

NO&T Thailand Legal Update

February, 2025 No.35

Recent developments in e-commerce registration under the Direct Sale and Marketing Act: Implications for compliance in the e-commerce industry

Yothin Intaraprasong / Chattong Sunthorn-opas / Thunsinee Sungmongkol

Background

Thailand's e-commerce market has experienced substantial growth over the past few years. This has been driven by increased consumer reliance on online shopping platforms since the pandemic. An example is the case of The iCon Group Co., Ltd. (the “**iCon Group**”), an e-commerce business operator that rapidly emerged as a successfully self-proclaimed online health supplement and cosmetic products business, with a number of well-known Thai celebrities involved, bringing its growing business into the spotlight. According to the database of the Office of the Consumer Protection Board (the “**OCPB**”), the competent authority governing direct sales and direct marketing registration, the iCon Group had been registered with the OCPB for direct marketing business under the Direct Sale and Marketing Act of 2002 (the “**Direct Sale and Marketing Act**”) since 2019 to operate its direct marketing business for sales of cosmetic products. However, in late 2024, the iCon Group was unexpectedly hit by a fraud scandal and faced numerous complaints from alleged victims. This resulted in the iCon Group attracting significant public attention with several investigations being carried out into its prominent executives and associated celebrities, including its self-proclaimed e-commerce business model.

From the perspective of compliance, it appears to the OCPB that the iCon Group's business model was not a ‘de jure’ e-commerce business, i.e., it was not intended to legally operate to offer sales of products to customers directly via its own website platform as per its registration, but rather via its sales representatives' websites. In fact, the iCon Group was found to have operated its business by encouraging its existing members to induce new members to join as sales representatives with promises of granting benefits based on the number of persons joining the network, which violates with Section 19 of the Direct Sale and Marketing Act.¹ As a result, on 7 January 2025, the secretary of the OCPB issued an order revoking the registration of the direct marketing business of the iCon Group,² leading to controversial discussions among legal practitioners about compliance.

Therefore, this article aims to highlight the key takeaways for direct marketing, focusing on the legal requirements to engage in e-commerce business under the Direct Sale and Marketing Act, in order to enhance understanding of legal compliance and to prevent legal consequences from arising for current and future e-commerce business operators.

(1) General Principles

One of the key regulations governing the operation of e-commerce businesses in Thailand is the Direct Sale and Marketing Act. Under the Direct Sale and Marketing Act, the legal term of e-commerce business is referred to ‘direct marketing’, where goods and services are marketed by means of communicating information, in order to directly offer goods and services for sale to remote consumers, with the expectation that consumers will agree to

¹ Section 19 of the Direct Sale and Marketing Act: Direct sales business operators and direct marketing business operators are prohibited from operating in a manner that induces individuals to join the network to engage in direct sales or direct marketing, with promises to grant benefits that are calculated based on the number of persons joining the network.

² OCPB Press Release dated 8 January 2025, available at https://www.ocpb.go.th/news_view.php?id=15755

purchase such goods and services from the direct marketing operators.³

From the given definition, it could be interpreted that any kind of e-commerce business that operates through an online platform, connecting business operators and remote consumers and enabling customers to directly purchase products and services from such e-commerce business operators, falls under the scope of direct marketing under the Direct Sale and Marketing Act. Therefore, it would be necessary to register with the OCPB for direct marketing business before the commencement of operations.⁴ As described, this direct marketing registration aims to protect consumer rights when purchasing goods or services through online platforms, as consumers are unable to physically inspect the products or services prior to the purchase.

