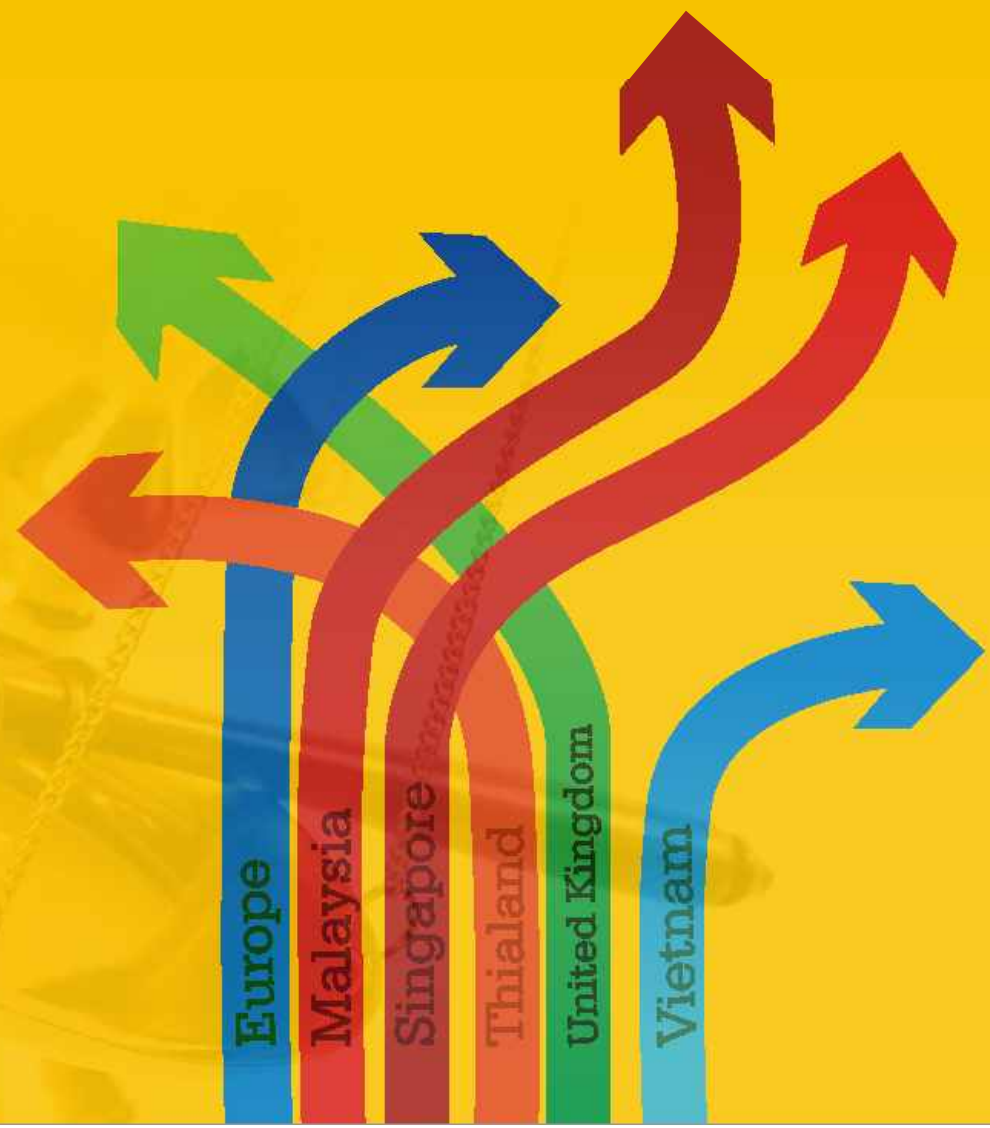




Compilation of Various  
International

# ACTS & LAWS

for Direct Selling Industry







## Background of Direct Selling Industry in India

---

With economic development and growing consumerism, the retail sector in India also underwent significant changes. Various store and non-store retail formats have evolved to cater to this growing market and direct selling is one such non-store retail format. Direct selling refers to the selling of goods and services to the consumers away from a fixed retail outlet, generally in their homes, workplace, etc., through explanation and demonstration of the product by direct sellers. Formally defining, direct selling is a sales and distribution channel / system whereby, on the basis of certain well defined rules direct sellers can derive income not only from personal sales but also from ongoing sales and consumption by people whom they, directly or indirectly, have introduced to the direct selling company and for whom they provide ongoing motivation and training.

This sector is one of the fastest growing non-store retail formats, recording double-digit growth in the post-reform period. The growing Indian market has attracted a large number of Indian and foreign direct selling companies.

### **Benefits of Direct Selling:**

Globally, direct selling is a labour-intensive industry and has a positive socio-economic impact in terms of higher employment, women empowerment and skill development.

Direct selling offers self-employment opportunities to a large number of people, especially women. The number of direct sellers in India has almost doubled between 2004 and 2009. In terms of the number of direct sellers, India ranked 11th among the top direct selling countries in 2009-10. In future, this sector is expected to offer employment opportunities not only in urban areas but also in rural areas. Indirect employment is expected to be generated in manufacturing and the supply chain, as direct selling companies develop India as a sourcing hub. The direct selling industry not only offers an alternative employment opportunity but has also contributed in terms of increased incomes for those who have entered the industry as direct sellers.

Financial independence, development of personal and business skills, flexible timings and an improved ability to take care of families are other benefits of direct selling.

## Regulations on Direct Selling in Singapore, Malaysia, United Kingdom and United States of America

Country	Applicable Regulations	Objective
Singapore	<ul style="list-style-type: none"> <li>Multi-level Marketing and Pyramid Selling (Prohibition) Act (Chapter 190)</li> </ul>	<ul style="list-style-type: none"> <li>This Act prohibits the registration of businesses that are designed to promote multi-level marketing schemes or pyramid selling schemes in relation to the distribution and sale of commodities and makes it unlawful for any person to promote such schemes.</li> </ul>
	<ul style="list-style-type: none"> <li>Multi-level Marketing and Pyramid Selling (Excluded Schemes and Arrangements) Order 2000</li> </ul>	<ul style="list-style-type: none"> <li>This Order explicitly excludes from the Multi-level Marketing and Pyramid Selling (Prohibition) Act certain schemes and arrangements. MTI has enhanced the safeguards on MLM schemes operating in Singapore, with the aim of protecting Singaporean consumers and at the same time promoting a conducive environment for legitimate businesses.</li> </ul>
	<ul style="list-style-type: none"> <li>Consumer Protection (Fair Trading) Act</li> </ul>	<ul style="list-style-type: none"> <li>This Act provides the legislative framework to allow consumers aggrieved by unfair practices to have recourse to civil remedies before the courts. It also provides for a cooling-off period for direct sales and time share contracts, and allows specified bodies to enter voluntary compliance agreements with, or apply for injunction orders against errant traders.</li> </ul>
Malaysia	<ul style="list-style-type: none"> <li>Act 500 Direct Sales Act 1993 (Reprint 2002)</li> </ul>	<ul style="list-style-type: none"> <li>An Act to provide for the licensing of persons carrying on direct sales business, for the regulation of direct selling, and for other matters connected therewith.</li> </ul>
United Kingdom	<ul style="list-style-type: none"> <li>The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987</li> </ul>	<ul style="list-style-type: none"> <li>This Regulation provides framework for consumer protection for supply by a trader of goods or services to a consumer either through unsolicited visit or solicited visit.</li> </ul>
	<ul style="list-style-type: none"> <li>The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) (Amendment) Regulations 1988</li> </ul>	<ul style="list-style-type: none"> <li>These Regulations amend the Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987 (the principal Regulations) and come into force at the same time as those Regulations.</li> <li>They make it clear that under the principal Regulations the consumer only has to repay money actually advanced to him before the cancellation of the contract in the form of a cash loan or an overdraft.</li> </ul>

Country	Applicable Regulations	Objective
<b>United Kingdom</b>	<ul style="list-style-type: none"> <li>The Doorstep Selling Regulations</li> </ul>	<ul style="list-style-type: none"> <li>This Regulation provides protection to consumers when you buy goods or services from a trader on the doorstep or in the home (or in someone else's home) by way of consumers right to cooling of period and duties of traders to inform of the same to the consumers</li> </ul>
<b>United States</b>	<ul style="list-style-type: none"> <li>Texas Statutes &amp; Codes</li> </ul>	<ul style="list-style-type: none"> <li>Defines the pyramid promotional scheme</li> </ul>
	<ul style="list-style-type: none"> <li>Oklahoma Statutes</li> </ul>	<ul style="list-style-type: none"> <li>This Act details the punishments for promoting pyramid promotional scheme</li> </ul>
<b>India</b>	<ul style="list-style-type: none"> <li>No separate Regulation / Notification / Act in place for the Direct Selling Industry</li> </ul>	<ul style="list-style-type: none"> <li>Because of absence of a superior legislation, the Prize Chits &amp; Money Circulation (Banning) Act get erroneously invoked and gets applied to legitimate Direct Selling Businesses. These businesses otherwise do comply with all relevant regulations for conducting any general &amp; specific business in India.</li> </ul>

## Analysis of regulations on Direct Selling in Singapore, Malaysia, U K and United States of America

Regulations	Singapore	Malaysia	United Kingdom	United States of America	Suggested Rules or conditions
Specific Legislation on Direct Selling	<ul style="list-style-type: none"> <li>Governed by:</li> <li>Multi-level Marketing and Pyramid Selling (Prohibition) Act (Chapter 190)</li> <li>Multi-level Marketing and Pyramid Selling (Excluded Schemes and Arrangements) Order 2000</li> <li>Consumer Protection (Fair Trading) Act [CPFTA]</li> </ul>	<ul style="list-style-type: none"> <li>Governed by Direct Sales Act 1993 [DSA 1993]</li> <li>The Act's regulatory authority is Ministry of Domestic Trade and Consumer Affairs</li> </ul>	No	No	<ul style="list-style-type: none"> <li>No separate legislation.</li> <li>Guidelines would help in regulating the Direct sales activity in the country</li> </ul>
Cooling-off Period	<ul style="list-style-type: none"> <li>Voluntarily by DSA of Singapore for 7 days</li> <li>Under CPFTA its 3-day cooling-off period</li> </ul>	<ul style="list-style-type: none"> <li>As specified in Section 2, 23, 24(1), 25 and 26 of DSA1993</li> </ul>	<ul style="list-style-type: none"> <li>Applicable under laws of The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) (Amendment) Regulations 1988</li> </ul>	<ul style="list-style-type: none"> <li>Federal Level – Federal Trade Commission (FTC) Cooling-off Rule</li> <li>All US states – Home Solicitation Sales Acts</li> </ul>	<ul style="list-style-type: none"> <li>Refer detailed answer 3 to guidelines questions.</li> </ul>

Regulations	Singapore	Malaysia	United Kingdom	United States of America	Suggested Rules or conditions
Pyramid Schemes	<p>Conditional</p> <ul style="list-style-type: none"> <li>Prohibited under Multi-level Marketing and Pyramid Selling (Prohibition) Act 1973</li> <li>Under Multi-level Marketing and Pyramid Selling (Excluded Schemes and Arrangements) Order 2001 MLM schemes or arrangements that satisfy certain conditions are permitted</li> </ul>	<ul style="list-style-type: none"> <li>Banned under Section 7 of the DSA 1993</li> </ul>	<ul style="list-style-type: none"> <li>Illegal under Fair Trading Act 1973 (as amended by the Trading Schemes Act 1996)</li> </ul>	<ul style="list-style-type: none"> <li>Prohibited by all US states through various forms of legislation – some are specifically drafted to combat pyramid schemes while others use variety of means (e.g., lottery laws, endless chain scheme statutes) to curtail pyramid schemes frauds</li> <li>Six states (Idaho, Louisiana, Montana, Oklahoma, South Dakota and Texas) have anti-pyramid statutes (which are consistent with US DSA Code of Ethics)</li> </ul>	<ul style="list-style-type: none"> <li>This is merely a guideline to bring about transparency and ethical practices in the industry.</li> <li>Specific references may be made by the regulator with reference to the Pyramid schemes as and when appropriate law is enacted.</li> </ul>

Regulations	Singapore	Malaysia	United Kingdom	United States of America	Suggested Rules or conditions
Multi-Level Marketing	As above	<ul style="list-style-type: none"> <li>No specific legislation</li> <li>Presently covered under the DSA 1993</li> </ul>	<ul style="list-style-type: none"> <li>No specific laws. All network marketing has either to comply with the Fair Trading Act 1973 (as amended by the Trading Schemes Act 1996) or is exempted</li> </ul>	<ul style="list-style-type: none"> <li>No specific federal regulations</li> <li>Some states regulate multi-level marketing companies (Georgia, Louisiana, Maryland, Massachusetts, Wyoming and the Commonwealth of Puerto Rico)</li> <li>Montana has a multi-level filing requirement as part of its anti-pyramid statute</li> <li>These states define 'multi-level distribution companies' as those which market products or services through independent agents or distributors at different levels and in which participants recruit or sponsor others and receive compensation based upon the recruit's sales of products</li> </ul>	<ul style="list-style-type: none"> <li>The guidelines may applicable for all the Direct Sales companies including Multi Level marketing companies.</li> <li>Specific references may be made by the regulator with reference to the Pyramid schemes as and when appropriate law is enacted.</li> </ul>



Regulations	Singapore	Malaysia	United Kingdom	United States of America	Suggested Rules or conditions
Prohibition on Products	<ul style="list-style-type: none"> <li>Some prohibitions on certain class of products</li> </ul>	<ul style="list-style-type: none"> <li>No such specification but before introducing new products direct selling companies must get approval from the authority before distributing the products</li> </ul>	<p>Generally no restrictions except for:</p> <ul style="list-style-type: none"> <li>Wines &amp; Spirits – local authority licence is required</li> <li>Drugs – Pharmacy registration is required</li> <li>Regulated financial services like life insurance and investments products</li> </ul>	<ul style="list-style-type: none"> <li>Generally, no prohibitions on consumer products</li> <li>Regulated industries (e.g., wine and liquor, securities, insurance) and certain product lines (e.g., dietary supplements, telephone cards) have to confirm to requirements to sell as stated for that industry / or by federal and state level</li> </ul>	<ul style="list-style-type: none"> <li>General prohibitions as applicable in India through various laws / legislations.</li> </ul>
Credit Restrictions Country	<ul style="list-style-type: none"> <li>According to the law on sale of goods</li> </ul>	<ul style="list-style-type: none"> <li>No such clauses in DSA 1993</li> </ul>	<ul style="list-style-type: none"> <li>As applicable under the Consumer Credit Act 1974</li> </ul>	<p>As specified in:</p> <ul style="list-style-type: none"> <li>The Consumer Credit Protection Act (which contains the Truth in Lending Act)</li> </ul>	<ul style="list-style-type: none"> <li>No specific clause / measure is recommended / required.</li> </ul>
Money Collections	<ul style="list-style-type: none"> <li>No legislation</li> </ul>	<ul style="list-style-type: none"> <li>No money can be collected before the expiry of the cooling-off period as stated in Section 25(4) of DSA 1993</li> </ul>	<ul style="list-style-type: none"> <li>No regulations</li> </ul>	<ul style="list-style-type: none"> <li>No information</li> </ul>	<ul style="list-style-type: none"> <li>No specific clause / measure is recommended / required.</li> </ul>

Regulations	Singapore	Malaysia	United Kingdom	United States of America	Suggested Rules or conditions
Licenses for direct salespersons	<ul style="list-style-type: none"> <li>No law or legislation to register with the authorities except under the Environment of Public Health Act, the operation of food establishment requires a license from the Commissioner of Public Health</li> </ul>	<ul style="list-style-type: none"> <li>Direct sales license is necessary before commencing a direct selling business as under Section 4 of DSA 1993</li> </ul>	<ul style="list-style-type: none"> <li>Apart from consumer credit license direct sellers licensing requirements are as in archaic laws in England and Wales about 'peddlers' – anyone selling goods door to door needs have an annually renewable license from the country police. Government has indicated to repeal the law.</li> </ul>	<ul style="list-style-type: none"> <li>No federal licensing</li> <li>Different forms of registrations, disclosure and bonding are mandated in many municipalities and localities and sometimes by states</li> </ul>	<ul style="list-style-type: none"> <li>No specific clause / measure is recommended / required.</li> <li>Specific references may be made by the regulator with reference to the Pyramid schemes as and when appropriate law is enacted</li> </ul>
Status of Direct Sellers	<ul style="list-style-type: none"> <li>Can be classified as independent contractors</li> <li>However, as far as their liabilities vis-à-vis the customer is concerned, they are, unless known to the buyer, agents of the company</li> </ul>	<ul style="list-style-type: none"> <li>Generally salespersons are independent contractors and are not employees of the company</li> <li>Authority stipulates that companies are responsible for the conduct of their distributors</li> </ul>	<ul style="list-style-type: none"> <li>Essential for direct selling companies to ensure that those who participate in their schemes are self-employed, wholly independent salespeople – else they are treated as employees</li> <li>Application of European community law "The Commercial Agents (Council Directive) Regulations 1993 which gives the right to financial compensation if their agency is terminated</li> </ul>	<ul style="list-style-type: none"> <li>Are non-employees for federal employment tax purposes if they: <ul style="list-style-type: none"> <li>Fit the definition of who is a direct seller</li> <li>Receive substantially all remuneration based upon sales or other outputs; and</li> <li>Have a written contract stating that they will not be treated as employees</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Refer detailed answer 2 to guideline questions.</li> </ul>

Regulations	Singapore	Malaysia	United Kingdom	United States of America	Suggested Rules or conditions
Earning Claims	<ul style="list-style-type: none"> <li>No legislation</li> </ul>	<ul style="list-style-type: none"> <li>Need to be substantiated</li> </ul>	<ul style="list-style-type: none"> <li>Have to satisfy the Advertising Standards Authority's requirements that any claim is honest, lawful, decent and true</li> </ul>	<ul style="list-style-type: none"> <li>No information</li> </ul>	<ul style="list-style-type: none"> <li>No specific clause / measure is recommended / required.</li> </ul>
Taxes and Fees – individual	<ul style="list-style-type: none"> <li>Pay Income Tax through the basis of disclosure</li> </ul>	<ul style="list-style-type: none"> <li>Responsibility lies with the distributors</li> </ul>	<ul style="list-style-type: none"> <li>Treated as any other tax payer and taxes payable as laid down by Inland Revenue</li> </ul>	Liable for: <ul style="list-style-type: none"> <li>Annual Tax Income filing</li> <li>Self-employment Tax</li> <li>Information Returns for those who have individuals in their downline</li> </ul>	<ul style="list-style-type: none"> <li>Taxes are payable as laid down by various taxation existing in the country.</li> </ul>
Taxes and Fees – corporate	<ul style="list-style-type: none"> <li>Corporate Tax</li> </ul>	<ul style="list-style-type: none"> <li>As applicable under law</li> </ul>	<ul style="list-style-type: none"> <li>Applicable for Corporation Tax (1998)</li> <li>VAT @ 17.5% on the retail price of all goods sold by a VAT registered direct selling company</li> </ul>	<ul style="list-style-type: none"> <li>Corporate tax</li> <li>Information Returns</li> </ul>	<ul style="list-style-type: none"> <li>Taxes are payable as laid down by various taxation existing in the country.</li> </ul>

Regulations	Singapore	Malaysia	United Kingdom	United States of America	Suggested Rules or conditions
Social Security	No information	No information	<ul style="list-style-type: none"> <li>Only direct sellers whose annual net income from self employment exceeds £3,590 (1998/9) are liable to pay social security payments</li> </ul>	<ul style="list-style-type: none"> <li>As independent contractors, direct sellers do not have social security deducted from their commission checks by companies</li> <li>Direct seller is responsible for paying self-employment tax on their direct selling earnings</li> </ul>	Not applicable to India
Others	No information	<p>Other laws and regulations affecting direct selling are:</p> <ul style="list-style-type: none"> <li>Hire Purchase Act 1967</li> <li>Sale of Goods Act 1957</li> <li>Contracts Act 1950</li> <li>Companies Act 1965</li> </ul>	<p>Control of Advertising</p> <ul style="list-style-type: none"> <li>Compliance with British Codes of Advertising Practice</li> <li>False or misleading statements by trader is a criminal offense under the Trade Descriptions Act 1968</li> <li>Additional power to Director General of Fair Trading by the Control of Misleading Advertisement Regulations 1998</li> </ul>	<ul style="list-style-type: none"> <li>Needs to be within the laws in Business Opportunity and Franchise Statutes</li> </ul>	<ul style="list-style-type: none"> <li>Refer Annexure 1 of detailed answer 2 to guideline questions.</li> </ul>
Incorporation	<ul style="list-style-type: none"> <li>Incorporation of companies which propose to promote multi-level marketing schemes or pyramid schemes is prohibited</li> </ul>		<ul style="list-style-type: none"> <li>No law to prevent a direct seller from incorporating his / her business</li> </ul>		<ul style="list-style-type: none"> <li>Refer detailed answer 1 to guideline questions.</li> </ul>

# Index

EUROPE.....	1
MALAYSIA .....	29
SINGAPORE .....	45
THIALAND .....	57
UNITED KINGDOM.....	73
VIETNAM .....	99





# EUROPE

## Law on Direct Selling



# EUROPE

## Law on Direct Selling

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee

Acting in accordance with the procedure laid down in Article 251 of the Treaty

### Whereas:

- (1) Article 153(1) and (3)(a) of the Treaty provides that the Community is to contribute to the attainment of a high level of consumer protection by the measures it adopts pursuant to Article 95 thereof.
- (2) In accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods and services and free movement of establishment are ensured. The development of fair commercial practices within the area without internal frontiers is vital for the promotion of the development of cross border activities.
- (3) The laws of the Member States relating to unfair commercial practices show marked differences which can generate appreciable distortions of competition and obstacles to the smooth functioning of the internal market. In the field of advertising, Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising establishes minimum criteria for harmonising legislation on misleading advertising, but does not prevent the Member States from retaining or adopting measures which provide more extensive protection for consumers. As a result, Member States' provisions on misleading advertising diverge significantly.
- (4) These disparities cause uncertainty as to which national rules apply to unfair commercial practices harming consumers' economic interests and create many barriers affecting



business and consumers. These barriers increase the cost to business of exercising internal market freedoms, in particular when businesses wish to engage in cross border marketing, advertising campaigns and sales promotions. Such barriers also make consumers uncertain of their rights and undermine their confidence in the internal market.