Although the Direct Sale and Marketing Act and the relevant regulations do not clearly specify the definition of a direct marketing business operator, a manual published by the OCPB has clarified the persons who are required to register for direct marketing business to engage in sales via an online platform, as follows:

- (1) The owners of a website, which is registered for sales of their own goods;
- (2) If there are intermediaries who sell products of other persons on an online platform, the owner of the online platform must notify the registrar of the direct marketing business with details of the type or category of the goods, the address of the owner of the products, purchase method, and any other relevant conditions;
- (3) The companies, shops, or individuals who own the products regardless of whether they are manufacturers, importers, distributors, or sellers. If they have registered the website to engage in sales of goods via their own internet platform, without using the website of which is the intermediate platform; and
- (4) Other individuals who engage in sales through alternative platforms, such as telephone, facsimile, or other electronic communication devices.⁵

Upon the completion of the direct marketing registration, direct marketing business operators must comply with certain obligations, such as the duty to comply with information, advertisement, and warranty requirements,⁶ the duty to submit a direct marketing report to the OCPB within the designated timeframe,⁷ and the duty to prepare and deliver documents related to the sales of goods or services to consumers.⁸

As the Direct Sale and Marketing Act aims to protect consumers from being deceived into actively marketing goods or services, thereby placing them at a disadvantage and resulting in unfair treatment, one of the key restrictions thereunder is that direct marketing business operators are strictly prohibited from operating their businesses in a manner that induces any person to join a direct sales or direct marketing network with promises of granting benefits that will be calculated based on the number of persons joining the network.⁹ Those who fail to comply with this requirement will be subject to a penalty,¹⁰ or the revocation of their direct marketing registration by the OCPB under the Administrative Procedure Act of 1996.¹¹

As of the date of this article, there are approximately 900 e-commerce business operators registered with the OCPB,¹² a number which is expected to increase considering the growth of e-commerce business and the shift in consumer preferences to online shopping.

(2) Exception

There are certain e-commerce transactions for the sale and purchase of goods and services that do not fall under the definition of direct marketing, as follows:

- (1) Sales of goods or provision of services by an individual who is not registered as a direct marketing business operator, and who generates no more than THB 1,800,000 per year in income from the sales of goods or

³ Section 3 of the Direct Sale and Marketing Act

⁴ Section 27 of the Direct Sale and Marketing Act

⁵ Manual of the Office of Consumer Protection Board, Page 48, undated

⁶ Sections 28, 29, and 37 of the Direct Sale and Marketing Act

⁷ Section 29/2 of the Direct Sale and Marketing Act and the Notification of the Office of the Consumer Protection Board re: requirements and timeframe for submitting the report for operating a direct marketing business to the registrar of 2020

⁸ Section 30, paragraph 2 of the Direct Sale and Marketing Act

⁹ Section 19 of the Direct Sale and Marketing Act

¹⁰ Section 46 of the Direct Sale and Marketing Act: Any person violating Section 19 shall be subject to imprisonment for a period of not more than 5 years and a fine not exceeding THB 500,000.

¹¹ Sections 3, 5, 44, and 53, paragraph two (3) (5) of the Administrative Procedure Act of 1996, and Memorandum of the Administrative Procedures Committee re: Revocation of the Order of the Registration of Direct Marketing Business by Virtue of the Administrative Procedure Act of 1996, Case No. 1588/2567 on December 2024

¹² According to the database of the OCPB as of 23 January 2024

- services through an e-commerce platform;
- (2) Sales of goods or provision of services by a Small and Medium-sized Enterprise (SME) registered under the SME laws;
 - (3) Sales of goods or provision of services by a community enterprise registered under the Community Enterprise Incentives laws; and
 - (4) Sales of goods or provision of services by a cooperative and a group of farmers registered under the cooperative law.¹³

Further to the statutory exemptions,

- The OCPB has clarified that an owner of goods, whether as a manufacturer or importer, who exclusively sells through platforms like Shopee or Lazada, is not subject to direct marketing registration.¹⁴ This is because the OCPB considers that consumers do not purchase goods or services directly from the platform of the goods' owner. Instead, the sale of goods is made through intermediate platforms.
- In addition, direct marketing registration is not required in cases where companies, shops, or individuals who own the goods, whether as manufacturers, importers, distributors, or sellers, wish to promote the goods or services through media solely for advertisement purposes, without the intention to engage in sales of goods or services through such media.¹⁵

Although direct marketing registration is not required for the above exempted business operations, e-commerce business operators are still required to comply with other e-commerce-related laws and regulations, including, but not limited to, the Electronic Transaction Act of 2001, the Commercial Registration Act of 1956, the Personal Data Protection Act of 2019, the Royal Decree on Operation of Digital Platform Services Which Requires Notification of 2022, etc.