- (5) In the absence of uniform rules at Community level, obstacles to the free movement of services and goods across borders or the freedom of establishment could be justified in the light of the case-law of the Court of Justice of the European Communities as long as they seek to protect recognised public interest objectives and are proportionate to those objectives. In view of the Community's objectives, as set out in the provisions of the Treaty and in secondary Community law relating to freedom of movement, and in accordance with the Commission's policy on commercial communications as indicated in the Communication from the Commission entitled. The follow-up to the Green Paper on Commercial Communications in the Internal Market', such obstacles should be eliminated. These obstacles can only be eliminated by establishing uniform rules at Community level which establish a high level of consumer protection and by clarifying certain legal concepts at Community level to the extent necessary for the proper functioning of the internal market and to meet the requirement of legal certainty.
- (6) This Directive therefore approximates the laws of the Member States on unfair commercial practices, including unfair advertising, which directly harm consumers' economic interests and thereby indirectly harm the economic interests of legitimate competitors. In line with the principle of proportionality, this Directive protects consumers from the consequences of such unfair commercial practices where they are material but recognises that in some cases the impact on consumers may be negligible. It neither covers nor affects the national laws on unfair commercial practices which harm only competitors' economic interests or which relate to a transaction between traders; taking full account of the principle of subsidiarity, Member States will continue to be able to regulate such practices, in conformity with Community law, if they choose to do so. Nor does this Directive cover or affect the provisions of Directive 84/450/EEC on advertising which misleads business but which is not misleading for consumers and on comparative advertising. Further, this Directive does not affect accepted advertising and marketing practices, such as legitimate product placement, brand differentiation or the offering of incentives which may legitimately affect consumers' perceptions of products and influence their behaviour without impairing the consumer's ability to make an informed decision.
- (7) This Directive addresses commercial practices directly related to influencing consumers' transactional decisions in relation to products. It does not address commercial practices carried out primarily for other purposes, including for example commercial communication aimed at investors, such as annual reports and corporate promotional literature. It does not address legal requirements related to taste and decency which vary widely among the

Member States. Commercial practices such as, for example, commercial solicitation in the streets, may be undesirable in Member States for cultural reasons. Member States should accordingly be able to continue to ban commercial practices in their territory, in conformity with Community law, for reasons of taste and decency even where such practices do not limit consumers' freedom of choice. Full account should be taken of the context of the individual case concerned in applying this Directive, in particular the general clauses thereof.

- (8) This Directive directly protects consumer economic interests from unfair business-to-consumer commercial practices. Thereby, it also indirectly protects legitimate businesses from their competitors who do not play by the rules in this Directive and thus guarantees fair competition in fields coordinated by it. It is understood that there are other commercial practices which, although not harming consumers, may hurt competitors and business customers. The Commission should carefully examine the need for Community action in the field of unfair competition beyond the remit of this Directive and, if necessary, make a legislative proposal to cover these other aspects of unfair competition.
- (9) This Directive is without prejudice to individual actions brought by those who have been harmed by an unfair commercial practice. It is also without prejudice to Community and national rules on contract law, on intellectual property rights, on the health and safety aspects of products, on conditions of establishment and authorisation regimes, including those rules which, in conformity with Community law, relate to gambling activities, and to Community competition rules and the national provisions implementing them. The Member States will thus be able to retain or introduce restrictions and prohibitions of commercial practices on grounds of the protection of the health and safety of consumers in their territory wherever the trader is based, for example in relation to alcohol, tobacco or pharmaceuticals. Financial services and immovable property, by reason of their complexity and inherent serious risks, necessitate detailed requirements, including positive obligations on traders. For this reason, in the field of financial services and immovable property, this Directive is without prejudice to the right of Member States to go beyond its provisions to protect the economic interests of consumers. It is not appropriate to regulate here the certification and indication of the standard of fineness of articles of precious metal.
- (10) It is necessary to ensure that the relationship between this Directive and existing Community law is coherent, particularly where detailed provisions on unfair commercial practices apply to specific sectors. This Directive therefore amends Directive 84/450/EEC, Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests (2) and Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services. This Directive accordingly applies only in so far as there are no specific Community law provisions regulating specific aspects of unfair commercial practices, such as information requirements and rules on the way the information is presented to the consumer. It provides protection for

consumers where there is no specific sectoral legislation at Community level and prohibits traders from creating a false impression of the nature of products. This is particularly important for complex products with high levels of risk to consumers, such as certain financial services products. This Directive consequently complements the Community acquis, which is applicable to commercial practices harming consumers' economic interests.

- (11) The high level of convergence achieved by the approximation of national provisions through this Directive creates a high common level of consumer protection. This Directive establishes a single general prohibition of those unfair commercial practices distorting consumers' economic behaviour. It also sets rules on aggressive commercial practices, which are currently not regulated at Community level.
- (12) Harmonisation will considerably increase legal certainty for both consumers and business. Both consumers and business will be able to rely on a single regulatory framework based on clearly defined legal concepts regulating all aspects of unfair commercial practices across the EU. The effect will be to eliminate the barriers stemming from the fragmentation of the rules on unfair commercial practices harming consumer economic interests and to enable the internal market to be achieved in this area.
- (13) In order to achieve the Community's objectives through the removal of internal market barriers, it is necessary to replace Member States' existing, divergent general clauses and legal principles. The single, common general prohibition established by this Directive therefore covers unfair commercial practices distorting consumers' economic behaviour. In order to support consumer confidence the general prohibition should apply equally to unfair commercial practices which occur outside any contractual relationship between a trader and a consumer or following the conclusion of a contract and during its execution. The general prohibition is elaborated by rules on the two types of commercial practices which are by far the most common, namely misleading commercial practices and aggressive commercial practices.
- (14) It is desirable that misleading commercial practices cover those practices, including misleading advertising, which by deceiving the consumer prevent him from making an informed and thus efficient choice. In conformity with the laws and practices of Member States on misleading advertising, this Directive classifies misleading practices into misleading actions and misleading omissions. In respect of omissions, this Directive sets out a limited number of key items of information which the consumer needs to make an informed transactional decision. Such information will not have to be disclosed in all advertisements, but only where the trader makes an invitation to purchase, which is a concept clearly defined in this Directive. The full harmonisation approach adopted in this Directive does not preclude the Member States from specifying in national law the main characteristics of particular products such as, for example, collectors' items or electrical goods, the omission of which would be material when an invitation to purchase is made. It is not the intention of this Directive to reduce consumer choice by prohibiting the promotion of products which look

similar to other products unless this similarity confuses consumers as to the commercial origin of the product and is therefore misleading. This Directive should be without prejudice to existing Community law which expressly affords Member States the choice between several regulatory options for the protection of consumers in the field of commercial practices. In particular, this Directive should be without prejudice to Article 13(3) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector.

- (15) "Where Community law sets out information requirements in relation to commercial communication, advertising and marketing that information is considered as material under this Directive. Member States will be able to retain or add information requirements relating to contract law and having contract law consequences where this is allowed by the minimum clauses in the existing Community law instruments. A non exhaustive list of such information requirements in the *acquis* is contained in Annex II. Given the full harmonisation introduced by this Directive only the information required in Community law is considered as material for the purpose of Article 7(5) thereof. Where Member States have introduced information requirements over and above what is specified in Community law, on the basis of minimum clauses, the omission of that extra information will not constitute a misleading omission under this Directive. By contrast Member States will be able, when allowed by the minimum clauses in Community law, to maintain or introduce more stringent provisions in conformity with Community law so as to ensure a higher level of protection of consumers' individual contractual rights.
- (16) The provisions on aggressive commercial practices should cover those practices which significantly impair the consumer's freedom of choice. Those are practices using harassment, coercion, including the use of physical force, and undue influence.
- (17) It is desirable that those commercial practices which are in all circumstances unfair be identified to provide greater legal certainty. Annex I therefore contains the full list of all such practices. These are the only commercial practices which can be deemed to be unfair without a case-by-case assessment against the provisions of Articles 5 to 9. The list may only be modified by revision of the Directive.
- (18) It is appropriate to protect all consumers from unfair commercial practices; however the Court of Justice has found it necessary in adjudicating on advertising cases since the enactment of Directive 84/450/EEC to examine the effect on a notional, typical consumer. In line with the principle of proportionality, and to permit the effective application of the protections contained in it, this Directive takes as a benchmark the average consumer, who is reasonably well informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors, as interpreted by the Court of Justice, but also contains provisions aimed at preventing the exploitation of consumers whose characteristics make them particularly vulnerable to unfair commercial practices. Where a commercial practice is specifically aimed at a particular group of consumers, such as children, it is desirable that the impact of the com-

mercial practice be assessed from the perspective of the average member of that group. It is therefore appropriate to include in the list of practices which are in all circumstances unfair a provision which, without imposing an outright ban on advertising directed at children, protects them from direct exhortations to purchase. The average consumer test is not a statistical test. National courts and authorities will have to exercise their own faculty of judgement, having regard to the case-law of the Court of Justice, to determine the typical reaction of the average consumer in a given case.

- (19) Where certain characteristics such as age, physical or mental infirmity or credulity make consumers particularly susceptible to a commercial practice or to the underlying product and the economic behaviour only of such consumers is likely to be distorted by the practice in a way that the trader can reasonably foresee, it is appropriate to ensure that they are adequately protected by assessing the practice from the perspective of the average member of that group.
- (20) It is appropriate to provide a role for codes of conduct, which enable traders to apply the principles of this Directive effectively in specific economic fields. In sectors where there are specific mandatory requirements regulating the behaviour of traders, it is appropriate that these will also provide evidence as to the requirements of professional diligence in that sector. The control exercised by code owners at National or Community level to eliminate unfair commercial practices may avoid the need for recourse to administrative or judicial action and should therefore be encouraged. With the aim of pursuing a high level of consumer protection, consumers' organisations could be informed and involved in the drafting of codes of conduct.
- (21) Persons or organisations regarded under national law as having a legitimate interest in the matter must have legal remedies for initiating proceedings against unfair commercial practices, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings. While it is for national law to determine the burden of proof, it is appropriate to enable courts and administrative authorities to require traders to produce evidence as to the accuracy of factual claims they have made.
- (22) It is necessary that Member States lay down penalties for infringements of the provisions of this Directive and they must ensure that these are enforced. The penalties must be effective, proportionate and dissuasive.
- (23) Since the objectives of this Directive, namely to eliminate the barriers to the functioning of the internal market represented by national laws on unfair commercial practices and to provide a high common level of consumer protection, by approximating the laws, regulations and administrative provisions of the Member States on unfair commercial practices, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of

subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to eliminate the internal market barriers and achieve a high common level of consumer protection.

- (24) It is appropriate to review this Directive to ensure that barriers to the internal market have been addressed and a high level of consumer protection achieved. The review could lead to a Commission proposal to amend this Directive, which may include a limited extension to the derogation in Article 3(5), and/or amendments to other consumer protection legislation reflecting the Commission's Consumer Policy Strategy commitment to review the existing *acquis* in order to achieve a high, common level of consumer protection.
- (25) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

## HAVE ADOPTED THIS DIRECTIVE:

### CHAPTER 1

#### GENERAL PROVISIONS

##### Article 1

##### Purpose

The purpose of this Directive is to contribute to the proper functioning of the internal market and achieve a high level of consumer protection by approximating the laws, regulations and administrative provisions of the Member States on unfair commercial practices harming consumers' economic interests.

##### Article 2

##### Definitions

For the purposes of this Directive:

- (a) 'consumer' means any natural person who, in commercial practices covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;
- (b) 'trader' means any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader;

- (c) 'product' means any goods or service including immovable property, rights and obligations;
- (d) 'business-to-consumer commercial practices' (hereinafter also referred to as commercial practices) means any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers;
- (e) 'to materially distort the economic behaviour of consumers' means using a commercial practice to appreciably impair the consumer's ability to make an informed decision, thereby causing the consumer to take a transactional decision that he would not have taken otherwise;
- (f) 'code of conduct' means an agreement or set of rules not imposed by law, regulation or administrative provision of a Member State which defines the behaviour of traders who undertake to be bound by the code in relation to one or more particular commercial practices or business sectors;
- (g) 'code owner' means any entity, including a trader or group of traders, which is responsible for the formulation and revision of a code of conduct and / or for monitoring compliance with the code by those who have undertaken to be bound by it;
- (h) 'professional diligence' means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and / or the general principle of good faith in the trader's field of activity;
- (i) 'invitation to purchase' means a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of the commercial communication used and thereby enables the consumer to make a purchase;
- (j) 'undue influence' means exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer's ability to make an informed decision;
- (k) 'transactional decision' means any decision taken by a consumer concerning whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product or to exercise a contractual right in relation to the product, whether the consumer decides to act or to refrain from acting;
- (l) 'regulated profession' means a professional activity or a group of professional activities, access to which or the pursuit of which, or one of the modes of pursuing which, is conditional, directly or indirectly, upon possession of specific professional qualifications, pursuant to laws, regulations or administrative provisions.



## Article 3

### Scope

1. This Directive shall apply to unfair business-to-consumer commercial practices, as laid down in Article 5, before, during and after a commercial transaction in relation to a product.
2. This Directive is without prejudice to contract law and, in particular, to the rules on the validity, formation or effect of a contract.
3. This Directive is without prejudice to Community or national rules relating to the health and safety aspects of products.
4. In the case of conflict between the provisions of this Directive and other Community rules regulating specific aspects of unfair commercial practices, the latter shall prevail and apply to those specific aspects.
5. For a period of six years from 12 June 2007, Member States shall be able to continue to apply national provisions within the field approximated by this Directive which are more restrictive or prescriptive than this Directive and which implement directives containing minimum harmonisation clauses. These measures must be essential to ensure that consumers are adequately protected against unfair commercial practices and must be proportionate to the attainment of this objective. The review referred to in Article 18 may, if considered appropriate, include a proposal to prolong this de-rogation for a further limited period.
6. Member States shall notify the Commission without delay of any national provisions applied on the basis of paragraph 5.
7. This Directive is without prejudice to the rules determining the jurisdiction of the courts.
8. This Directive is without prejudice to any conditions of establishment or of authorisation regimes, or to the deontological codes of conduct or other specific rules governing regulated professions in order to uphold high standards of integrity on the part of the professional, which Member States may, in conformity with Community law, impose on professionals.
9. In relation to 'financial services', as defined in Directive 2002/65/EC, and immovable property, Member States may impose requirements which are more restrictive or prescriptive than this Directive in the field which it approximates.
10. This Directive shall not apply to the application of the laws, regulations and administrative provisions of Member States relating to the certification and indication of the standard of fineness of articles of precious metal.



## Article 4

### Internal market

Member States shall neither restrict the freedom to provide services nor restrict the free movement of goods for reasons falling within the field approximated by this Directive.

## CHAPTER 2

### UNFAIR COMMERCIAL PRACTICES

## Article 5

Prohibition of unfair commercial practices

#### 1. Unfair commercial practices shall be prohibited.

2. A commercial practice shall be unfair if:

- (a) it is contrary to the requirements of professional diligence, and
- (b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.

3. Commercial practices which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group. This is without prejudice to the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally.

4. In particular, commercial practices shall be unfair which:

- (a) are misleading as set out in Articles 6 and 7, or
- (b) are aggressive as set out in Articles 8 and 9.

5. Annex I contains the list of those commercial practices which shall in all circumstances be regarded as unfair. The same single list shall apply in all Member States and may only be modified by revision of this Directive.

## Section 1

### Misleading commercial practices

#### Article 6

#### Misleading actions

1. A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:
  - (a) the existence or nature of the product;
  - (b) the main characteristics of the product, such as its availability, benefits, risks, execution, composition, accessories, after sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product;
  - (c) the extent of the trader's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product;
  - (d) the price or the manner in which the price is calculated, or the existence of a specific price advantage;
  - (e) the need for a service, part, replacement or repair;
  - (f) the nature, attributes and rights of the trader or his agent, such as his identity and assets, his qualifications, status, approval, affiliation or connection and ownership of industrial, commercial or intellectual property rights or his awards and distinctions;
  - (g) the consumer's rights, including the right to replacement or reimbursement under Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, or the risks he may face.

---

(a) 1974 c. 39.

2. A commercial practice shall also be regarded as misleading if in its factual context, taking account of all its features and circumstances, it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise, and it involves:
  - (a) any marketing of a product, including comparative advertising, which creates confusion with any products, trade-marks, trade names or other distinguishing marks of a competitor;
  - (b) non-compliance by the trader with commitments contained in codes of conduct by which the trader has undertaken to be bound, where:
    - (i) the commitment is not aspirational but is firm and is capable of being verified, and
    - (ii) the trader indicates in a commercial practice that he is bound by the code.

## Article 7

### Misleading omissions

1. A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.
2. It shall also be regarded as a misleading omission when, taking account of the matters described in paragraph 1, a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information as referred to in that paragraph or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.
3. Where the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the trader to make the information available to consumers by other means shall be taken into account in deciding whether information has been omitted.
4. In the case of an invitation to purchase, the following information shall be regarded as material, if not already apparent from the context:
  - (a) the main characteristics of the product, to an extent appropriate to the medium and the product;

- (b) the geographical address and the identity of the trader, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting;
  - (c) the price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
  - (d) the arrangements for payment, delivery, performance and the complaint handling policy, if they depart from the requirements of professional diligence;
  - (e) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right.
5. Information requirements established by Community law in relation to commercial communication including advertising or marketing, a non-exhaustive list of which is contained in Annex II, shall be regarded as material.

## Section 2

### Aggressive commercial practices

#### Article 8

#### Aggressive commercial practices

A commercial practice shall be regarded as aggressive if, in its factual context, taking account of all its features and circumstances, by harassment, coercion, including the use of physical force, or undue influence, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct with regard to the product and thereby causes him or is likely to cause him to take a transactional decision that he would not have taken otherwise.

#### Article 9

#### Use of harassment, coercion and undue influence

In determining whether a commercial practice uses harassment, coercion, including the use of physical force, or undue influence, account shall be taken of:

- (a) its timing, location, nature or persistence;

- (b) the use of threatening or abusive language or behaviour;
- (c) the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the trader is aware, to influence the consumer's decision with regard to the product;
- (d) any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader;
- (e) any threat to take any action that cannot legally be taken.

## CHAPTER 3

### CODES OF CONDUCT

#### Article 10

#### Codes of conduct

This Directive does not exclude the control, which Member States may encourage, of unfair commercial practices by code owners and recourse to such bodies by the persons or organisations referred to in Article 11 if proceedings before such bodies are in addition to the court or administrative proceedings referred to in that Article.

Recourse to such control bodies shall never be deemed the equivalent of foregoing a means of judicial or administrative recourse as provided for in Article 11.

## CHAPTER 4

### FINAL PROVISIONS

#### Article 11

#### Enforcement

1. Member States shall ensure that adequate and effective means exist to combat unfair commercial practices in order to enforce compliance with the provisions of this Directive in the interest of consumers.

Such means shall include legal provisions under which persons or organisations regarded under national law as having a legitimate interest in combating unfair commercial practices, including competitors, may:

- (a) take legal action against such unfair commercial practices;

and/or

- (b) bring such unfair commercial practices before an administrative authority competent either to decide on complaints or to initiate appropriate legal proceedings.

It shall be for each Member State to decide which of these facilities shall be available and whether to enable the courts or administrative authorities to require prior recourse to other established means of dealing with complaints, including those referred to in Article 10. These facilities shall be available regardless of whether the consumers affected are in the territory of the Member State where the trader is located or in another Member State.