(3) Penalty

Any person who fails to register for direct marketing business will be subject to imprisonment for a period not exceeding 1 year or a fine not exceeding THB 100,000 or both, and to a daily penalty not exceeding THB 100,000 per day throughout the duration of such violation.¹⁶

In the case of a juristic person, if such misconduct of the juristic person arises from an order or act of a director, manager or any person responsible for such juristic person, or if the person has a duty to order or act but omit from such order or act, thereby giving rise to the juristic person's violation, such person will be held liable.¹⁷

Please note that the penalty under the Direct Sale and Marketing Act can be settled by paying a fine to the OCPB at the rate determined by the OCPB on a case-by-case basis,¹⁸ except for the penalty resulting from a violation of Section 19 of the Direct Sale and Marketing Act, as elaborated on in **Topic (1) General Principles** above.

Our remarks

The incident involving the iCon Group emphasizes the importance of compliance in the e-commerce industry under the Direct Sale and Marketing Act, transparency of business models, and ethical business practices in e-commerce business. It is expected that the OCPB will adopt a more proactive stance to enforce the laws and sanctions against violators. Therefore, it is prudent for e-commerce business operators to have a clear understanding of compliance and their business model in order to ensure compliance with laws and restrictions under the Direct Sale and Marketing Act and relevant e-commerce laws and regulations to avoid the penalties described above.

¹³ The Ministerial Regulation on Sales of Goods or Services Through an E-Commerce Platform That Are Not Considered Direct Marketing of 2018

¹⁴ Manual of the Office of Consumer Protection Board, Page 46, undated

¹⁵ Manual of the Office of Consumer Protection Board, Page 47, undated

¹⁶ Section 51/1 of the Direct Sale and Marketing Act

¹⁷ Section 54 of the Direct Sale and Marketing Act

¹⁸ Section 55 of the Direct Sale and Marketing Act

[Authors]



Yothin Intaraprasong (Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd. Partner)
yothin_intaraprasong@noandt.com

Yothin Intaraprasong is a partner at Nagashima Ohno & Tsunematsu, Bangkok office. He has been involved in providing legal advice on civil and commercial laws, focusing on foreign investments in Thailand. He also represents a number of Japanese, Thai, and international clients in a wide range of ongoing business issues.



Chattong Sunthorn-opas (Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)
chattong_sunthorn-opas@noandt.com

Chattong is a Thai-qualified attorney based in Bangkok, with a distinguished academic background and extensive legal expertise. He holds a First-Class Honors LL.B. from Chulalongkorn University and an LL.M. with the distinction of highest honors from the Graduate School of Law at Waseda University. Additionally, he earned an LL.M. with a Certificate of Specialization in Business Law from Keio University Law School. He represents both Thai and Japanese clients across a wide range of transactions. His main areas of practice include foreign investment law, M&A corporate transactions, competition law, general commercial laws, and regulatory advice.



Thunsinee Sungmongkol (Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)
thunsinee_sungmongkol@noandt.com

Thunsinee Sungmongkol is a qualified attorney based in Bangkok office since 2024. She graduated with a First-Class honors LL.B. from Chulalongkorn University. She has experience assisting both local and multinational companies in various areas, including corporate projects and commercial transactions.

This newsletter is given as general information for reference purposes only and therefore does not constitute our firm's legal advice. Any opinion stated in this newsletter is a personal view of the author(s) and not our firm's official view. For any specific matter or legal issue, please do not rely on this newsletter but make sure to consult a legal adviser. We would be delighted to answer your questions, if any.