It shall be for each Member State to decide:

- (a) whether these legal facilities may be directed separately or jointly against a number of traders from the same economic sector;

and

- (b) whether these legal facilities may be directed against a code owner where the relevant code promotes non-compliance with legal requirements.

2. Under the legal provisions referred to in paragraph 1, Member States shall confer upon the courts or administrative authorities powers enabling them, in cases where they deem such measures to be necessary taking into account all the interests involved and in particular the public interest:

- (a) to order the cessation of, or to institute appropriate legal proceedings for an order for the cessation of, unfair commercial practices;

or

- (b) if the unfair commercial practice has not yet been carried out but is imminent, to order the prohibition of the practice, or to institute appropriate legal proceedings for an order for the prohibition of the practice,

even without proof of actual loss or damage or of intention or negligence on the part of the trader.

Member States shall also make provision for the measures referred to in the first subparagraph to be taken under an accelerated procedure:

- either with interim effect,  
or
- with definitive effect,

on the understanding that it is for each Member State to decide which of the two options to select. Furthermore, Member States may confer upon the courts or administrative authorities powers enabling them, with a view to eliminating the continuing effects of unfair commercial practices the cessation of which has been ordered by a final decision:

- (a) to require publication of that decision in full or in part and in such form as they deem adequate;
- (b) to require in addition the publication of a corrective statement.

3. The administrative authorities referred to in paragraph 1 must:

- (a) be composed so as not to cast doubt on their Impartiality;
- (b) have adequate powers, where they decide on complaints, to monitor and enforce the observance of their decisions effectively;
- (c) normally give reasons for their decisions.

Where the powers referred to in paragraph 2 are exercised exclusively by an administrative authority, reasons for its decisions shall always be given. Furthermore, in this case, provision must be made for procedures whereby improper or unreasonable exercise of its powers by the administrative authority or improper or unreasonable failure to exercise the said powers can be the subject of judicial review.

## Article 12

### Courts and administrative authorities: substantiation of claims

Member States shall confer upon the courts or administrative authorities powers enabling them in the civil or administrative proceedings provided for in Article 11:

- (a) to require the trader to furnish evidence as to the accuracy of factual claims in relation to a commercial practice if, taking into account the legitimate interest of the trader and any other party to the proceedings, such a requirement appears appropriate on the basis of the circumstances of the particular case;

and

- (b) to consider factual claims as inaccurate if the evidence demanded in accordance with (a) is not furnished or is deemed insufficient by the court or administrative authority.

## Article 1.3

### Penalties

Member States shall lay down penalties for infringements of national provisions adopted in application of this Directive and shall take all necessary measures to ensure that these are enforced. These penalties must be effective, proportionate and dissuasive.

## Article 1.4

### Amendments to Directive 84/450/EEC

Directive 84/450/EEC is hereby amended as follows:

1. Article 1 shall be replaced by the following:

#### 'Article 1

The purpose of this Directive is to protect traders against misleading advertising and the unfair consequences thereof and to lay down the conditions under which comparative advertising is permitted.';

2. in Article 2:

- point 3 shall be replaced by the following:

'3. "trader means any natural or legal person who is acting for purposes relating to his trade, craft, business or profession and any one acting in the name of or on behalf of a trader.',

- the following point shall be added:

4. "code owner" means any entity, including a trader or group of traders, which is responsible for the formulation and revision of a code of conduct and/or for monitoring compliance with the code by those who have undertaken to be bound by it.';

3a shall be replaced by the following:

#### 'Article 3a

1. Comparative advertising shall, as far as the comparison is concerned, be permitted when the following conditions are met:



- (a) it is not misleading within the meaning of Articles 2 (2), 3 and 7 (1) of this Directive or Articles 6 and 7 of Directive 2005 / 29 / EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market;
- (b) it compares goods or services meeting the same needs or intended for the same purpose;
- (c) it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price;
- (d) it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities, or circumstances of a competitor;
- (e) for products with designation of origin, it relates in each case to products with the same designation;
- (f) it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
- (g) it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name;
- (h) it does not create confusion among traders, between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor.

4. Article 4(1) shall be replaced by the following:

'1. Member States shall ensure that adequate and effective means exist to combat misleading advertising in order to enforce compliance with the provisions on comparative advertising in the interest of traders and competitors. Such means shall include legal provisions under which persons or organisations regarded under national law as having a legitimate interest in combating misleading advertising or regulating comparative advertising may;

(a) take legal action against such advertising;

or

(b) bring such advertising before an administrative authority competent either to decide on complaints or to initiate appropriate legal proceedings.

It shall be for each Member State to decide which of these facilities shall be available and whether to enable the courts or administrative authorities to require prior recourse to other established means of dealing with complaints, including those referred to in Article 5.

It shall be for each Member State to decide:

(a) whether these legal facilities may be directed separately or jointly against a number of traders from the same economic sector;

and

(b) whether these legal facilities may be directed against a code owner where the relevant code promotes non-compliance with legal requirements.;

5. Article 7(1) shall be replaced by the following:

1. This Directive shall not preclude Member States from retaining or adopting provisions with a view to ensuring more extensive protection, with regard to misleading advertising, for traders and competitors.'

#### **Article 15 above "Amendments to Directives" 97/7/EC and 2002/65/EC**

1. Article 9 of Directive 97/7/EC shall be replaced by the following:

#### **Article 9**

#### **Inertia selling**

Given the prohibition of inertia selling practices laid down in Directive 2005/29/EC of 11 May 2005 of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market, Member States shall take the measures necessary to exempt the consumer from the provision of any consideration in cases of unsolicited supply, the absence of a response not constituting consent.

2. Article 9 of Directive 2002/65/EC shall be replaced by the following:

#### **Article 9**

Given the prohibition of inertia selling practices laid down in Directive 2005/29/EC of 11 May 2005 of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market and without prejudice to the provisions of Member States' legislation on the tacit renewal of distance contracts, when such rules permit tacit renewal, Member States shall take measures to exempt the consumer from any obligation in the event of unsolicited supplies, the absence of a reply not constituting consent.

## Article 16

### Amendments to Directive 98/27/EC and Regulation (EC) No 2006/2004

1. In the Annex to Directive 98/27/EC, point 1 shall be replaced by the following:

'1, Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market

2. In the Annex to Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of the consumer protection law (the Regulation on consumer protection cooperation) the following point shall be added:

'16, Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

## Article 17

### Information

Member States shall take appropriate measures to inform consumers of the national law transposing this Directive and shall, where appropriate, encourage traders and code owners to inform consumers of their codes of conduct

## Article 18

### Review

1. By 12 June 2011 the Commission shall submit to the European Parliament and the Council a comprehensive report on the application of this Directive, in particular of Articles 3(9) and 4 and Annex I, on the scope for further harmonisation and simplification of Community law relating to consumer protection, and, having regard to Article 3(5), on any measures that need to be taken at Community level to ensure that appropriate levels of consumer protection are maintained, The report shall be accompanied, if necessary, by a proposal to revise this Directive or other relevant parts of Community law,
2. The European Parliament and the Council shall endeavour to act, in accordance with the Treaty, within two years of the presentation by the Commission of any proposal submitted under paragraph 1,

## Article 19

### Transposition

Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by 12 June 2007. They shall forthwith inform the Commission thereof and inform the Commission of any subsequent amendments without delay. They shall apply those measures by 12 December 2007. When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

## Article 20

### Entry into force

This Directive shall enter into force on the day following its publication in the Official journal of the European Union.

## Article 21

### Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 11 May 2005.

For the European Parliament  
The President  
J. P. BORRELL FONTELLES

For the Council  
The President  
N.SCHMIT

## ANNEX I

### COMMERCIAL PRACTICES WHICH ARE IN ALL CIRCUMSTANCES CONSIDERED UNFAIR

#### Misleading commercial practices

1. Claiming to be a signatory to a code of conduct when the trader is not.
2. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.
3. Claiming that a code of conduct has an endorsement from a public or other body which it does not have.
4. Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when he / it has not or making such a claim without complying with the terms of the approval, endorsement or authorisation.
5. Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).
6. Making an invitation to purchase products at a specified price and then:
  - (a) refusing to show the advertised item to consumers;
  - or
  - (b) refusing to take orders for it or deliver it within a reasonable time;
  - or
  - (c) demonstrating a defective sample of it,

with the intention of promoting a different product (bait and switch)

7. Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.

8. Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the Member State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.
9. Stating or otherwise creating the impression that a product can legally be sold when it cannot.
10. Presenting rights given to consumers in law as a distinctive feature of the trader's offer.
11. Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial). This is without prejudice to Council Directive 89/552/EEC (1).
12. Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product.
13. Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.
14. Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.
15. Claiming that the trader is about to cease trading or move premises when he is not.
16. Claiming that products are able to facilitate winning in games of chance.
17. Falsely claiming that a product is able to cure illnesses, dysfunction or malformations.
18. Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions.
19. Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent

20. Describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.
21. Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the marketed product when he has not.
22. Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.
23. Creating the false impression that after-sales service in relation to a product is available in a Member State other than the one in which the product is sold.

### **Aggressive commercial practices**

24. Creating the impression that the consumer cannot leave the premises until a contract is formed.
25. Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return except in circumstances and to the extent justified, under national law, to enforce a contractual obligation.
26. Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under national law to enforce a contractual obligation. This is without prejudice to Article 10 of Directive 97/7/EC and Directives 95/46/EC and 2002/58/EC.
27. Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights.
28. Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them. This provision is without prejudice to Article 16 of Directive 89/552/EEC on television broadcasting.
29. Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer except where the product is a substitute supplied in conformity with Article 7(3) of Directive 97/7/EC (inertia selling).
30. Explicitly informing a consumer that if he does not buy the product or service, the trader's job or livelihood will be in jeopardy.

31. Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either:
- there is no prize or other equivalent benefit,
- or
- taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.



## ANNEX II

### COMMUNITY LAW PROVISIONS SETTING OUT RULES FOR ADVERTISING AND COMMERCIAL COMMUNICATION

Articles 4 and 5 of Directive 97/7/EC

Article 3 of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours

Article 3(3) of Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of a right to use immovable properties on a timeshare basis Article 3 (4) of Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers

Articles 86 to 100 of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (4)

Articles 5 and 6 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)

Article I (d) of Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Council Directive 87/102/EEC (on the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit

Articles 3 and 4 of Directive 2002/65/EC

Article 1(9) of Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses

Articles 12 and 13 of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation

Article 36 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance

Article 39 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments



Articles 31. and 4 3 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive)

Articles 5, 7 and 8 of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading.



# **MALAYSIA**

## **Law on Direct Selling**



2



## MALAYSIA

### Law on Direct Selling

DIRECT SALES (AMENDMENT) ACT 2010  
An Act to amend the Direct Sales Act 1993

**ENACTED** by the Parliament of Malaysia as follows:

#### Short title and commencement

- (1) This Act may be cited as the Direct Sales (Amendment) Act 2010.
- (2) This Act comes into operation on a date to be appointed by the Minister by notification in the Gazette.

#### Amendment of long title

- The Direct Sales Act 1993 [Act 500], which is referred to as the “principal Act” in this Act, is amended in the long title by inserting after the words “direct selling,” the words “for prohibiting pyramid scheme or arrangement, chain distribution scheme or arrangement, or any similar scheme or arrangement.”

#### Amendment of short title

- The principal Act is amended by substituting for the short title “Direct Sales Act 1993” the short title “Direct Sales and Anti-Pyramid Scheme Act 1993”.

#### Reference to the principal act

- (1) All references to the Direct Sales Act 1993 in any written law or document shall, when this Act comes into operation, be construed as references to the Direct Sales and Anti-Pyramid Scheme Act 1993.
- (2) All references to the Direct Sales Act 1993 in any criminal, civil or court proceedings shall continue to apply and not be affected as if it had not been amended by this Act.

#### Appointment made under the principal act

- The change of name provided in section 3 of this Act shall not affect or render defective the appointment of the Controller of Direct Sales, Deputy Controllers of Direct Sales, Assistant Controllers of Direct Sales and other officers made under the principal Act before the commencement of this Act.

## Amendment of section 2

6. Section 2 of the principal Act is amended—

- (a) by inserting after the definition of “door-to-door sale” the following definition:  
‘ “electronic” means the technology of utilizing electrical, optical, magnetic, electromagnetic, biometric, photonic or other similar technology;’;
- (b) by inserting after the definition of “prescribed” the following definition:  
‘ “property” means movable property or immovable property of every description, whether tangible or intangible and includes an interest in any such movable property or immovable property, choses-in-action, negotiable instrument and money;’;
- (c) in the definition of “direct sale,” by substituting for the words “and a mail order sale” the words “; a mail order sale or a sale through electronic transaction”;
- (d) by inserting after the definition of “purchaser” the following definition:  
‘ “sales through electronic transaction” means sales of goods or services through electronic means by using marketing networks with the purpose of getting commission, bonus or any other economic advantage;’;
- (e) in the definition of “mail order sale,” by inserting after the word “mail” the words “or any other means of mailing including through electronic means”; and
- (f) in the definition of “services,” by inserting after the word “goods” the words ‘and the performance of work under a contract of service, and a reference to the word “services” in this Act shall relate to direct sales and pyramid scheme’.

## Amendment of section 4

7. Section 4 of the principal Act is amended—

- (a) in subsection (2), by inserting after the words “body corporate,” wherever appearing the words “partnership or society,”;
- (b) in paragraph (2)(a)—
  - (i) by substituting for the words “two hundred and fifty thousand” the words “one million”; and
  - (ii) by substituting for the words “five hundred thousand” the words “two million”;

- (c) in paragraph (2)(b)—
  - (i) by substituting for the words “one hundred thousand” the words “two hundred and fifty thousand”;
  - (ii) by substituting for the words “two hundred and fifty thousand” the words “five hundred thousand”;
  - (iii) by substituting for the word “three” the word “five”;
  - (iv) by substituting for the word “six” the word “ten”; and
- (d) in subsection (3), by inserting after the words “a body corporate,” the words “a partner in a partnership or an office-bearer of a society, as the case may be.”

## Amendment of section 6

- 8. Section 6 of the principal Act is amended by inserting after subsection (3) the following subsection:  
“(4) Any licensee who fails to comply with any conditions of the licence imposed by the Controller under subsection (1) shall be guilty of an offence.”

## Deletion of section 7

- 9. The principal Act is amended by deleting section 7.

## Amendment of section 11

- 10. Section 11 of the principal Act is amended—
  - (a) by inserting after subsection (2) the following subsection:  
“(2a) Notwithstanding subsection (2), if there is no representation made by the licensee after the expiry of the period of fourteen days from the date of service of the notice under subsection (1), the Controller may decide to continue with the proposed action under subsection (1).”; and
  - (b) in subsection (3), by inserting after the words “(2)” the words “or (2a)”

## Amendment of section 12

- 11. Section 12 of the principal Act is amended by inserting after subsection (2) the following subsections:  
“(3) Notwithstanding subsections (1) and (2), where a licence is revoked, the licensee shall surrender its licence by personal service to the Controller within fourteen days from the date on which the written notice is served on the licensee under subsection 11(3).

- (4) Any person who contravenes subsection (3) shall be guilty of an offence and shall, on conviction, be liable—
- (a) if such person is a body corporate, partnership or society, to a fine not exceeding two hundred thousand ringgit;
  - (b) if such person is not a body corporate, partnership or society, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding six months or to both.
- (5) Where a person, being a director, manager, secretary or other similar officer of a body corporate, a partner in a partnership or an office-bearer in a society, as the case may be, is guilty of an offence under this section by virtue of section 38, he shall be liable to the penalty provided for under paragraph (4)(b)."

## Amendment of Part III

12. The heading of Part III of the principal Act is amended by substituting for the words "MAIL ORDER SALES" the words " ; MAIL ORDER SALES AND SALES THROUGH ELECTRONIC TRANSACTIONS"

### New section 19A

13. The principal Act is amended by inserting after section 19 the following section:  
**"sales through electronic transaction** 19A. (1) No person shall supply by sale, or advertise for the supply of, through electronic transaction, any goods or services except in accordance with this Act or the regulations.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence."

### New Part VA

14. The principal Act is amended by inserting after Part V the following Part:



## “PART VA PROHIBITION OF PYRAMID SCHEME

### Interpretation in relation to this Part

27A. In this Part, unless the context otherwise requires—

“promote”, in relation to pyramid scheme prohibited by this Act, means—

- (a) to contrive, prepare, establish, plan, advertise, operate or conduct by using any medium, including electronic transaction; or
- (b) to induce or attempt to induce other persons to be a participant in such scheme by using any medium, including electronic transaction;

“person” means an individual, body corporate, partnership or society;

“participant” means a person who participates or gets benefits in a pyramid scheme;

“pyramid scheme” means any scheme, arrangement, plan, operation or chain process having all or any of the features specified in the Schedule.

### Unlawful to promote or conduct pyramid scheme

27b. (1) No person shall promote or cause to be promoted a pyramid scheme.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable—

- (a) where such person is a body corporate, partnership or society, to a fine of not less than one million ringgit and not more than ten million ringgit and, for a second or subsequent offence, to a fine of not less than ten million ringgit and not more than fifty million ringgit;
- (b) where such person is not a body corporate, partnership or society, to a fine of not less than five hundred thousand ringgit and not more than five million ringgit or to imprisonment for a term not exceeding five years or to both and, for a second or subsequent offence, to a fine of not less than one million ringgit and not more than ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

(3) Where a person, being a director, manager, secretary or other similar officer of a body corporate, a partner in a partnership or an office-bearer in a society, as the case may be, is guilty of an offence under this section by virtue of section 38, he shall be liable to the penalty provided for under paragraph (2)(b).”



## Amendment of section 29

15. The principal Act is amended by substituting for section 29 the following section:

### “search and seizure with warrant

29. (1) If it appears to a Magistrate, upon written information on oath and after such inquiry as he considers necessary, that there is reasonable cause to believe that an offence under this Act or the regulations is being or has been committed on any premises, the Magistrate may issue a warrant authorizing any Assistant Controller named in the warrant to enter the premises at any reasonable time by day or by night, with or without assistance and if need be by force.
- (2) A warrant issued under subsection (1) may authorize the Assistant Controller to—
- (a) search the premises for, and seize any property, document or computerized data that is reasonably believed to furnish evidence of the commission of such offence;
  - (b) remove from the premises any property, document or computerized data seized under paragraph (a) and detain it for such period as the Assistant Controller thinks necessary;
  - (c) search any person who is found on such premises, if the Assistant Controller has reason to suspect that such person has on his person any property, document or computerized data, including personal document, that is reasonably believed to furnish evidence of the commission of such offence and seize such property, document or computerized data;
  - (d) remove from a person searched under paragraph (c) such property, document or computerized data seized under that paragraph and detain it for such period as the Assistant Controller thinks necessary; and
  - (e) inspect, make copies of, or take extracts from, any property, document or computerized data seized and detained under paragraphs (b), (c) and (d).
- (3) If it is necessary to do so, an Assistant Controller may in the exercise of his powers under subsection (1)—
- (a) break open any door of any premises and enter such premises;
  - (b) forcibly enter any premises and every part of such premises;
  - (c) break open, examine and search any article, container or receptacle;
  - (d) remove by force any obstruction to such entry, search, seizure, detention or removal as he is empowered to effect; or
  - (e) detain any person found on any premises until the search is completed.

- (4) If, by reason of its nature, size or amount, it is not practicable to remove any property, document or computerized data seized under subsection (1), the Assistant Controller shall, by any means, seal such property, document or computerized data in the premises or container in which it is found.
- (5) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (4) or removes any property, document or computerized data under seal or attempts to do so shall be guilty of an offence."

## New sections 29A, 29B, 29C and 29D

16. The principal Act is amended by inserting after section 29 the following sections:

### "search and seizure without warrant

- 29A. Where an Assistant Controller in any of the circumstances referred to in section 29 has reasonable cause to believe that by reason of delay in obtaining a search warrant under that section, the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, the Assistant Controller may enter the premises and exercise in, upon and in respect of the premises all the powers referred to in section 29 in as full and ample a manner as if he were authorized to do so by a warrant issued under that section.

## Assistant controller may take other persons

- 29B. Any Assistant Controller entering any premises by virtue of section 29A may take with him such other persons and such equipment as may appear to him necessary, and on leaving any premises which he has entered in the exercise of his powers under this Part he shall, if the premises are unoccupied or where the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

## Access to computerized data

- 29C. (1) An Assistant Controller conducting a search under this Act shall be given access to computerized data whether stored in a computer or otherwise.
- (2) For the purpose of this section, "access"—
  - (a) includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of such computerized data; and
  - (b) has the same meaning assigned to it by subsections 2(2) and (5) of the Computer Crimes Act 1997 [Act 563].

## List of things seized

- 29D. (1) Where any property, document or computerized data is seized under this Part, the Assistant Controller shall, as soon as practicable, prepare a list of the things seized and of the places in which they are respectively found and deliver a copy of the list signed by him to the occupier of the premises which has been searched, or to his agent or servant, at the premises.
- (2) Where the premises are unoccupied, the Assistant Controller shall whenever possible post a list of the things seized conspicuously on the premises."

## Amendment of section 30

17. Subsection 30(1) of the principal Act is amended by deleting the words "if that person refuses to furnish his name and address or there are reasonable grounds for believing that he has furnished a false name and address"

## Amendment of section 31

18. Section 31 of the principal Act is amended—
- (a) by substituting for subsection (1) the following subsection:
- "(1) Any person who—
- (a) refuses any officer appointed under this Act or the other persons referred to in section 29b access to any premises, or fails to submit to a search of his person;
  - (b) assaults, obstructs, hinders or delays or otherwise interferes with an officer appointed under this Act or the other persons referred to in section 29B in effecting any entry which he is entitled to effect or in the performance of his duties under this Part;
  - (c) fails to comply with any lawful demands of any officer appointed under this Act in the performance of his duties under this Part;
  - (d) refuses to give to any officer appointed under this Act any property, document or computerized data which may reasonably be required of him and which he has in his power to give;
  - (e) fails to disclose any information or to produce to, or conceals or attempts to conceal from an officer appointed under this Act any property, document or computerized data which such officer requires;
  - (f) rescues or attempts to rescue any thing which has been duly seized;

- (g) before or after any search or seizure, breaks or otherwise destroys any thing to prevent its seizure, or the securing of any property, document or computerized data;
- (h) without lawful authority, breaks, tampers with or damages the seal referred to in section 29 or removes any thing under seal or attempts to do so; or
- (i) obstructs in whatever manner any officer appointed under this Act acting in pursuance of this Act,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding six months or to both.”; and

- (b) by deleting subsection (3).

### Amendment of section 32

- 19. Section 32 of the principal Act is amended by substituting for the words “goods or documents” the words “property, document or computerized data”

### Amendment of section 33

- 20. Section 33 of the principal Act is amended—
  - (a) by renumbering the existing provision as subsection (1) and inserting after the words “this Act” the words “or the regulations”; and
  - (b) by inserting after subsection (1) the following subsection:

“(2) An Assistant Controller investigating the commission of an offence under this Act or the regulations may exercise all or any of the powers in relation to police investigation in seizable cases as provided for under the Criminal Procedure Code [Act 593].”

### New sections 33A, 33B and 33C

- 21. The principal Act is amended by inserting after section 33 the following sections:

“Power to require attendance of person acquainted with case

- 33A. (1) An Assistant Controller making an investigation under this Act or the regulations may, by order in writing, require the attendance before himself of any person who appears to him to be acquainted with the facts and circumstances of the case, and such person shall attend as so required. (2) If any person refuses to attend as so required, the Assistant Controller may report such refusal to a Magistrate who shall issue a warrant to secure the attendance of such person as may be required by the order made under subsection (1).

### Examination of person acquainted with case

- 33b. (1) An Assistant Controller making an investigation under this Act or the regulations may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.
- (2) The person examined under subsection (1) shall be legally bound to answer all questions relating to such case put to him by the Assistant Controller, but such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.
- (3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.
- (4) The Assistant Controller examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).
- (5) A statement made by any person under this section shall, wherever possible, be reduced into writing and signed by the person making it or affixed with his thumbprint, as the case may be, after—
- (a) it has been read to him in the language in which he made it; and
- (b) he has been given an opportunity to make any correction he may wish.

### Admissibility of statement in evidence

- 33c. (1) Except as provided in this section, no statement made by any person to an Assistant Controller in the course of an investigation made under this Act or the regulations shall be used in evidence.
- (2) When any witness is called for the prosecution or for the defence, other than the accused, the court shall, on the request of the accused or the prosecutor, refer to any statement made by that witness to the Assistant Controller in the course of the investigation under this Act or the regulations and may then, if the court thinks fit in the interest of justice, direct the accused to be furnished with a copy of it and the statement may be used to impeach the credit of the witness in the manner provided by the Evidence Act 1950 [Act 56].
- (3) Where the accused had made a statement during the course of an investigation, such statement may be admitted in evidence in support of his defence during the course of the trial.
- (4) Nothing in this section shall be deemed to apply to any statement made in the course of an identification parade or falling within section 27 or paragraphs 32(1)(a), (i) and (j) of the Evidence Act 1950.

(5) When any person is charged with any offence in relation to—

- (a) the making; or
- (b) the contents,

of any statement made by him to an Assistant Controller in the course of an investigation made under this Act or the regulations, that statement may be used as evidence in the prosecution's case."

## Substitution of section 34

22. (1) The principal Act is amended by substituting for section 34 the following section:

### "Prosecution

34. No prosecution for or in relation to any offence under this Act or the regulations shall be instituted except by or with the written consent of the Public Prosecutor."

(2) The amendment in subsection (1) shall not affect any criminal or civil proceedings pending in any court.

## Amendment of section 35

23. Section 35 of the principal Act is amended—

(a) by substituting for the existing shoulder note the following shoulder note:

### "Forfeiture of property, etc.";

(b) in subsections (1), (2), (3), (4) and (6), by substituting for the word "goods" wherever appearing the words "property, document or computerized data"; and

(c) by substituting for subsection (5) the following subsection:

"(5) On receipt of the notice under subsection (4), the Assistant Controller shall refer the notice to the Controller or Deputy Controller, who may, after such enquiries as may be necessary, direct that such property, document or computerized data be released or forfeited or refer the matter to a Magistrate for his decision."

## Amendment of section 36

24. Section 36 of the principal Act is amended by substituting for the word "goods" the words "property, document or computerized data"

## New section 36A

25. The principal Act is amended by inserting after section 36 the following section:

### “cost of holding property, etc., seized

36A. Where any property, document or computerized data seized in the exercise of any power under this Act is held in the custody of the Government pending the completion of any proceedings in respect of an offence under this Act or the regulations, the cost of holding it in custody shall, in the event of any person being found guilty of an offence under this Act or the regulations, be a debt due to the Government by such person and shall be recoverable accordingly.”

## Amendment of section 38

26. Section 38 of the principal Act is amended—

(a) by substituting for the existing shoulder note the following shoulder note:

### “Offences by body corporate, etc.”; and

(b) in subsection (1)—

(i) by inserting after the words “body corporate” wherever appearing the words “; partnership or society”; and

(ii) by inserting after the words “other similar officer of the body corporate” the words “; a partner in the partnership or an office-bearer of the society, as the case may be,”

## Amendment of section 39

27. Section 39 of the principal Act is amended—

(a) in subsection (1)—

(i) by substituting for the words “twenty five thousand” the words “one hundred thousand”; and

(ii) by substituting for the words “fifty thousand” the words “two hundred and fifty thousand”;

(b) in subsection (2)—

(i) by inserting after the words “body corporate” the words “; partnership or society”;

(ii) by substituting for the words “one hundred thousand” the words “two hundred and fifty thousand”; and

- (iii) by substituting for the words “two hundred and fifty thousand” the words “five hundred thousand”; and
- (c) in subsection (3), by inserting after the words “a body corporate” the words “, a partner of a partnership or an office-bearer of a society, as the case may be.”

## Amendment of section 41

- 28. Section 41 of the principal Act is amended by substituting for the words “court of a Magistrate of the First Class” the words “Sessions court”.

## Amendment of section 42

- 29. Section 42 of the principal Act is amended in paragraph (1)(b), by substituting for the words “handicapped person” the words “person with disability”.

## New section 43A

- 30. The principal Act is amended by inserting after section 43 the following section:

### “Protection of informers

- 43A. (1) Except as provided in this section, no witness in any civil or criminal proceedings shall be obliged or permitted to disclose the name or address of any informer or the substance and nature of the information received from him or to state any matter which might lead to his discovery.
- (2) If any property, document or computerized data which is in evidence or liable to inspection in any civil or criminal proceedings contains any entry in which any informer is named or described or which might lead to his discovery, the court shall cause all such entries to be concealed from view or to be obliterated so far as may be necessary to protect the informer from discovery.
- (3) If in a trial for any offence under this Act or the regulations, the court after full inquiry into the case believes that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceedings the court is of the opinion that justice cannot be fully done between the parties to the proceedings without the discovery of the informer, the court may require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.”

## New section 45

- 31. The principal Act is amended by inserting after section 44 the following section:



### “Amendment of schedule

45. The Minister may, by order published in the Gazette, amend the Schedule.”

### New schedule

32. The principal Act is amended by inserting after section 45 the following Schedule:

Schedule

#### **FEATURES OF PYRAMID SCHEME OR ARRANGEMENT**

[Section 27a]

1. The promotion of a scheme or the payment of bonus or other benefits is solely or primarily through recruitment or introduction of participants, into the pyramid scheme, plan, operation or chain process rather than the sale of goods, services or intangible property by the participants.
2. The bonus is paid to the participants or the other benefits are received by the participants solely or primarily through the recruitment or introduction of other persons into the pyramid scheme, plan, operation or chain process rather than the sale of goods, services or intangible property by the participants or other persons.
3. A written contract or statement which describes the material terms of the agreement is not provided to participants who join the pyramid scheme, plan, operation or chain process.
4. A mandatory purchase of goods, services or intangible property or a minimum payment or sale requirement is imposed as a condition to satisfy the eligibility or start-up requirement for participation or payment of bonus or other benefits in the pyramid scheme, plan, operation or chain process.
5. The participants are required to purchase goods, services or intangible property in unreasonable amount which exceeds the expectation to be resold or consumed within a reasonable period of time. The participants may not be given full liberty in buying but they are pressured to purchase selected goods packages to meet sales requirements to qualify them for position or bonus in the pyramid scheme, plan, operation or chain process.
6. The refund policy for goods, services or intangible property purchased by participants or consumers is not provided.
7. The buy-back policy by the operator of the pyramid scheme, plan, operation or chain process for currently marketable goods, services or intangible property upon the request of participants within reasonable terms or agreement is not allowed or provided for.

8. A strict or unreasonable structural requirements of the pyramid scheme, plan, operation or chain process for the eligibility of participants to be paid bonus or other benefits.
9. Withdrawal by participants from the pyramid scheme, plan, operation or chain process is not allowed.
10. The participants are allowed or encouraged to buy up more than one position or right to participate in the pyramid scheme, plan, operation or chain process.

*Explanation 1* - A reference to the word “bonus or other benefits” shall relate to return or profit gains from a pyramid scheme, plan, operation or chain process.

*Explanation 2* - A reference to the words “material terms” shall include buy-back policy, cooling-off period, warranty and refund policy.

*Explanation 3* - The goods or services shall not be considered as currently marketable and shall not be subject to the specified features if the goods or services are seasonal, discontinued or special promotional items which are disclosed to the participants at the time of sales.”



# **SINGAPORE**

## **Law on Direct Selling**



# SINGAPORE

## Law on Direct Selling

### **MULTI-LEVEL MARKETING AND PYRAMID SELLING (PROHIBITION) ACT**

(CHAPTER 190)

MULTI-LEVEL MARKETING AND PYRAMID SELLING

(EXCLUDED SCHEMES AND ARRANGEMENTS) ORDER 2000

In exercise of the powers conferred by section \*2 (IA) of the Multi-Level Marketing and Pyramid Selling (Prohibition) Act, the Minister for Trade and Industry hereby makes the following Order:

#### Citation and commencement

1. This Order may be cited as the Multi-Level Marketing and Pyramid Selling (Excluded Schemes and Arrangements) Order 2000 and shall come into operation on 01 June 2000.

#### Excluded schemes and arrangements

2. – (1) The definition of "pyramid selling scheme or arrangement" in section 2 of the Act shall be taken not to include any of the following schemes or arrangements:
  - (a) any scheme or arrangement comprising insurance business, or any class of insurance business, so long as every insurer and every insurance intermediary participating in the scheme or arrangement is registered, licensed, approved or otherwise so entitled to act under the Insurance Act (Cap. 142), the Insurance Intermediaries Act 1999 (Act 31 of 1999), or the regulations made thereunder;
  - (b) any master franchise scheme or arrangement, or any class of such scheme or arrangement, whereby a person is given the right to sub-franchise a franchise, subject to the scheme or arrangement satisfying the terms and conditions in sub-paragraph (c)(ii), (iii), (iv) and (vi);
  - (c) any scheme or arrangement, or any class of such schemes or arrangements, which satisfies the following terms and conditions:

- (i) a person shall not be required to provide any benefit or acquire any commodity in order to participate in the scheme or arrangement, other than the purchase of sales demonstration equipment or materials at a price not exceeding their cost which are not for resale and for which no commission, bonus or any other advantage will be given to any person;
- (ii) any benefit received-
  - (A) by any promoter of, or participant in, the scheme or arrangement accrues as a result of the sale, lease, licence or other distribution of a commodity to any other person;
  - (B) by any promoter of the scheme or arrangement accrues as a result of the performance of one or more participants in relation to the sale, lease, licence or other distribution of a commodity to any other person;
- (iii) subject to sub-paragraph (ii), no benefit shall be received by any person as a result of the introduction or recruitment of one or more persons to be participants in the scheme or arrangement;
- (iv) a promoter of the scheme or arrangement shall not make, or cause to be made, any representation to any person that benefits will accrue under the scheme or arrangement in a manner other than as specified in sub-paragraph (ii);
- (v) a promoter of the scheme or arrangement shall, in respect of any representation relating to the actual or potential accrual of any benefit under the scheme or arrangement, maintain fair and accurate records of the maximum, minimum, median, average and mode benefits that have accrued to the promoter and participants in the scheme or arrangement, duly audited by an auditor for each financial year;
- (vi) a promoter of the scheme or arrangement shall not, and shall take reasonable steps to ensure that participants in the scheme or arrangement do not-
  - (A) knowingly make, or cause or permit to be made, any representation relating to the scheme or arrangement or to the commodity which is false or misleading;
  - (B) knowingly omit, or cause or permit to be omitted, any material particular relating to the scheme or arrangement or to the commodity;
  - (C) knowingly engage in, or cause or permit, any conduct that is misleading or likely to mislead as to any material particular relating to the scheme or arrangement or to the commodity; or

- (D) in promoting the scheme or arrangement or the commodity, use, or cause or permit to be used, fraud, coercion, harassment, or unconscionable or unlawful means;
- (vii) the commodity shall be distributed with a full refund or buy-back guarantee that is exercisable by every participant in the scheme or arrangement on reasonable commercial terms and within a period of at least 60 days from the date of distribution of the commodity to the participant; and
- (viii) every participant in the scheme or arrangement shall be informed in writing, at the time of the distribution of the commodity to the participant, of the existence of the guarantee and the manner in which it can be exercised.
- (2) For the purposes of sub-paragraph (1) (b), "franchise" has the same meaning as in section 107 (1) of the Companies Act (Cap. 50).
- (3) For the purposes of sub-paragraph (l)(c)-

"cost", in relation to sales demonstration equipment or materials, means the direct cost of production or the wholesale price of such equipment or materials;

"representation" includes any statement or claim.

**Made this 23<sup>rd</sup> day of May 2000.**

*Permanent Secretary,  
Ministry of Trade and Industry,  
Singapore.*

<b>Base Versions</b>	Act 50 of 1973	1985 REVISED EDITION	2000 REVISED EDITION
<b>Ammended by</b>	s 227/95	19 of 2000	

An Act to prohibit the registration of businesses that are designed to promote multi-level marketing schemes or arrangements or pyramid selling schemes or arrangements in relation to the distribution and sale of commodities; to prohibit the incorporation or registration of companies which propose to promote multi-level marketing schemes or arrangements or pyramid selling schemes or arrangements in relation to the distribution and sale of commodities and to make it unlawful for any person to promote such schemes or arrangements and to provide for matters connected therewith.

**[28th September 1973]**

## Arrangement of Provisions

- 1 Short title
- 2 Interpretation
- 3 Unlawful to promote or participate in, or hold out that person is promoting or participating in, pyramid selling scheme or arrangement
- 4 Registration of business which is designed to promote pyramid selling scheme or arrangement prohibited
- 5 Registration of company which proposes to promote pyramid selling scheme or arrangement prohibited
- 6 Offences by bodies corporate
- 7 Penalty to be imposed in addition to other punishment
- 8 Jurisdiction of District Courts
- 9 Act to prevail
- 10 Regulations



## LEGISLATION HISTORY COMPARATIVE TABLE

### Short title

1. This Act may be cited as the Multi-Level Marketing and Pyramid Selling (Prohibition) Act.

### Interpretation

2. -(1) In this Act, unless the context otherwise requires -

"benefit" includes any gratuity, commission, cross commission, bonus, refund, discount, dividend and any other payment, service or advantage of whatever description, but does not include -

- (a) the purchase of a sample of a commodity furnished at a price not exceeding the cost of the sample and which is not for resale; and
- (b) time and effort spent in pursuit of sales, distribution or recruiting activities;

"commodity" means any goods, service, right or other property, whether tangible or intangible, capable of being the subject of a sale, lease or licence;

"company" means a company as defined in the Companies Act (Cap. 50) and includes a corporation as defined in that Act;

"multi-level marketing scheme or arrangement" has the same meaning as "pyramid selling scheme or arrangement" in this Act;

"promote", with its grammatical variations and cognate expressions, includes to manage, form, operate, carry on, engage in or otherwise to organise;

"pyramid selling scheme or arrangement" means any scheme or arrangement for the distribution or the purported distribution of a commodity whereby -

- (a) a person may in any manner acquire a commodity or a right or a licence to acquire the commodity for sale, lease, licence or other distribution;
- (b) that person receives any benefit, directly or indirectly, as a result of —
  - (i) the recruitment, acquisition, action or performance of one or more additional participants in the scheme or arrangement; or

- (ii) the sale, lease, licence or other distribution of the commodity by one or more additional participants in the scheme or arrangement; and
- (c) any benefit is or may be received by any other person who promotes, or participates in, the scheme or arrangement (other than a person referred to in paragraph (a) or an additional participant referred to in paragraph (b)).

[19/2000]

- (2) In this Act, "pyramid selling scheme or arrangement" shall be taken not to include such schemes or arrangements for the sale, lease, licence or other distribution of a commodity, or any class of such schemes or arrangements, as the Minister may by order prescribe, subject to such terms or conditions as may be specified in the order.

[19/2000]

- (3) Any reference in this Act to the winding up of a company includes, in the case of a foreign company, a reference to the winding up of the affairs of a foreign company so far as the assets of the foreign company within Singapore are concerned.

### Unlawful to promote or participate in, or hold out that person is promoting or participating in, pyramid selling scheme or arrangement

- 3. -(1) It shall be unlawful for any person to promote or participate in a multi-level marketing scheme or arrangement or a pyramid selling scheme or arrangement or to hold out that he is promoting or participating in such a scheme or arrangement.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 5 years or to both.

[19/2000]

### Registration of business which is designed to promote pyramid selling scheme or arrangement prohibited

- 4. -(1) No business which is designed to promote a multi-level marketing scheme or arrangement or a pyramid selling scheme or arrangement shall be registered under any written law relating to the registration of businesses.
- (2) A person who in contravention of subsection (1) obtains registration of a business which is designed to promote a multi-level marketing scheme or arrangement or a pyramid selling

scheme or arrangement shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 5 years or to both.

[19/2000]

### Registration of company which proposes to promote pyramid selling scheme or arrangement prohibited

5. -(1) No company which proposes to promote a multi-level marketing scheme or arrangement or a pyramid selling scheme or arrangement shall be incorporated or registered under the Companies Act (Cap. 50).
- (2) Where a company which is designed to promote a multi-level marketing scheme or arrangement or a pyramid selling scheme or arrangement contravenes subsection (1) by obtaining incorporation or registration under the Companies Act, that company and every officer thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 5 years or to both.

[6  
[19/2000]

### Offences by bodies corporate

6. -(1) If the person committing an offence under this Act is a company, every individual who at the time the offence was committed was a director, general manager, manager, secretary or other officer of the company concerned in the management of the company or who was purporting to act in any such capacity, as well as the company, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) It shall be a defence for the individual referred to in subsection (1) if he proves that the offence was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and to all other circumstances.
- (3) For the purpose of this section, "company" includes -
  - (a) any body corporate; and
  - (b) a firm or other association of individuals.
- (4) This section shall be in addition to and not in derogation of any other provisions of this Act.

[9/2000]

## Penalty to be imposed in addition to other punishment

7. -(1) Where a court convicts any person of committing an offence of promoting or participating in a multi-level marketing scheme or arrangement or a pyramid selling scheme or arrangement under section 3 (2) then-
- (a) if the person has received any benefit, directly or indirectly, as a result of committing the offence; and
  - (b) if the benefit received by the person is a sum of money or if the value of the benefit can be assessed,

the court shall, in addition to imposing on that person any other punishment, order him to pay as a penalty, within such time as may be specified in the order, a sum not exceeding the amount of or, in the opinion of the court, the value of the benefit received by the person, and any such penalty shall be recoverable as a fine.

[19/2000]

- (2) In determining the amount of the penalty that a person, being a participant, shall be required to pay under subsection (1), the court may take into account any benefit that the person may have given for the right to participate in the multi level marketing scheme or arrangement or the pyramid selling scheme or arrangement, as the case may be, or any loss that the person may have incurred as a result of such participation.

[19/2000]

- (3) Where a person charged with any offence under section 3 (2) is convicted of one or more offences under any other written law, and the outstanding offences are taken into consideration by the court under section 178 of the Criminal Procedure Code (Cap. 68) for the purpose of passing sentence, the court may impose the penalty mentioned in

Section ( 1) for any offence under this Act so taken into consideration.

[19/2000]

- (4) Nothing in subsection (1) shall prejudice or affect any right which any person may have under any written law or rule of law to recover damages from the person referred to in subsection (1).

[11  
[19/2000]

## Jurisdiction of District Courts

8. Notwithstanding the Criminal Procedure Code, a District Court shall have jurisdiction to try any offence under this Act or any regulations made thereunder and may impose the full penalty or punishment in respect of such offence

[IIA  
[19/2000]

## Act to prevail

9. The provisions of this Act shall be without prejudice to the Business Registration Act (Cap. 32) or the Companies Act (Cap. 50) but where there is a conflict between the Business Registration Act and the Companies Act and this Act, the provisions of this Act shall prevail.

[12

## Regulations

10. The Minister may make regulations for carrying into effect the objects and purposes of this Act.

[13





# THAILAND

## Law on Direct Selling



# THAILAND

## Law on Direct Selling

### Direct Sales and Marketing Act B.E. 2545

**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 sales and marketing; and

This Act contains certain provisions concerning the restriction of rights and liberties of persons, which, under Article 29 in conjunction with Article 50 of the Constitution of the Kingdom of Thailand, may be done by virtue of the provisions 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 Sales and Marketing Act, B.E. 2545".

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

**Section 3** In this Act,

"direct sales" means the marketing of goods or services by way of offering to sell directly to consumers at the residences or business premises of the consumers or of other persons, or at such other places not being regular business operating premises, whether through direct sales agents or through either one-level or multi-level independent sellers, but excluding juristic acts stipulated in the Ministerial Regulations;

"direct marketing" means the marketing of goods and services by way of communicating information in order to offer to sell goods or services directly to consumers at a distance and with the anticipation that individual consumers will respond to purchase the goods or services from the direct marketing operators;



"consumer" means a buyer or a person who receives services from an independent seller, a direct sales agent, direct sales operator or direct marketing operator; or a person who has accepted the offer from or has been induced by an independent seller, direct sales agent, direct sales operator or direct marketing operator to buy its goods or services;

"independent seller" means a person who receives the transfer of ownership of goods or services from a direct sales operator and offers to sell such goods or services directly to consumers;

"direct sales agent" means a person whom a direct sales operator authorizes to offer to sell goods or services directly to consumers;

"to buy" or "to purchase" includes to rent, hire-purchase or acquire in any way whatsoever by giving remuneration in money or other kinds of benefits;

"to sell" includes to lease out, sell on hire-purchase or provide in any way whatsoever by charging remuneration in money or other kinds of benefits, as well as to offer or induce for the same;

"goods" means things which are produced, manufactured or available for sale;

"services" means undertaking to do work, giving any rights, allowing the use of or giving benefits in any property or business, by charging remuneration in money or other benefits, but excluding employing labor under the labor law;

"Committee" means the Direct Sales and Marketing Committee;

"Member" means a member of the Direct Sales and Marketing Committee;

"Registrar" means the Secretary-General of the Consumer Protection Board;

"Competent Official" means a person appointed by the Minister for the carrying out of this Act; and

"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 Competent Officials and issue Ministerial Regulations for the carrying out of this Act.

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

**Section 5** In performing the duties under this Act, the Competent Official shall have the following powers:

- (1) to summon any person by letter to appear and give statements and facts or make an explanation in writing or to furnish any accounts, registers, documents or evidence for examining or supporting consideration;
- (2) to enter upon the business premises of a direct sales operator or direct marketing operator during the business hours of such place, in order to inquire into the facts or examine documents or evidence for monitoring the carrying out of this Act; and
- (3) to collect or bring goods in reasonable quantity as samples for inspection or analysis without making payment for the goods; such collecting or bringing of samples and returning of the same pursuant to the owner's desire shall be in compliance with the rules notified by the Committee.

The exercising of the powers under paragraph one (2) shall comply with the Rules laid down by the Secretary-General of the Consumer Protection Board. Such Rules shall at least contain the matters of the showing of innocence prior to entering, the delivery of a memorandum recording the reasons for such entry to the person occupying the premises in question, and the reporting of the result of the performance of duties to the supervisor.

In the performance of duties in paragraph one, any person concerned therewith shall provide appropriate facilities

**Section 6** In performing the duties under this Act, a Competent Official is required to show his official identification card.

The official identification card of the Competent Official shall be in such form as notified by the Committee.

**Section 7** In carrying out this Act, the Members, sub-committee members, the Registrar and Competent Officials shall be the officials under the Criminal Code.

## Chapter 1

### Direct Sales and Marketing Committee

**Section 8** There shall be a committee called "Direct Sales and Marketing Committee" composed of:

- (1) one Chairman appointed by the Cabinet from persons with knowledge and expertise concerning direct sales and marketing;

- (2) Members by virtue of office, namely the Director-General of the Department of Internal Trade, the Director-General of the Department of Industrial Promotion, the Commissioner-General of the National Police, and the Secretary-General of the Food and Drug Administration;
- (3) one Member appointed by the Cabinet from representatives of associations with objectives concerning direct sales business, one Member from representatives of associations with objectives concerning direct marketing business, and two Members from representatives of associations or foundations with objectives concerning consumer protection; and
- (4) four qualified Members appointed by the Cabinet from persons with knowledge and expertise concerning direct sales or direct marketing, of which at least one half shall be appointed from qualified persons in the private sector.

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

In appointing those Members under paragraph one (3), all the associations with objectives concerning direct sales business, all associations with objectives concerning direct marketing business, and all the associations or foundations with objectives concerning consumer protection, as the case may be, shall nominate the persons they find appropriate to the Cabinet for consideration. The rules and procedures for such nomination shall follow the Rules prescribed by the Minister.

**Section 9** The Chairman shall not hold office or be a partner or shareholder holding shares exceeding 10% in a partnership or company which operates a direct sales business or direct marketing business in the one-year period before or during holding such office as Chairman.

**Section 10** The Members under Section 8 (1), (3) and (4) shall hold office for a term of three years. A vacating Member may be re-appointed but not more than two consecutive terms.

Upon completion of the term under paragraph one, if no new Member has been appointed (to fill the vacancy), the vacating Member shall continue to hold office until the newly appointed Member takes up the duties.

**Section 11** Apart from vacating office at the end of the term under Section 10, the Members appointed by the Cabinet shall vacate office upon:

- (1) death;
- (2) resignation;
- (3) bankruptcy;

- (4) being an incompetent or quasi-incompetent person;
- (5) being sentenced to a term of imprisonment by a final judgment of the court except for an offence committed through negligence or petty offence; or
- (6) being instructed to vacate office by the Cabinet due to defective performance, dishonest performance of duties, detrimental behavior or incapability.

In the case where a Member vacates office before the end of term, the Cabinet may appoint a replacement and the person so appointed shall hold office for the remaining term of the Member he/ she replaced.

In the case the Cabinet appoints an additional Member during the term of office of the Members already appointed; the person so appointed shall hold office for the remaining term of the Members already appointed.

**Section 12** At a meeting of the Committee where the Chairman does not come to the meeting or is absent from the meeting, the Members present at such meeting shall elect one of their number preside over the meeting.

At all meetings of the Committee, the presence of not less than one-half of the total number of Members is required to constitute a quorum.

A final decision of the meeting shall be by a 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 a casting vote.

**Section 13** The Committee shall have the following powers and duties:

- (1) to consider a complaint from a consumer who has suffered trouble or damage on account of an act by an independent seller, a direct sales agent, direct sales operator or direct marketing operator;
- (2) to notify or publish news about the goods or services that might cause damage to or prejudice the rights of consumers; and in this regard, the name of the goods or services or name of the independent seller, direct sales agent; direct sales operator or direct marketing operator may be mentioned;
- (3) to oversee direct sales operators and direct marketing operators, as well as to follow up and monitor the circumstances in operating direct sales and direct marketing businesses;

- (4) to lay down Rules or issue Notifications concerning the carrying out of this Act;
- (5) to consider and decide upon an appeal against an order of the Registrar;
- (6) to submit opinions to the Cabinet on the policy and measures for overseeing, promoting and supporting the direct sales and direct market businesses, and to consider and give opinions on matters concerning the operation of the direct sales and direct marketing businesses as entrusted by the Cabinet or the Minister;
- (7) to monitor and speed up the Competent Officials, government departments or other State agencies to carry out their powers and duties prescribed by law, and also to speed up the Competent Officials to take legal action on the offences under this Act;
- (8) to recommend the issuance of the Ministerial Regulations under this Act; and
- (9) to consider such other matters as entrusted by the Cabinet or the Minister.

In performing the duties under this Section, the Committee may entrust the Office of the Consumer Protection Board to carry them out or to prepare proposals to the Committee for consideration as to how to proceed.

**Section 14** The Committee may appoint sub-committees to consider or carry out any matters on its behalf.

**Section 15** Section 12 shall apply *mutatis mutandis* to meetings of the sub-committees.

**Section 16** To perform duties under Sections 13 and 14, the Committee or sub-committee shall have the right to order any person to provide facts, explanation, suggestion or comments, or to furnish any relevant document or evidence or any other thing to support the consideration.

**Section 17** In performing the duties under this Act, the Committee shall give a person accused or suspected of acting contrary to this Act a reasonable opportunity to explain the facts and give opinions, except in necessary and urgent cases where any delay would cause serious damage to any person or affect the public interest.

To prescribe or issue an order on any matter under this Act, the Committee shall pay due regard to the damage that might occur to consumers, independent sellers, direct sales agents, direct sales operators and direct marketing operators and in a case where it is found reasonable, the Committee may attach conditions or prescribe temporary procedures to enforce compliance with such prescriptions or orders.

**Section 18** The Office of the Consumer Protection Board under the law on consumer protection shall be responsible for the administrative work of the Committee and has the duty to accept the registration application for direct sales and direct marketing businesses, and to follow up and monitor the circumstances in operating the direct sales and direct marketing businesses and performing the work, so as to be in accordance with this Act.

## Chapter 2

### Operating Direct Sales and Marketing Businesses

**Section 19** No direct sales operator or direct marketing operator shall operate its business by way of inducing any person to participate in a network for operating the direct sales or direct marketing business, by agreeing to give return benefits for finding network participants when the calculation is based on the increased number of network participants.

## Part 1

### Direct Sales Businesses

**Section 20** No person shall engage in a direct sales business unless such direct sales business is registered under this Act.

**Section 21** A direct sales operator shall run the business in accordance with the remuneration plan it files with the Registrar under Section 38.

The remuneration plan shall have the following characteristics:

- (1) there shall be no provision providing that an independent seller or a direct sales agent who is not an employee will receive remuneration as the main revenue from enrolling participants or from advising other independent sellers or direct sales agents not being employees to participate as a network in the direct sales business;
- (2) the remuneration that is the main revenue of the independent seller or direct sales agent not being an employee shall depend on the selling of goods or services to consumers, including purchase for one's own use or consumption;
- (3) the independent sellers shall not be forced to purchase goods;
- (4) the independent sellers shall not be induced to purchase goods in an unreasonable amount;

- (5) the method of calculation for the remuneration payment which is actually true or really feasible and clearly disclosed shall be shown; and
- (6) other characteristics as required by the Committee.

A remuneration plan with characteristics different from those in paragraph two shall be enforced only to the extent it is fair to those independent sellers or direct sales agents who are not employees.

**Section 22** No direct sales operator shall charge those independent sellers or direct sale agents, not being employees, a membership fee, cost of training, cost of sales promotion equipment and materials or other fees relating to participation as the network of direct sales business at the rate higher than that announced by the Committee.

**Section 23** An agreement to be made between an independent seller and a direct sales operator shall be made in writing and contain at least the following details:

- (1) clear conditions concerning payment of the remuneration under the remuneration plan;
- (2) clear conditions concerning the membership fee, cost of training, cost of sales promotion equipment and materials or other fees; and
- (3) clear conditions concerning the direct sales operator's buying back of goods, sales promotion equipment and materials, manuals or business promotion equipment from the independent seller and the period of time the independent seller is permitted to exercise such right.

The provisions under paragraph one (1) and (2) shall also apply to direct sales agents not being employees.

**Section 24** In offering to sell goods and services directly to consumers, the independent sellers shall follow the conditions and sales plan determined by the direct sales operator.

**Section 25** Where the independent seller exercises the right to return the goods, sales promotion equipment and materials, manuals or business promotion equipment purchased from the direct sales operator, the direct sales operator shall buy back the same at the price the independent seller paid, within fifteen days from the date on which the independent seller exercised such right. To exercise such right in the case where the agreement under Section 23 has come to an end, the direct sales operator shall be entitled to deduct an operation fee not exceeding the rate fixed by the Committee, and to offset any debt concerning the agreement under Section 23 which is payable by the independent seller.

**Section 26** In entering upon the residence or business premises of a consumer or another person or such other place that is not a regular business operating place, to make contact (solicit) and offer to sell the goods directly to consumers, the independent seller or a direct sales agent shall first obtain the permission of the consumer or a person who occupies such place and shall not do anything that would disturb or cause an annoyance to such person. In this regard, the independent seller or direct sales agent shall also show their citizen's identification card and their independent seller or direct sales<sup>1</sup> agent identification card issued by the direct sales operator.

## Part 2

### Direct Marketing Businesses

**Section 27** No person shall engage in a direct marketing business unless such direct marketing business is registered under this Act.

**Section 28** The text of the information communications for offering to sell the goods or services of the direct marketing operators shall be in accordance with the Ministerial Regulations.

**Section 29** The provisions of the law on consumer protection with respect to advertising shall apply *mutatis mutandis* to the information communications for offering to sell goods or services of the direct marketing operators. The powers and duties of the Consumer Protection Board shall be deemed the powers and duties of the Minister, and, likewise, the powers and duties of the Advertising Committee shall be deemed those of the Committee.

## Chapter 3

### Consumer Protection

**Section 30** It is the duty of an independent seller, a direct sales agent or direct marketing operator to deliver documents on trading the goods and services to consumers.

The trading documents under paragraph one shall be in Thai and the text shall be easily readable and understandable and give the names of the purchaser and seller, the trading date, and the delivery date of the goods or services, including the consumer's right to rescind the agreement. The wording as to the right to rescind the agreement shall be in letters that can be more clearly seen than the overall text.

**Section 31** The Committee has the power to determine the details in the documents on the trading of goods or services applying to direct sales or direct marketing methods, by holding to the price of goods or services for which the protection is granted to consumers, as well as the type of the goods or services.



The trading documents under paragraph one shall at least contain the following particulars:

- (1) details under Section 30;
- (2) time schedule, place and method of debt payment;
- (3) place and method for delivery of the goods or services;
- (4) procedures for rescinding the agreement;
- (5) procedures for returning the goods;
- (6) warranty of the goods; and
- (7) change of goods in case of defect.

The announcement of the details of the trading documents shall be published in the Government Gazette.

**Section 32** Any trading of goods or services where an independent seller, a direct sales agent or direct marketing operator fails to provide the trading documents with the details under Section 30 or Section 31, shall have no binding effect on the consumer.

**Section 33** In buying goods or services through direct sales or by selling through direct marketing, a consumer shall be entitled to rescind the agreement by sending a letter of intent to the direct sales operator or direct marketing operator within seven days from the date of receipt of the goods or services. For the direct sales business, the consumer may notify the rescinding of the agreement to the relevant independent seller or director sales agent.

The provisions in paragraph one shall not apply to the type, price or kind of the goods or services stipulated in a Royal Decree.

**Section 34** A consumer who exercises the right to rescind the agreement under Section 33 must choose to take any one of the following actions:

- (1) to return the goods to the independent seller, direct sales agent or direct sales operator, or, in case of direct marketing, to return goods to the direct marketing operator; or
- (2) to reasonably keep the goods for up to twenty-one days from the date on which the consumer exercised the right to rescind the agreement, unless such goods are easily damaged and by their nature cannot be kept for such period. In such a case, the goods

shall be kept for an appropriate time and in a manner appropriate to their nature. When the period has elapsed, the consumer may either keep such goods or not.

The consumer who chooses to take action as provided in paragraph one (2) has the duty to return goods to the independent seller, direct sales agent, direct sales operator or direct marketing operator, as the case may be at the domicile of the consumer. However, if the direct sales operator or direct marketing operator requests the consumer to return the goods within the period under paragraph one (2) via mail by collecting the postage at the destination, the consumer shall return the goods in accordance with such request.

If the goods are expendable items, the consumer shall be obligated to return only those items remaining from use before exercising the right to rescind the agreement.

The rules and procedures for returning goods and services shall be in accordance with the Ministerial Regulations.

The consumer shall be entitled to retain or withhold the goods until repaid the amount of money the consumer had paid for the purchase of such goods.

**Section 35** Subject to Section 34, if the goods or services are damaged or lost through the fault of the consumer or because the consumer makes the returning of goods and services impossible, the consumer shall indemnify the independent seller, direct sales agent, direct sales operator or direct marketing operator, as the case may be, except for damage normally arising from the opening, assembly or combining (or mixing) for using the goods or services.

**Section 36** Where the consumer exercises the right to rescind the agreement under Section 33, the independent seller, direct sales agent, direct sales operator or direct marketing operator shall return the full amount of money the consumer paid for purchase of such goods or services within fifteen days from the date of receipt of the letter of intent to rescind the agreement.

In case of failure of the independent seller, direct sales agent, direct sales operator or direct marketing operator to return money in the amount and within the time set forth in paragraph one, the independent seller, direct sales agent, direct sales operator or direct marketing operator shall pay a penalty to the consumer at the rate announced by the Committee.

**Section 37** The warranty of goods or services shall be in Thai and shall specify the consumer's right to claim for the rights under the warranty clearly and in such manner that allows the conditions specified therein to be understandable.

Details as to the warranty of goods or services under paragraph one shall be in accordance with the announcements of the Committee.

## Chapter 4

### Registration of Direct Sales and Direct Marketing Businesses

**Section 38** Any person who is desirous of operating a direct sales or direct marketing business shall file an application therefor with the Registrar following the rules and procedures announced by the Committee.

A direct sales operator shall also furnish the remuneration plan together with the application pursuant to paragraph one.

To change the remuneration -plan, the direct sales operator shall first inform such change to the Registrar prior to the implementation of such change.

**Section 39** The application for registration of direct sales and direct marketing business shall be in accordance with what the Committee announces, which shall contain at least the following particulars:

- (1) name of the direct sales or direct marketing operator;
- (2) domicile of the direct sales or direct marketing operator;
- (3) type or kind of goods or services; and
- (4) procedures for sale of the goods or services.

## Chapter 5

### The Registrar

**Section 40** In performing the duties under this Act, the Registrar shall have the power to summon persons concerned to appear and give clarifications or furnish necessary documents or evidence to support his consideration or examination.

**Section 41** Upon receipt of the registration application either for direct sales business or direct marketing business, the Registrar shall consider and examine the following matters:

- (1) the remuneration plan shall not be contrary to the law or public order or good morals;
- (2) the description of goods or services is as given in the information communications for offering to sell; and

- (3) the agreement contains correct and complete particulars as announced by the Committee.

In the case where the Registrar finds that the application is submitted correctly under paragraph one of Section 38 and Section 39, the Registrar shall accept such application and register the direct sales or direct marketing business and notify the applicant in writing within forty-five days from the date of receipt of the application.

In the case where the Registrar finds that the application is submitted incorrectly under paragraph one of Section 38 or Section 39, the Registrar shall order the applicant to remedy or correct the same within a reasonable time. When the applicant has so remedied or corrected, the Registrar shall accept the application and register the direct sales or direct marketing business and notify the applicant in writing within thirty days from the date of receipt of such document.

In the case the applicant fails to comply with the order to remedy or correct within the stipulated time, the Registrar shall order not accepting the registration of the direct sales or direct marketing business and shall notify the applicant in writing of the same together with the reason therefor within seven days from the expiration of the period permitted for compliance with the order.

**Section 42** If it is subsequently apparent to the Registrar that any direct sales operator or direct marketing operator operates the direct sales or direct marketing business not in accordance with the provisions of this Act, the Registrar shall have the power to revoke the registration of direct sales business or of direct marketing business and notify the same together with the reason therefor to such direct sales or direct marketing operator within seven days from the date of revocation of the order.

## Chapter 6

### Appeal

**Section 43** In case the Registrar orders not to register the direct sales or direct marketing business under Section 41 or the Registrar orders to revoke the registration of direct sales or directing marketing business under Section 42; the applicant, the direct sales operator or direct marketing operator, as the case may be, shall be entitled to appeal to the Committee in writing within thirty days from the date of receipt of such order.

The decision of the Committee shall be final.

**Section 44** The rules and procedures for submitting an appeal and the appeal procedures shall be in accordance with the Rules set by the Committee.

## Chapter 7

### Penalties

- Section 45** Any person who fails to comply with an order of the Committee 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 Baht Ten Thousand, or to both.
- Section 46** Any person who violates Section 19 shall be liable to imprisonment for a term not exceeding five years and to a fine not exceeding Baht Five Hundred Thousand.
- Section 47** Any person who violates Section 20 or Section 27 shall be liable to imprisonment not exceeding one year or to a fine not exceeding Baht One Hundred Thousand or to both, and to a daily fine not exceeding Baht Ten Thousand throughout the time during which the violation continues.
- Section 48** Any person who violates paragraph one of Section 21 shall be liable to a fine not exceeding Baht Three Hundred Thousand.
- Section 49** Any person who violates Section 22 or Section 28 shall be liable to imprisonment not exceeding six months or to a fine not exceeding Baht Fifty Thousand, or to both.
- Section 50** Any person who violates Section 23 or Section 25 shall be liable to a fine not exceeding Baht Fifty Thousand.
- Section 51** Any person who violates Section 26, paragraph one of Section 30, or Section 37 shall be liable to a fine not exceeding Baht Thirty Thousand.
- Section 52** Any direct sales operator who fails to notify the change to the remuneration plan to the Registrar under paragraph three of Section 38, shall be liable to a fine not exceeding Baht Three Hundred Thousand.
- Section 53** Any person who commits an offence punishable under this Act, and again commits an offence under this Act having passed over the punishment for less than five years, shall be liable to twice the punishment for such offence.
- Section 54** In the case where the person who commits an offence and is punished under this Act is a juristic person, the managing director, the managers or any person who is responsible for the operation of such juristic person shall be punished as the law provides for such offence, unless they can prove that they had nothing to do with the commission of such offence by the juristic person.

**Section 55** The Committee shall have the power to settle all offences under this Act, except in a case under Section 46, with a fine and, in this regard, may entrust the sub committee, an inquiry official or a Competent Official to make the settlement by specifying the rules or any conditions for those persons so entrusted as the Committee deems appropriate.

Subject to the provisions of paragraph one, in making an inquiry, if the inquiry official finds that any person has committed an offence under this Act and such person consents to a settlement, the inquiry official shall submit the matter to the Committee or a person entrusted under paragraph one within seven days from the date on which the person gave such consent.

Where the offender has paid the settled fine, it shall be deemed that the case is closed according to the Criminal Procedure Code.

## Temporary Provisions

**Section 56** A direct sales operator and direct marketing operator who is operating the businesses on the date this Act comes into force, shall proceed with the registration of the direct sales or direct marketing business within one hundred and twenty days from the date this Act comes into force.

Countersigned by  
Pol. Lt.Col. Thaksin Shinawatra  
Prime Minister.



# UNITED KINGDOM

Law on Direct Selling



1



## UNITED KINGDOM

### Law on Direct Selling

The Secretary of State, being a Minister designate (a) the purposes of section 2(2) of the European Communities Act 1972 (b) in relation to matters relating to consumer protection, in exercise of the powers conferred on him by section 2(2) of that Act, hereby makes the following Regulations—

#### Title, commencement and extent

- 1.— (1) These Regulations may be cited as the Consumer Protection (Distance Selling) Regulations 2000 and shall come into force on 31st October 2000.
- (2) These Regulations extend to Northern Ireland.

#### Revocation

2. The Mail Order Transactions (Information) Order 1976 (c) is hereby revoked.

#### Interpretation

- 3.—(1) In these Regulations—

“breach” means contravention by a supplier of a prohibition in, or failure to comply with a requirement of, these Regulations;

“business” includes a trade or profession;

“consumer” means any natural person who, in contracts to which these Regulations apply, is acting for purposes which are outside his business;

“court” in relation to England and Wales and Northern Ireland means a county court or the High Court, and in relation to Scotland means the Sheriff Court or the Court of Session;

“credit” includes a cash loan and any other form of financial accommodation, and for this purpose “cash” includes money in any form;



“Director” means the Director General of Fair Trading;

“distance contract” means any contract concerning goods or services concluded between a supplier and a consumer under an organised distance sales or service provision scheme run by the supplier who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993 (a);

“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;

“enforcement authority” means the Director, every weights and measures authority in Great Britain, and the Department of Enterprise, Trade and Investment in Northern Ireland;

“excepted contract” means a contract such as is mentioned in regulation 5(1);

“means of distance communication” means any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the conclusion of a contract between those parties; and an indicative list of such means is contained in Schedule 1;

“Member State” means a State which is a contracting party to the EEA Agreement;

“operator of a means of communication” means any public or private person whose business involves making one or more means of distance communication available to suppliers;

“period for performance” has the meaning given by regulation 19(2);

“personal credit agreement” has the meaning given by regulation 14(8);

“related credit agreement” has the meaning given by regulation 15(5);

“supplier” means any person who, in contracts to which these Regulations apply, is acting in his commercial or professional capacity; and

“working days” means all days other than Saturdays, Sundays and public holidays.

- (2) In the application of these Regulations to Scotland, for references to an “injunction” or an “interim injunction” there shall be substituted references to an “interdict” or an “interim interdict” respectively.

## Contracts to which these Regulations apply

4. These Regulations apply, subject to regulation 6, to distance contracts other than excepted contracts.

## Excepted contracts

- 5.—(1) The following are excepted contracts, namely any contract—

- (a) for the sale or other disposition of an interest in land except for a rental agreement;
- (b) for the construction of a building where the contract also provides for a sale or other disposition of an interest in land on which the building is constructed, except for a rental agreement;
- (c) relating to financial services, a non-exhaustive list of which is contained in Schedule 2;
- (d) concluded by means of an automated vending machine or automated commercial premises;
- (e) concluded with a telecommunications operator through the use of a public pay-phone;
- (f) concluded at an auction.

- (2) References in paragraph (1) to a rental agreement—

- (a) if the land is situated in England and Wales, are references to any agreement which does not have to be made in writing (whether or not in fact made in writing) because of section 2(5)(a) of the Law of Property (Miscellaneous Provisions) Act 1989 (b);
- (b) if the land is situated in Scotland, are references to any agreement for the creation, transfer, variation or extinction of an interest in land, which does not have to be made in writing (whether or not in fact made in writing) as provided for in section 1(2) and (7) of the Requirements of Writing (Scotland) Act 1995 (a) and
- (c) if the land is situated in Northern Ireland, are references to any agreement which is (b) not one to which section II of the Statute of Frauds, (Ireland) 1695 (b) applies.

- (3) Paragraph (2) shall not be taken to mean that a rental agreement in respect of land situated outside the United Kingdom is not capable of being a distance contract to which these Regulations apply.

## Contracts to which only part of these Regulations apply

- 6.— (1) Regulations 7 to 20 shall not apply to a contract which is a “timeshare agreement” within the meaning of the Timeshare Act 1992 (c) and to which that Act applies.
- (2) Regulations 7 to 19(1) shall not apply to—
- (a) contracts for the supply of food, beverages or other goods intended for every day consumption supplied to the consumer’s residence or to his workplace by regular rounds men; or
  - (b) contracts for the provision of accommodation, transport, catering or leisure services, where the supplier undertakes, when the contract is concluded, to provide these services on a specific date or within a specific period.
- (3) Regulations 19(2) to (8) and 20 do not apply to a contract for a “package” within the meaning of the Package Travel, Package Holidays and Package Tours Regulations 1992 (d) which is sold or offered for sale in the territory of the Member States.

## Information required prior to the conclusion of the contract

- 7.— (1) Subject to paragraph (4), in good time prior to the conclusion of the contract the supplier shall—
- (a) provide to the consumer the following information—
    - (i) the identity of the supplier and, where the contract requires payment in advance, the supplier’s address;
    - (ii) a description of the main characteristics of the goods or services;
    - (iii) the price of the goods or services including all taxes;
    - (iv) delivery costs where appropriate;
    - (v) the arrangements for payment, delivery or performance;
    - (vi) the existence of a right of cancellation except in the cases referred to in regulation 13;
    - (vii) the cost of using the means of distance communication where it is calculated other than at the basic rate;
    - (viii) the period for which the offer or the price remains valid; and
    - (ix) where appropriate, the minimum duration of the contract, in the case of contracts for the supply of goods or services to be performed permanently or recurrently;

- (b) inform the consumer if he proposes, in the event of the goods or services ordered by the consumer being unavailable, to provide substitute goods or services (as the case maybe of equivalent quality and price; and
  - (c) inform the consumer that the cost of returning any such substitute goods to the supplier in the event of cancellation by the consumer would be met by the supplier.
- (2) The supplier shall ensure that the information required by paragraph (1) is provided in a clear and comprehensible manner appropriate to the means of distance communication used, with due regard in particular to the principles of good faith in commercial transactions and the principles governing the protection of those who are unable to give their consent such as minors.
- (3) Subject to paragraph (4), the supplier shall ensure that his commercial purpose is made clear when providing the information required by paragraph (1).
- (4) In the case of a telephone communication, the identity of the supplier and the commercial purpose of the call shall be made clear at the beginning of the conversation with the consumer.

## Written and additional information

- 8.— (1) Subject to regulation 9, the supplier shall provide to the consumer in writing, or in another durable medium which is available and accessible to the consumer, the information referred to in paragraph (2), either—
- (a) prior to the conclusion of the contract, or
  - (b) thereafter, in good time and in any event—
    - (i) during the performance of the contract, in the case of services; and
    - (ii) at the latest at the time of delivery where goods not for delivery to third parties are concerned.
- (2) The information required to be provided by paragraph (1) is—
- (a) the information set out in paragraphs (i) to (vi) of Regulation 7(1)(a);
  - (b) information about the conditions and procedures for exercising the right to cancel under regulation 10, including—
    - (i) where a term of the contract requires (or the supplier intends that it will require) that the consumer shall return the goods to the supplier in the event of cancellation, notification of that requirement; and

- (ii) information as to whether the consumer or the supplier would be responsible under these Regulations for the cost of returning any goods to the supplier, or the cost of his recovering them, if the consumer cancels the contract under regulation 10;
  - (c) the geographical address of the place of business of the supplier to which the consumer may address any complaints;
  - (d) information about any after-sales services and guarantees; and
  - (e) the conditions for exercising any contractual right to cancel the contract, where the contract is of an unspecified duration or a duration exceeding one
- (3) Subject to regulation 9, prior to the conclusion of a contract for the supply of services, the supplier shall inform the consumer in writing or in another durable medium which is available and accessible to the consumer that, unless the parties agree otherwise, he will not be able to cancel the contract under regulation 10 once the performance of the services has begun with his agreement.

## Services performed through the use of a means of distance communication

- 9.— (1) Regulation 8 shall not apply to a contract for the supply of services which are performed through the use of a means of distance communication, where those services are supplied on only one occasion and are invoiced by the operator of the means of distance communication.
- (2) But the supplier shall take all necessary steps to ensure that a consumer who is a party to a contract to which paragraph (1) applies is able to obtain the supplier's geographical address and the place of business to which the consumer may address any complaints.

## Right to cancel

- 10.— (1) Subject to regulation 13, if within the cancellation period set out in regulations 11 and 12, the consumer gives a notice of cancellation to the supplier, or any other person previously notified by the supplier to the consumer as a person to whom notice of cancellation may be given, the notice of cancellation shall operate to cancel the contract.
- (2) Except as otherwise provided by these Regulations, the effect of a notice of cancellation is that the contract shall be treated as if it had not been made.
- (3) For the purposes of these Regulations, a notice of cancellation is a notice in writing or in another durable medium available and accessible to the supplier (or to the other person to whom it is given) which, however expressed, indicates the intention of the consumer to

cancel the contract.

- (4) A notice of cancellation given under this regulation by a consumer to a supplier or other person is to be treated as having been properly given if the consumer—
  - (a) leaves it at the address last known to the consumer and addressed to the supplier or other person by name (in which case it is to be taken to have been given on the day on which it was left);
  - (b) sends it by post to the address last known to the consumer and addressed to the supplier or other person by name (in which case, it is to be taken to have been given on the day on which it was posted);
  - (c) sends it by facsimile to the business facsimile number last known to the consumer (in which case it is to be taken to have been given on the day on which it is sent); or
  - (d) sends it by electronic mail, to the business electronic mail address last known to the consumer (in which case it is to be taken to have been given on the day on which it is sent).
- (5) Where a consumer gives a notice in accordance with paragraph (4)(a) or (b) to a supplier who is a body corporate or a partnership, the notice is to be treated as having been properly given if—
  - (a) in the case of a body corporate, it is left at the address of, or sent to, the secretary or clerk of that body; or
  - (b) in the case of a partnership, it is left with or sent to a partner or a person having control or management of the partnership business.

## Cancellation period in the case of contracts for the supply of goods

- 11.— (1) For the purposes of regulation 10, the cancellation period in the case of contracts for the supply of goods begins with the day on which the contract is concluded and ends as provided in paragraphs (2) to (5).
- (2) Where the supplier complies with regulation 8, the cancellation period ends on the expiry of the period of seven working days beginning with the day after the day on which the consumer receives the goods.
- (3) Where a supplier who has not complied with regulation 8 provides to the consumer the information referred to in regulation 8(2), and does so in writing or in another durable medium available and accessible to the consumer, within the period of three months

beginning with the day after the day on which the consumer receives the goods, the cancellation period ends on the expiry of the period of seven working days beginning with the day after the day on which the consumer receives the information.

- (4) Where neither paragraph (2) nor (3) applies, the cancellation period ends on the expiry of the period of three months and seven working days beginning with the day after the day on which the consumer receives the goods.
- (5) In the case of contracts for goods for delivery to third parties, paragraphs (2) to (4) shall apply as if the consumer had received the goods on the day on which they were received by the third party.

## Cancellation period in the case of contracts for the supply of services

12.—(1) For the purposes of regulation 10, the cancellation period in the case of contracts for the supply of services begins with the day on which the contract is concluded and ends as provided in paragraphs (2) to (4).

- (2) Where the supplier complies with regulation 8 on or before the day on which the contract is concluded, the cancellation period ends on the expiry of the period of seven working days beginning with the day after the day on which the contract is concluded.
- (3) Where a supplier who has not complied with regulation 8 on or before the day on which the contract is concluded provides to the consumer the information referred to in regulation 8(2) and(3), and does so in writing or in another durable medium available and accessible to the consumer, within the period of three months beginning with the day after the day on which the contract is concluded, the cancellation period ends on the expiry of the period of seven working days beginning with the day after the day on which the consumer receives the information.
- (4) Where neither paragraph (2) nor (3) applies, the cancellation period ends on the expiry of the period of three months and seven working days beginning with the day after the day on which the contract is concluded.

## Exceptions to the right to cancel

13.—(1) Unless the parties have agreed otherwise, the consumer will not have the right to cancel the contract by giving notice of cancellation pursuant to regulation 10 in respect of contracts—

- (a) for the supply of services if the supplier has complied with regulation 8(3) and performance of the contract has begun with the consumer's agreement before the end of the cancellation period applicable under regulation 12;

- (b) for the supply of goods or services the price of which is dependent on fluctuations in the financial market which cannot be controlled by the supplier;
- (c) for the supply of goods made to the consumer's specifications or clearly personalised or which by reason of their nature cannot be returned or are liable to deteriorate or expire rapidly;
- (d) for the supply of audio or video recordings or computer software if they are unsealed by the consumer;
- (e) for the supply of newspapers, periodicals or magazines; or
- (f) for gaming, betting or lottery services.

### Recovery of sums paid by or on behalf of the consumer on cancellation, and return of security

- 14.—(1) On the cancellation of a contract under regulation 10, the supplier shall reimburse any sum paid by or on behalf of the consumer under or in relation to the contract to the person by whom it was made free of any charge, less any charge made in accordance with paragraph (5).
- (2) The reference in paragraph (1) to any sum paid on behalf of the consumer includes any sum paid by a creditor who is not the same person as the supplier under a personal credit agreement with the consumer.
  - (3) The supplier shall make the reimbursement referred to in paragraph (1) as soon as possible and in any case within a period not exceeding 30 days beginning with the day on which the notice of cancellation was given.
  - (4) Where any security has been provided in relation to the contract, the security (so far as it is so provided) shall, on cancellation under regulation 10, be treated as never having had effect and any property lodged with the supplier solely for the purposes of the security as so provided shall be returned by him forthwith.
  - 5) Subject to paragraphs (6) and (7), the supplier may make a charge, not exceeding the direct costs of recovering any goods supplied under the contract, where a term of the contract provides that the consumer must return any goods supplied if he cancels the contract under regulation 10 but the consumer does not comply with this provision or returns the goods at the expense of the supplier.
  - (6) Paragraph (5) shall not apply where—
    - (a) the consumer cancels in circumstances where he has the right to reject the goods under a term of the contract, including a term implied by virtue of any enactment, or
    - (b) the term requiring the consumer to return any goods supplied if he cancels the



contract is an “unfair term” within the meaning of the Unfair Terms in Consumer Contracts Regulations 1999(a).

- (7) Paragraph (5) shall not apply to the cost of recovering any goods which were supplied as substitutes for the goods ordered by the consumer.
- (8) For the purposes of these Regulations, a personal credit agreement is an agreement between the consumer and any other person (“the creditor”) by which the creditor provides the consumer with credit of any amount.

## Automatic cancellation of a related credit agreement

- 15.—(1) Where a notice of cancellation is given under regulation 10 which has the effect of cancelling the contract, the giving of the notice shall also have the effect of cancelling any related credit agreement.
- (2) Where a related credit agreement is cancelled by virtue of paragraph (1), the supplier shall, if he is not the same person as the creditor under that agreement, forthwith on receipt of the notice of cancellation inform the creditor that the notice has been given.
  - (3) Where a related credit agreement is cancelled by virtue of paragraph (1)—
    - (a) any sum paid by or on behalf of the consumer under, or in relation to, the credit agreement which the supplier is not obliged to reimburse under regulation 14(1) shall be reimbursed, except for any sum which, if it had not already been paid, would have to be paid under subparagraph (b);
    - (b) the agreement shall continue in force so far as it relates to repayment of the credit and payment of interest, subject to regulation 16; and
    - (c) subject to subparagraph (b), the agreement shall cease to be enforceable
  - (4) Where any security has been provided under a related credit agreement, the security, so far as it is so provided, shall be treated as never having had effect and any property lodged with the creditor solely for the purposes of the security as so provided shall be returned by him forthwith..
  - (5) For the purposes of this regulation and regulation 16, a “related credit agreement” means an agreement under which fixed sum credit which fully or partly covers the price under a contract cancelled under regulation 10 is granted—
    - (a) by the supplier, or
    - (b) by another person, under an arrangement between that person and the supplier.

- (6) For the purposes of this regulation and regulation 16—
- (a) “creditor” is a person who grants credit under a related credit agreement;
  - (b) “fixed sum credit” has the same meaning as in section 10 of the Consumer Credit Act 1974 (a);
  - (c) “repayment” in relation to credit means repayment of money received by the consumer, and cognate expressions shall be construed accordingly; and
  - (d) “interest” means interest on money so received

## Repayment of credit and interest after cancellation of a related credit agreement

16.—(1) This regulation applies following the cancellation of a related credit agreement by virtue of regulation 15(1).

(2) If the consumer repays the whole or a portion of the credit—

- (a) before the expiry of one month following the cancellation of the credit agreement, or
- (b) in the case of a credit repayable by instalments, before the date on which the first instalment is due,

no interest shall be payable on the amount repaid.

(3) If the whole of a credit repayable by instalments is not repaid on or before the date referred to in paragraph (2)(b), the consumer shall not be liable to repay any of the credit except on receipt of a request in writing, signed by the creditor, stating the amounts of the remaining installment (recalculated) by the creditor as nearly as may be in accordance with the agreement and without extending the repayment period), but excluding any sum other than principal and interest.

(4) Where any security has been provided under a related credit agreement the duty imposed on the consumer to repay credit and to pay interest shall not be enforceable before the creditor has discharged any duty imposed on him by regulation 15(4) to return any property lodged with him as security on cancellation.

## Restoration of goods by consumer after cancellation

17.— (1) This regulation applies where a contract is cancelled under regulation 10 after the consumer has acquired possession of any goods under the contract other than any goods mentioned in regulation 13(1)(b) to (e).

- (2) The consumer shall be treated as having been under a duty throughout the period prior to cancellation—
  - (a) to retain possession of the goods, and
  - (b) to take reasonable care of them.
- (3) On cancellation, the consumer shall be under a duty to restore the goods to the supplier in accordance with this regulation, and in the meanwhile to retain possession of the goods and take reasonable care of them.
- (4) The consumer shall not be under any duty to deliver the goods except at his own premises and in pursuance of a request in writing, or in another durable medium available and accessible to the consumer, from the supplier and given to the consumer either before, or at the time when, the goods are collected from those premises.
- (5) If the consumer—
  - (a) delivers the goods (whether at his own premises or elsewhere) to any person to whom, under regulation 10(1), a notice of cancellation could have been given; or
  - (b) sends the goods at his own expense to such a person, he shall be discharged from any duty to retain possession of the goods or restore them to the supplier.
- (6) Where the consumer delivers the goods in accordance with paragraph (5)(a), his obligation to take care of the goods shall cease; and if he sends the goods in accordance with paragraph (5)(b), he shall be under a duty to take reasonable care to see that they are received by the supplier and not damaged in transit, but in other respects his duty to take care of the goods shall cease when he sends them.
- (7) Where, at any time during the period of 21 days beginning with the day notice of cancellation was given, the consumer receives such a request as is mentioned in paragraph (4), and unreasonably refuses or unreasonably fails to comply with it, his duty to retain possession and take reasonable care of the goods shall continue until he delivers or sends the goods as mentioned in paragraph (5), but if within that period he does not receive such a request his duty to take reasonable care of the goods shall cease at the end of that period.
- (8) Where—
  - (a) a term of the contract provides that if the consumer cancels the contract, he must return the goods to the supplier, and
  - (b) the consumer is not otherwise entitled to reject the goods under the terms of the contract by virtue of any enactment, paragraph (7) shall apply as if for the period of 21 days there were substituted the period of 6 months.

- (9) Where any security has been provided in relation to the cancelled contract, the duty to restore goods imposed on the consumer by this regulation shall not be enforceable before the supplier has discharged any duty imposed on him by regulation 14(4) to return any property lodged with him as security on cancellation.
- (10) Breach of a duty imposed by this regulation on a consumer is actionable as a breach of statutory duty.

## Goods given in part-exchange

- 18.—(1) This regulation applies on the cancellation of a contract under regulation 10 where the supplier agreed to take goods in part-exchange (the “part-exchange goods”) and those goods have been delivered to him.
  - (2) Unless, before the end of the period of 10 days beginning with the date of cancellation, the part-exchange goods are returned to the consumer in a condition substantially as good as when they were delivered to the supplier, the consumer shall be entitled to recover from the supplier a sum equal to the part-exchange allowance.
  - (3) In this regulation the part-exchange allowance means the sum agreed as such in the cancelled contract, or if no such sum was agreed, such sum as it would have been reasonable to allow in respect of the part-exchange goods if no notice of cancellation had been served.
  - (4) Where the consumer recovers from the supplier a sum equal to the part-exchange allowance, the title of the consumer to the part-exchange goods shall vest in the supplier (if it has not already done so) on recovery of that sum.

## Performance

- 19.—(1) Unless the parties agree otherwise, the supplier shall perform the contract within a maximum of 30 days beginning with the day after the day the consumer sent his order to the supplier.
  - (2) Subject to paragraphs (7) and (8), where the supplier is unable to perform the contract because the goods or services ordered are not available, within the period for performance referred to in paragraph (1) or such other period as the parties agree (“the period for performance”), he shall—
    - (a) inform the consumer; and
    - (b) reimburse any sum paid by or on behalf of the consumer under or in relation to the contract to the person by whom it was made.

- (3) The reference in paragraph (2)(b) to any sum paid on behalf of the consumer includes any sum paid by a creditor who is not the same person as the supplier under a personal credit agreement with the consumer.
- (4) The supplier shall make the reimbursement referred to in paragraph (2)(b) as soon as possible and in any event within a period of 30 days beginning with the day after the day on which the period for performance expired.
- (5) A contract which has not been performed within the period for performance shall be treated as if it had not been made, save for any rights or remedies which the consumer has under it as a result of the non-performance.
- (6) Where any security has been provided in relation to the contract, the security (so far as it is so provided) shall, where the supplier is unable to perform the contract within the period for performance, be treated as never having had any effect and any property lodged with the supplier solely for the purposes of the security as so provided shall be returned by him forthwith.
- (7) Where the supplier is unable to supply the goods or services ordered by the consumer, the supplier may perform the contract for the purposes of these Regulations by providing substitute goods or services (as the case may be) of equivalent quality and price provided that—
  - (a) this possibility was provided for in the contract;
  - (b) prior to the conclusion of the contract the supplier gave the consumer the information required by regulation 7(1)(b) and (c) in the manner required by regulation 7(2).
- (8) In the case of outdoor leisure events which by their nature cannot be rescheduled, paragraph 2(b) shall not apply where the consumer and the supplier so agree.

## Effect of non-performance on related credit agreement

20. Where a supplier is unable to perform the contract within the period for performance—
  - (a) regulations 15 and 16 shall apply to any related credit agreement as if the consumer had given a valid notice of cancellation under regulation 10 on the expiry of the period for performance; and
  - (b) the reference in regulation 15 (3) (a) to regulation 14 (1) shall be read, for the purposes of this regulation, as a reference to regulation 19 (2).

## Payment by card

- 21.—(1) Subject to paragraph (4), the consumer shall be entitled to cancel a payment where fraudulent use has been made of his payment card in connection with a contract to which this regulation applies by another person not acting, or to be treated as acting, as his agent.
- (2) Subject to paragraph (4), the consumer shall be entitled to be recredited, or to have all sums returned by the card issuer, in the event of fraudulent use of his payment card in connection with a contract to which this regulation applies by another person not acting, or to be treated as acting, as the consumer's agent.
- (3) Where paragraphs (1) and (2) apply, in any proceedings if the consumer alleges that any use made of the payment card was not authorised by him it is for the card issuer to prove that the use was so authorised.
- (4) Paragraphs (1) and (2) shall not apply to an agreement to which section 83(1) of the Consumer Credit Act 1974 applies.
- (5) Section 84 of the Consumer Credit Act 1974 (misuse of credit-tokens) is amended by the insertion after subsection (3) of—
- (3A) Subsections (1) and (2) shall not apply to any use, in connection with a distance contract (other than an excepted contract), of a card which is a credit-token.
- (3B) In subsection (3A), "distance contract" and "excepted contract" have the meanings given in the Consumer Protection (Distance Selling) Regulations 2000."(6) For the purposes of this regulation—"card issuer" means the owner of the card; and"payment card" includes credit cards, charge cards, debit cards and store cards.
- (6) For the purposes of this regulation—
- "card issuer" means the owner of the card; and
- "payment card" includes credit cards, charge cards, debit cards and store cards.

## Amendments to the Unsolicited Goods and Services Act 1971

- 22.—(1) The Unsolicited Goods and Services Act 1971 (a) is amended as follows.
- (2) Omit section 1 (rights of recipient of unsolicited goods).

- (3) In subsection (1) of section 2 (demands and threats regarding payment), after “them” insert “for the purposes of his trade or business”
- (4) The amendments made by this regulation apply only in relation to goods sent after the date on which it comes into force.

## Amendments to the Unsolicited Goods and Services (Northern Ireland) Order 1976

- 23.—(1) The Unsolicited Goods and Services (Northern Ireland) Order 1976 (b) amended as follows.
- (2) Omit Article 3 (rights of recipient of unsolicited goods).
  - (3) In paragraph (1) of Article 4 (demands and threats regarding payment), after “them” insert “for the purposes of his trade or business”
  - (4) The amendments made by this regulation apply only in relation to goods sent after the date on which it comes into force.

## Inertia Selling

- 24.—(1) Paragraphs (2) and (3) apply if—
- (a) unsolicited goods are sent to a person (“the recipient”) with a view to his acquiring them;
  - (b) the recipient has no reasonable cause to believe that they were sent with a view to their being acquired for the purposes of a business; and
  - (c) the recipient has neither agreed to acquire nor agreed to return them.
- (2) The recipient may, as between himself and the sender, use, deal with or dispose of the goods as if they were an unconditional gift to him.
  - (3) The rights of the sender to the goods are extinguished.
  - (4) A person who, not having reasonable cause to believe there is a right to payment, in the course of any business makes a demand for payment, or asserts a present or prospective right to payment, for what he knows are—
    - (a) unsolicited goods sent to another person with a view to his acquiring them for purposes other than those of his business, or

- (b) unsolicited services supplied to another person for purposes other than those of his business,

is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

- (5) A person who, not having reasonable cause to believe there is a right to payment, in the course of any business and with a view to obtaining payment for what he knows are unsolicited goods sent or services supplied as mentioned in paragraph (4)—

- (a) threatens to bring any legal proceedings, or

- (b) places or causes to be placed the name of any person on a list of defaulters or debtors or threatens to do so, or

- (c) invokes or causes to be invoked any other collection procedure or threatens to do so, is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

- (6) In this regulation—

“acquire” includes hire;

“send” includes deliver;

“sender”, in relation to any goods, includes—

- (a) any person on whose behalf or with whose consent the goods are sent;

- (b) any other person claiming through or under the sender or any person mentioned in paragraph (a); and

- (c) any person who delivers the goods; and

“unsolicited” means, in relation to goods sent or services supplied to any person, that they are sent or supplied without any prior request made by or on behalf of the recipient.

- (7) For the purposes of this regulation, an invoice or similar document which—

- (a) states the amount of a payment, and

- (b) fails to comply with the requirements of regulations made under section 3A of the Unsolicited Goods and Services Act 1971 or, as the case may be, Article 6 of the Unsolicited Goods and Services (Northern Ireland) Order 1976 applicable to it, is to be regarded as asserting a right to the payment.



- (8) Section 3A of the Unsolicited Goods and Services Act 1971 applies for the purposes of this regulation in its application to England, Wales and Scotland as it applies for the purposes of that Act.
- (9) Article 6 of the Unsolicited Goods and Services (Northern Ireland) Order 1976 applies for the purposes of this regulation in its application to Northern Ireland as it applies for the purposes of that Order.
- (10) This regulation applies only to goods sent and services supplied after the date on which it comes into force.

#### No contracting-out

- 25.—(1) A term contained in any contract to which these Regulations apply is void if, and to the extent that, it is inconsistent with a provision for the protection of the consumer contained in these Regulations.
- (2) Where a provision of these Regulations specifies a duty or liability of the consumer in certain circumstances, a term contained in a contract to which these Regulations apply, other than a term to which paragraph (3) applies, is inconsistent with that provision if it purports to impose, directly or indirectly, an additional duty or liability on him in those circumstances.
  - (3) This paragraph applies to a term which requires the consumer to return any goods supplied to him under the contract if he cancels it under regulation 10.
  - (4) A term to which paragraph (3) applies shall, in the event of cancellation by the consumer under regulation 10, have effect only for the purposes of regulation 14(5) and 17(8).
  - (5) These Regulations shall apply notwithstanding any contract term which applies or purports to apply the law of a non-Member State if the contract has a close connection with the territory of a Member State.

#### Consideration of complaints

- 26.—(1) It shall be the duty of an enforcement authority to consider any complaint made to it about a breach unless—
- (a) the complaint appears to the authority to be frivolous or vexatious; or
  - (b) another enforcement authority has notified the Director that it agrees to consider the complaint.
- (2) If an enforcement authority notifies the Director that it agrees to consider a complaint made to another enforcement authority, the first mentioned authority shall be under a duty to consider the complaint.

- (3) An enforcement authority which is under a duty to consider a complaint shall give reasons for its decision to apply or not to apply, as the case may be, for an injunction under regulation 27.
- (4) In deciding whether or not to apply for an injunction in respect of a breach an enforcement authority may, if it considers it appropriate to do so, have regard to any undertaking given to it or another enforcement authority by or on behalf of any person as to compliance with these Regulations

#### Injunctions to secure compliance with these Regulation

- 27.— (1) The Director or, subject to paragraph (2), any other enforcement authority may apply for an injunction (including an interim injunction) against any person who appears to the Director or that authority to be responsible for a breach.
- (2) An enforcement authority other than the Director may apply for an injunction only where—
- (a) it has notified the Director of its intention to apply at least fourteen days before the date on which the application is to be made, beginning with the date on which the notification was given; or
  - (b) the Director consents to the application being made within a shorter period.
- (3) The court on an application under this regulation may grant an injunction on such terms as it thinks fit to secure compliance with these Regulations

#### Notification of undertakings and orders to the Director

28. An enforcement authority other than the Director shall notify the Director—
- (a) of any undertaking given to it by or on behalf of any person who appears to it to be responsible for a breach;
  - (b) of the outcome of any application made by it under regulation 27 and of the terms of any undertaking given to or order made by the court;
  - (c) of the outcome of any application made by it to enforce a previous order of the court.

## Publication, information and advice

29.—(1) The Director shall arrange for the publication in such form and manner as he considers appropriate of—

- (a) details of any undertaking or order notified to him under regulation 28;
- (b) details of any undertaking given to him by or on behalf of any person as to compliance with these Regulations;
- (c) details of any application made by him under regulation 27, and of the terms of any undertaking given to, or order made by, the court;
- (d) details of any application made by the Director to enforce a previous order of the court.

(2) The Director may arrange for the dissemination in such form and manner as he considers appropriate of such information and advice concerning the operation of these Regulations as it may appear to him to be expedient to give to the public and to all persons likely to be affected by these Regulations.

31st August 2000

*Helen Liddell*  
*Minister of State,*  
*Department of Trade and Industry*

## SCHEDULE 1

Regulation 3

### Indicative list of means of distance communication

1. Unaddressed printed matter.
2. Addressed printed matter.
3. Letter.
4. Press advertising with order form.
5. Catalogue.
6. Telephone with human intervention.
7. Telephone without human intervention (automatic calling machine, audiotext).
8. Radio.
9. Videophone (telephone with screen).
10. Videotext (microcomputer and television screen) with keyboard or touch screen.
11. Electronic mail.
12. Facsimile machine (fax).
13. Television (teleshopping).

## SCHEDULE 2

Regulation 5(1)(c)

### Non-exhaustive list of financial services

1. Investment services.
2. Insurance and reinsurance operations.
3. Banking services.
4. Services relating to dealings in futures or options.

Such services include in particular:

- investment services referred to in the Annex to Directive 93/22/EEC(a); services of collective investment undertakings;
- services covered by the activities subject to mutual recognition referred to in the Annex to Directive 89/846/EEC(b);
- operations covered by the insurance and reinsurance activities referred to in:
  - Article 1 of Directive 73/239/EEC(c);
  - the Annex to Directive 79/267/EEC(d);
  - Directive 64/225/EEC(e);
  - Directives 92/49/EEC(f) and 92/96/EEC(g).

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement Directive 97/7/EC of the European Parliament and the Council of 20 May 1997 (O.J. No. L144, 4.6.97, p.19) on the protection of consumers in relation to distance contracts, with the exception of Article 10.

The Regulations apply to contracts for goods or services to be supplied to a consumer where the contract is made exclusively by means of distance communication, that is any means used without the simultaneous physical presence of the consumer and the supplier (regulations 3 and 4). Schedule 1 contains an indicative list of means of distance communication.

The Regulations do not apply to those distance contracts excluded by regulation 5(1), such as contracts relating to the supply of financial services.

The Regulations have limited application to contracts for the supply of groceries by regular delivery and contracts for the provision of accommodation, transport, catering or leisure services (regulation 6).

The Regulations require the supplier to provide the consumer with the information referred to in regulation 7 prior to the conclusion of the contract. This includes information on the right to cancel the distance contract, the main characteristics of the goods or services, and delivery costs where appropriate.

Regulation 8 requires the supplier to confirm in writing, or another durable medium which is available and accessible to the consumer, information already given and to give some additional information, including information on the conditions and procedures relating to the exercise of the right to cancel the contract. Regulation 8(3) requires the supplier to inform the consumer prior to conclusion of a contract for services that he will not be able to cancel once performance of the service has begun with his agreement.

Where the Regulations apply, they provide a “cooling off period” to enable the consumer to cancel the contract by giving notice of cancellation to the supplier. The effect of giving notice of cancellation under the Regulations is that the contract is treated as if it had not been made.

Where the supplier supplies the information to the consumer on time, the cooling-off period is 7 working days from the day after the date of the contract, in the case of services, or from the day after the date of delivery of the goods.

Where the supplier fails to comply with the information requirement at all, the cooling-off period is extended by 3 months.

Where the supplier complies with the information requirement later than he should have done but within 3 months the cooling-off begins from the date he provided the information (regulations 10–12).

Certain contracts are excluded from the right to cancel unless the parties agree otherwise, such as a contract for the supply of goods made to the consumer's specifications (regulation 13).

If the consumer cancels, the consumer must be reimbursed within a maximum period of 30 days (regulation 14). Where the consumer cancels the contract, any related credit agreement is automatically cancelled (regulation 15).

Regulation 17 provides that on cancellation of the contract the consumer is under a duty to restore goods to the supplier if he collects them and in the meantime to take reasonable care of them. The Regulations do not require the consumer to return goods but if he is required to under the contract and does not do so, he must pay the cost to the supplier of recovering them.

The Regulations provide that the contract must be performed within 30 days subject to agreement between the parties. However, where the supplier is not able to provide the goods or service ordered, substitutes may be offered if certain conditions are met (regulation 19).

The Regulations provide that where the consumer's payment card is used fraudulently in connection with a distance contract the consumer will be entitled to cancel the payment. If the payment has already been made the consumer will be entitled to a re-credit or to have all sums returned by the card issuer. The Regulations amend the Consumer Credit Act 1974 by removing the potential liability of the debtor under a regulated consumer credit agreement for the first £50 of loss to the creditor from misuse of a credit-token in connection with a distance contract.

The Regulations prohibit the supply of unsolicited goods and services to consumers. Regulation 24 replaces with amendments section 1 of the Unsolicited Goods and Services Act 1971 and Article 3 of the Unsolicited Goods and Services (Northern Ireland) Order 1976. It also creates an offence in similar terms to section 2 of the 1971 Act but extended to the supply of unsolicited services and limited to supply to consumers. The scope of section 2 of the 1971 Act and Article 4 of the 1976 Order (which apply only to goods) is amended to restrict their application to the unsolicited supply of goods to businesses.

The Director General of Fair Trading, Trading Standards Departments in Great Britain and the Department of Enterprise, Trade and Investment in Northern Ireland are enforcement authorities for the purposes of the Regulations. Regulation 26 provides that an enforcement authority must consider complaints about a breach of the requirements of the Regulations. Those bodies are given the power to take proceedings for an injunction against a business to prevent further breaches (regulation 27).

A Regulatory Impact Assessment is available, copies of which have been placed in the libraries of both Houses of Parliament. Copies are also available from the Consumer Affairs Directorate of the Department of Trade and Industry, Room 415, 1 Victoria Street, London SW1H 0ET.







# **VIETNAM**

## **Law on Direct Selling**



# VIETNAM

## Law on Direct Selling

### The Government

Pursuant to the Law on Organization of the Government dated 25 December 2001;

Pursuant to the Law on Competition dated 3 December 2004;

On the proposal of the Minister of Trade;

Decrees:

### CHAPTER 1

#### General Provisions

- Article 1 Governing scope This Decree regulates multi-level selling activities and provides for supervision of multi-level selling activities within the territory of the Socialist Republic of Vietnam.
- Article 2 Applicable entities This Decree shall apply to multi-level selling enterprises and to participants in multi-level sales networks.
- Article 3 Multi-level selling of goods 1. Multi-level selling of goods means a marketing method in order to conduct retail sales of goods which satisfy the conditions stipulated in clause 11 of article 3 of the Law on Competition. 2. An enterprise shall only be permitted to organize multi-level selling of goods after it has been issued with a certificate of registration of organization of multi-level selling pursuant to article 16 of this Decree.
- Article 4 People participating in multi-level selling of goods
1. People participating in multi-level selling of goods (hereinafter referred to as participants) means individuals with full capacity for civil acts who have signed a contract for participation in multi-level selling of goods with a multi-level selling enterprise, except for the individuals stipulated in clause 2 of this article.

2. The following individuals shall not be permitted to participate in multi-level selling:
  - (a) Persons who are currently subject to a prison sentence or who have a criminal record regarding manufacture or trading of counterfeit goods, dishonest advertising, illegal business, tax evasion or defrauding customers, or who have committed crimes being misappropriation of property, abuse of trust in order to obtain property, or illegal retention of property;
  - (b) Foreign individuals and Vietnamese residing overseas who do not have a labour permit in Vietnam issued by the competent body.

Article 5 Goods which may be the subject of business by the multi-level selling method

1. It shall be permitted to conduct business by the multi-level selling method in all types of goods except the following:
  - (a) Goods on the list of goods prohibited from circulation, goods on the list of goods in which business is restricted, counterfeit goods, and goods which are illegally imported as stipulated by law;
  - (b) Goods being preventive and treatment medicines for humans; all types of vaccines and biological products; medical equipment and apparatus; all types of veterinary drugs (including veterinary drugs used in aquaculture); plant protection agents; chemicals; insecticide and disinfectant products used in both the domestic home sector and in the health sector; raw materials for the manufacture of treatment medicines; and all types of toxic chemicals and products containing toxic chemicals as stipulated by law.
2. It shall be permitted to conduct business by the multi-level selling method only with respect to goods which satisfy the following conditions:
  - (a) The goods satisfy the standards stipulated by law on product quality, safety and hygiene;
  - (b) The source, country of origin, function and use of the goods is clear and legal;
  - (c) The goods are correctly labelled in accordance with law.

## CHAPTER 2

### Multi-level Selling Activities

#### Article 6 Responsibilities of multi-level selling enterprises

1. Multi-level selling enterprises shall be responsible to formulate and publicly announce Operating Rules of the Enterprise and of Participants in Multi-Level Selling Activities.
2. Multi-level selling enterprises shall be responsible to provide data on the following matters to people who propose to participate in the multi-level sales network of the enterprise:
  - (a) Sales Plan including the method of paying bonuses; standard form contract which the enterprise will sign with participants and all other agreements containing provisions on the rights and obligations of participants; information about quality standards or quality certificates (if any); prices, use and method of use of the goods for sale; and provisions relating to warranty, return and buy back of the goods for sale;
  - (b) Training program for participants including the matters on which training will be provided; duration of training courses; order and procedures for issuance of certificates of having passed training courses; and duration and contents of periodic up-dating courses for participants;
  - (c) Operating Rules containing guidelines on methods of conducting transactions and containing provisions relating to multi-level selling of goods;
  - (d) Responsibilities of participants;
  - (e) Economic benefits to which participants may be entitled as a result of marketing or directly selling goods, and any conditions which apply before participants will be entitled to receive such economic benefits;
  - (f) Conditions in which contracts of participants will be terminated, and rights and obligations arising from contractual termination;
  - (g) Any other issues as stipulated by the competent State body.
3. In addition to the responsibilities stipulated in clause 2 of this article, multi-level selling enterprises shall also have the following responsibilities:
  - (a) They must guarantee the truthfulness and accuracy of the information they provide to participants;

- (b) They must guarantee the quality of goods for sale by the multi-level selling method;
- (c) They must resolve complaints made by participants or consumers;
- (d) They must deduct personal income tax of participants in order to pay it into the State budget prior to paying commission, bonuses or other economic benefits to participants;
- (e) They must provide professional training and up-dating courses for participants regarding multi-level selling of goods and the law relating to multi-level selling of goods;
- (f) They must manage participants via a system of cards for members of the multi-level sales network, which cards shall be issued in accordance with the sample form stipulated by the Ministry of Trade;
- (g) They must notify participants of goods in the category which the enterprise is not obliged to buy back, prior to participants commencing the selling of goods.

Article 7 *Prohibited practices by multi-level selling enterprises*

Multi-level selling enterprises shall be prohibited from conducting the following practices:

1. Requiring persons who wish to participate in the multi-level sales network to pay a deposit in order to have the right to participate.
2. Requiring persons who wish to participate in the multi-level sales network to purchase an initial quantity of goods in order to have the right to participate.
3. Requiring persons who wish to participate in the multi-level sales network to pay a sum of money or any other fee in the form of study course fees, training fees, seminar fees, fees for social activities or for other similar activities in order to have the right to participate, except for a fee for payment of the data set out in clause 2 of article 6 of this Decree.
4. Failing to undertake to participants to buy back goods from participants and to repay the sums the participants paid to the enterprise in accordance with article 11 of this Decree.
5. Hindering participants from returning goods as a consequence of termination of a contract for participation in the multi-level sales network.

6. Allowing participants to receive commission, bonuses and other economic benefits from the enticement of other persons to participate in the multi-level sales network.
7. Refusing without a legitimate reason to pay to participants commission, bonuses and other economic benefits to which such participants are entitled.
8. Providing untruthful information about the benefits of participation in the multi-level sales network in order to entice people to participate.
9. Providing false information about the nature and use of goods in order to entice people to participate in the multi-level sales network.

Article 8 *Responsibilities of participants and prohibited practices by participants*

1. When participants conduct multi-level selling activities, they shall have the following responsibilities:
  - (a) To present their card of membership in the multi-level sales network prior to introducing or marketing any goods for sale;
  - (b) To provide notification of all the matters set out in clause 2 of article 6 of this Decree when they sponsor another person to participate in the multi-level sales network;
  - (c) To provide truthful and accurate information about the type, quality, price, use and method of use of the goods for sale;
  - (d) To comply with the provisions in the Operating Rules and in the multi-level Sales Plan of the enterprise.
2. It shall be prohibited for participants to conduct the following practices:
  - (a) To require any person whom such participant sponsors for participation in a multi-level sales network to pay any fee in the form of study course fees, training fees, seminar fees, fees for social activities or for other similar activities;
  - (b) To provide fraudulent information about the benefits from participation in a multi-level sales network, or false information about the nature and use of goods or about the activities of the multi-level selling enterprise in order to entice others to participate in multi-level selling of goods.

Article 9 *Contract for participation in multi-level selling of goods*

1. Multi-level selling enterprises must sign a written contract for participation in the multi-level sales network with a participant.
2. The Ministry of Trade shall be responsible to provide guidelines on the main contents of a sample contract for multi-level selling activities.

Article 10 *Termination of a contract for participation in multi-level selling of goods*

1. A participant shall have the right to terminate the contract for participation by providing written notice to the multi-level selling enterprise at least seven (7) working days prior to the date of termination of the contract.
2. A multi-level selling enterprise shall have the right to terminate the contract of a participant who breaches the provisions in article 8 of this Decree, and the enterprise must provide written notice to the participant at least seven (7) working days prior to the date of termination of the contract.
3. Within fifteen (15) working days from the date of termination of a contract, a multi-level selling enterprise shall have the following responsibilities:
  - (a) To buy back from the participant pursuant to article 11 of this Decree the goods which were sold to the participant;
  - (b) To pay to the participant commission, bonuses and other economic benefits to which the participant is entitled as a result of participation in the multi-level sales network.

Article 11 *Buying back goods from a participant when a contract for participation in a multi-level sales network is terminated*

1. A multi-level selling enterprise must buy back the goods sold to the participant when those goods satisfy the following conditions:
  - (a) The goods are resalable in accordance with their initial use purpose;
  - (b) No more than thirty (30) days have expired from the date the participant received the goods.
2. A multi-level selling enterprise which is obliged to buy back goods pursuant to clause 1 of this article shall have the following responsibilities:

- (a) To refund the total amount of money which the participant paid in order to receive the goods if there are no grounds for making the deduction stipulated in sub-clause (b) of this clause;
  - (b) In a case where the enterprise must bear administrative costs, expenses for re-storage and other administrative costs, then it must repay a total sum not less than ninety (90) per cent of the amount which the participant paid in order to receive the goods.
3. When paying the refund referred to in clause 2 of this article, a multi-level enterprise may deduct commission, bonuses and/or other economic benefits which the participant has already received as a result of receipt of such goods.
4. The provisions in clauses 1 and 2 of this article shall not apply in a case where goods are in the category which need not be compulsorily bought back, comprising goods whose use period has expired as at the date of their return, seasonal goods and goods used in promotions.

Article 12 Mandatory responsibilities owed by multi-level selling enterprises to participants

1. Multi-level selling enterprises shall be responsible to pay damages to consumers or participants in the following circumstances:
  - (a) A participant causes loss to a consumer or to another participant when the former participant correctly implements the Operating Rules and Sales Plan of the enterprise;
  - (b) A participant was not provided with complete information about the goods in accordance with clause 2 of article 6 of this Decree.
2. Multi-level selling enterprises shall be responsible to regularly supervise the activities of participants in order to ensure that the latter are correctly implementing the Rules on Operation and the Sales Plan of the enterprise.
3. In a case where failure to comply with the provisions in article 8 of this Decree results in loss to a consumer or another participant, then the [offending] participant in the multi-level sales network shall be responsible to pay damages for the loss caused.

Article 13 Information and benefits on participation in a multi-level sales network

If an individual being a participant in a multi-level sales network is used in order to introduce the selling operation, the multi-level selling enterprise or the participant must specify the name, age, address, period of participation and benefits received in each period by such individual, and the latter item must also be certified in minutes by the tax office.



## CHAPTER 3

### Supervision of Multi-Level Selling Activities

Article 14 Conditions applicable to issuance of a certificate of registration of organization of multi-level selling. A certificate of registration of organization of multi-level selling shall be issued to an enterprise which satisfies all the following conditions:

1. It has established the deposit fund stipulated in article 17 of this Decree.
2. Trading in the goods in question conforms with the business line specified in the business registration certificate of the enterprise.
3. The enterprise satisfies all the conditions for conducting business, or it has been issued with a certificate of satisfaction of conditions for conducting business in accordance with law in a case where the goods traded are on the list of goods for which the conduct of business is conditional.
4. It has Sales Plan which is transparent and not contrary to law.
5. It has a clear program for training participants.

Article 15 Application file for issuance of a certificate of registration of organization of multi-level selling.

An application file for issuance of a certificate of registration of organization of multi-level selling shall be lodged with the Department of Trade or with the Department of Trade and Tourism in the province where the enterprise is registered for business. The application file shall comprise:

1. Application for issuance of a certificate of registration of organization of multi-level selling in the form stipulated by the Ministry of Trade.
2. A notarized copy of the business registration certificate.
3. A document of certification from a bank about the amount in the deposit fund paid in accordance with the provision in clause 1 of article 17 of this Decree.
4. A notarized copy of a certificate of satisfaction of business conditions in a case where the goods traded are on the list of goods for which business is conditional.
5. A list and curriculum vitae of the people heading the enterprise together with photos and verification by the police of the commune or ward where those people reside. In

the case of foreigners there must certification from the embassy or consulate in Vietnam of the country of nationality of such persons.

6. There must be a Sales Plan containing the particulars specified in clause 2(a) of article 6 of this Decree.
7. There must be a program for training participants containing the particulars stipulated in clause 2(b) of article 6 of this Decree.

Article 16 Procedures for issuance and supplementation of a certificate of registration of organization of multi-level selling

1. Within a time-limit of fifteen (15) working days as from the date of receipt of a complete and valid file, the Department of Trade or the Department of Trade and Tourism of the province where the enterprise has registered for business shall be responsible to issue a certificate of registration of organization of multi-level selling to any enterprise whose application file satisfies all the conditions stipulated in article 14 of this Decree.

In a case where a certificate of registration of organization of multi-level selling is not issued, the Department of Trade or the Department of Trade and Tourism shall provide a written response specifying its reasons.

2. An enterprise making an application for the issuance of a certificate of registration of organization of multi-level selling must pay fees for the issuance of the certificate. The level of fees and the regime for management and use of fees shall be regulated by the Ministry of Finance.
3. In a case where there are changes relating to the contents of the Sales Plan, an enterprise shall be responsible to conduct procedures requesting the issuance of an amended certificate of registration of organization of multi-level selling.

The order and time-limit for the issuance of an amended certificate shall be implemented in accordance with the provisions in clauses of 1 and 2 of this article.

4. Within a time-limit of fifteen (15) working days as from the date of issuance of a certificate or amended certificate of registration of organization of multi-level selling, the Department of Trade or the Department of Trade and Tourism shall be responsible to provide a written report to the administrative body for competition under the Ministry of Trade.
5. If a multi-level selling enterprise develops its sales network into a province or city under central authority where such enterprise does not have its own office, then it

must notify the Department of Trade or the Department of Trade and Tourism of such province or city under central authority.

6. The Ministry of Trade shall regulate the sample form for the certificate of registration of organization of multi-level selling and the sample form for a notice of having organized a multi-level sales network.

Article 17 Deposit fund

1. Multi-level selling enterprises must pay into a deposit fund with a commercial bank operating in Vietnam a sum of five per cent of their charter capital but no less than one billion Vietnamese dong.
2. When there is a notice of suspension of multi-level selling activities, the multi-level selling enterprise shall be permitted to use the deposited monies to pay commission and bonuses or for the cost of buying back goods from participants.
3. On the termination of multi-level selling activities, the multi-level selling enterprise shall only be permitted to withdraw the deposited monies when there are no complaints from participants in the multi-level sales network about payment of commission and bonuses or about the cost of buying back goods.

Article 18 Withdrawal of certificate or registration of organization of multi-level selling

1. A Department of Trade or a Department of Trade and Tourism shall revoke a certificate of registration of organization of multi-level selling in the following circumstances:
  - (a) The business registration certificate of the enterprise has been withdrawn;
  - (b) The certificate of satisfaction of business conditions of the enterprise has been withdrawn in a case where the goods traded are on the list of goods for which business is conditional;
  - (c) The application file for issuance of the certificate for registration of organization of multi-level selling contained deliberately fraudulent information;
  - (d) There was conduct constituting a serious breach of law during the course of multi-level selling activity.
2. In a case of withdrawal of a certificate of registration of organization of multi-level selling pursuant to the provisions of clause 1 of this article, the multi-level selling enterprise must immediately suspend multi-level sales and the recruitment of new

participants, and must discharge its responsibilities to participants in accordance with the provisions in article 11 of this Decree or pay damages to consumers and participants for claims arising out of transactions entered into prior to the day on which the certificate was withdrawn.

3. The Department of Trade or the Department of Trade and Tourism shall forward any decision on withdrawal of a certificate of registration of organization of multi-level selling to the administrative body for competition under the Ministry of Trade and shall announce such decision on the mass media.

#### Article 19 Provisional suspension or termination of multi-level selling activities

1. Any multi-level selling enterprise which wishes to provisionally suspend or [provisionally] terminate its multi-level selling activities shall have the following obligations:
  - (a) To comply with the regulations on temporary suspension or [temporary] termination of business activities as stipulated in the law on enterprises;
  - (b) To provide a notice to the Department of Trade or the Department of Trade and Tourism in the province where the enterprise has registered for business, and at the same time to provide a public notice at the headquarters of the enterprise and a notice to participants for their information within a time-limit of thirty (30) working days prior to the date of temporary suspension or [temporary] termination of activities.
2. In a case of temporary suspension or [temporary] termination of multi-level selling activities, a multi-level selling enterprise must conduct procedures for liquidation of contracts for participation in multi-level selling with participants in accordance with the provisions in article 10 of this Decree within a time-limit of thirty (30) working days as from the date of temporary suspension or [temporary] termination of multi-level selling activity.

#### Article 20 Periodical reporting by multi-level selling enterprises

Once every six months, multi-level selling enterprises shall be responsible to provide a report to the Department of Trade or the Department of Trade and Tourism of the province where the enterprise is registered for business on the number of participants, on turnover, and on the amount of tax paid by the enterprise including personal income tax of participants which the enterprise has paid on behalf of participants.

---

(a) 1974 c. 39.

Article 21 Responsibilities of the Ministry of Trade

1. The Ministry of Trade shall be responsible before the Government to exercise the function of State management of multi-level selling activities nationwide.
2. The administrative body for competition under the Ministry of Trade shall be responsible to assist the Minister of Trade with the following specific administrative matters:
  - (a) Provision of guidelines to Departments of Trade and Departments of Trade and Tourism regarding issuance of certificates of registration of organization of multi-level selling; checks of the supervision of multi-level selling activities by Departments of Trade and Departments of Trade and Tourism;
  - (b) Direct checks and inspections of multi-level selling activities when necessary; and dealing in accordance with its authority with breaches of the law on multi-level selling activities;
  - (c) Recommendations to the Government to issue or to amend legal instruments on ensuring order during the organization of conduct of multi-level selling activities, on protection of the interests of participants in multi-level sales networks and of consumers, and on maintaining socio-economic stability.

Article 22 Responsibilities of people's committees of provinces and cities under central authority

1. People's committees of provinces and cities under central authority shall be responsible to exercise State supervision of methods of multi-level selling in accordance with their authority and pursuant to directions and guidelines from the Ministry of Trade pursuant to this Decree and other relevant provisions of law.
2. Departments of Trade or Departments of Trade and Tourism shall assist people's committees of provinces and cities under central authority to issue certificates of registration of organization of multi-level selling; shall regularly check and supervise multi-level selling activities within their respective localities, and shall provide periodical reports to the administrative body for competition under the Ministry of Trade regarding such checks and super visions.

Article 23 Dealing with breaches by multi-level selling enterprises and by participants

1. Any multi-level selling enterprise or any participant in a multi-level sales network who commits one of the following breaches shall, depending on the nature and seriousness of the breach, be subject to an administrative penalty in accordance with the law on dealing with administrative offences:

- (a) Conducting multi-level selling prior to having satisfied the stipulated conditions;
- (b) Committing a breach of the provision on entities entitled to participate in multi-level selling;
- (c) Committing a breach of the provision on goods in which business is permitted to be conducted by the multi-level selling method;
- (d) Failing to provide complete information in accordance with the regulations when sponsoring a new participant to a multi-level sales network;
- (e) Conducting practices which a multi-level selling enterprise and participants are not permitted to conduct;
- (f) Failure by a multi-level selling enterprise to sign a written contract with a participant;
- (g) Committing a breach of the provision on termination of a contract for participation in multi-level selling;
- (h) Failure to comply with the reporting regime stipulated in article 20 of this Decree;
- (i) Changing the contents of a Sales Plan without conducting procedures to apply for issuance of a supplemented certificate;
- (j) A multi-level selling enterprise breaches the provisions of the amount of money it must pay into the deposit fund, or pays disbursements from such deposit fund during the course of its operations;
- (k) Failure to pay tax as required by law;
- (l) Failure to comply with requests from a competent State body during the course of a check or inspection;
- (m) Breach of other provisions of this Decree.

## CHAPTER 4

### Implementing Provision

#### Article 25 Effectiveness

1. This Decree shall be of full force and effect fifteen (15) days after the date of its publication in the Official Gazette. Any multi-level selling enterprise which had already conducted business registration prior to the date on which this Decree took effect shall, within a period of three months as from the date this Decree takes effect, be responsible to conduct procedures to apply for the issuance of a certificate of registration of organization of multi-level selling at the Department of Trade or the Department of Trade and Tourism in the province where such enterprise has registered for business.
2. Ministers, heads of ministerial equivalent bodies and Government bodies, and chairmen of people's committees of provinces and cities under central authority shall be responsible for implementation of this Decree.

On behalf of the Government  
The Prime Minister  
PHAN VAN KHAI



## Sources

---

- **Europe:** Official Journal of the European Union
- **Malaysia:** Percetakan Nasional Malaysia Berhad
- **Singapore:** <http://statutes.agc.gov.sg>
- **Thailand:** Baker & McKenzie report
- **UK:** The Consumer Protection (Distance Selling) Regulations, The Stationery Office Limited, UK









## About FICCI

Established in 1927, FICCI is the largest and oldest apex business organisation in India. Its history is closely interwoven with India's struggle for independence, its industrialization, and its emergence as one of the most rapidly growing global economies. FICCI has contributed to this historical process by encouraging debate, articulating the private sector's views and influencing policy.

A non-government, not-for-profit organisation, FICCI is the voice of India's business and industry.

FICCI draws its membership from the corporate sector, both private and public, including SMEs and MNCs; FICCI enjoys an indirect membership of over 2,50,000 companies from various regional chambers of commerce.

FICCI provides a platform for sector specific consensus building and networking and as the first port of call for Indian industry and the international business community.

**Our Vision:** To be the thought leader for industry, its voice for policy change and its guardian for effective implementation.

**Our Mission:** To carry forward our initiatives in support of rapid, inclusive and sustainable growth that encompass health, education, livelihood, governance and skill development.

To enhance efficiency and global competitiveness of Indian industry and to expand business opportunities both in domestic and foreign markets through a range of specialised services and global linkages.

---

## About FICCI Direct Selling Task Force

The FICCI FMCG division has been relentlessly working on various issues which are critical for the industry. We have been actively involved in the policy & strategy, capacity building and global recognition for the Indian FMCG industry. We have formed a Task-force on Direct Selling Industry which works on the similar issues with the Government.

Direct selling is a very obvious distribution channel for FMCG industry and has gained huge importance in the times when demand is further driven by convenience at their doorstep. Direct selling, as we all understand is a sales & distribution channel/system whereby, on the basis of certain well-defined rules direct sellers can derive income not only from personal sales but also from ongoing sales and consumption by people whom they, directly or indirectly, have introduced to the direct selling company and for whom they provide ongoing motivation and training.

We at Direct Selling Sub-Committee gives experts insight to the issues pertaining to the Direct Selling Industry in India and work towards promotion of this industry which is a labour intensive industry and a big employment generator for the masses. We interact with various ministries –to name a few- Ministry of Consumer Affairs, Ministry of Corporate Affairs, Ministry of Finance, etc, to bring legitimacy to Direct Selling sector.

## Contact Person

### Shilpa Gupta

Head - Retail, FMCG & Gems n Jewellery Committee  
Federation House, Tansen Marg, New Delhi 110 001

T: +91-11-23487270

E: [shilpa.gupta@ficci.com](mailto:shilpa.gupta@ficci.com)

W: [www.ficci.com](http://www.ficci.com)