Other Publications

Recently we also featured in a number of articles and books covering a wide range of legal areas to address the latest legal issues. Please follow the link below to access each publications.



Lexology GTDT - Real Estate 2024 – Thailand

This article provides comparative analysis of real estate regulations in different jurisdictions worldwide, with answers to crucial questions in key areas such as: acquisition of real estate, including recording conveyance documents, foreign investors, investment entities, leases and mortgages and contracts and financing, including liens, interest, enforcement, protection of collateral, covenants and bankruptcy.



Chambers Global Practice Guides Investing In... 2025 Thailand – Law and Practice

The Investing In... 2025 guide features close to 40 jurisdictions. The guide provides the latest information on foreign direct investment, market trends, mergers and acquisitions, corporate governance and disclosure/reporting, capital markets, antitrust/competition, tax, employment and labour, and IP and data protection.

www.noandt.com

NAGASHIMA OHNO & TSUNEMATSU

JP Tower, 2-7-2 Marunouchi, Chiyoda-ku, Tokyo 100-7036, Japan

Tel: +81-3-6889-7000 (general) Fax: +81-3-6889-8000 (general) Email: info@noandt.com



Nagashima Ohno & Tsunematsu, based in Tokyo, Japan, is widely recognized as a leading law firm and one of the foremost providers of international and commercial legal services. The firm's overseas network includes locations in New York, Singapore, Bangkok, Ho Chi Minh City, Hanoi, Jakarta* and Shanghai. The firm also maintains collaborative relationships with prominent local law firms. The approximately 600 lawyers of the firm, including about 50 experienced lawyers from various jurisdictions outside Japan, work together in customized teams to provide clients with the expertise and experience specifically required for each client matter. (*Associate office)

Singapore Office

(Nagashima Ohno & Tsunematsu Singapore LLP)



6 Battery Road Level 41
Singapore 049909
Tel: +65-6654-1760 (general)
Fax: +65-6654-1770 (general)
Email: info-singapore@noandt.com

Bangkok Office

(Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)



34th Floor, Bhiraaj Tower at EmQuartier
689 Sukhumvit Road, Klongton Nuea
Vadhana, Bangkok 10110, Thailand
Tel: +66-2-302-4800 (general)
Fax: +66-2-302-4899 (general)
Email: info-bangkok@noandt.com

HCMC Office

(Nagashima Ohno & Tsunematsu HCMC Branch)



Suite 1801, Saigon Tower
29 Le Duan Street, District 1
Ho Chi Minh City, Vietnam
Tel: +84-28-3521-8800 (general)
Fax: +84-28-3521-8877 (general)
Email: info-hcmc@noandt.com

Hanoi Office

(Nagashima Ohno & Tsunematsu Hanoi Branch)



Suite 10.04, CornerStone Building
16 Phan Chu Trinh, Hoan Kiem District
Ha Noi City, Vietnam
Tel: +84-24-3266-8140 (general)
Fax: +84-24-3266-8141 (general)
Email: info-hanoi@noandt.com

Jakarta Office (*Associate office)

(IM & Partners in association with

Nagashima Ohno & Tsunematsu)



Jakarta Mori Tower 14th Floor, Unit 1401
Jalan Jenderal Sudirman Kav. 40-41
Jakarta 10210, Indonesia
Tel: +62-21-25098080 (general)
Fax: +62-21-25098090 (general)
Email: info-jakarta@noandt.com

Shanghai Office

(Nagashima Ohno & Tsunematsu

Shanghai Representative Office)



21st Floor, One ICC, 999 Middle Huaihai Road
Xuhui District, Shanghai 200031, China
Tel: +86-21-2415-2000 (general)
Fax: +86-21-6403-5059 (general)
Email: info-shanghai@noandt.com

For more details on our global practice

If you would like to receive future editions of the NO&T Thailand Legal Update by email directly to your Inbox, please fill out our newsletter subscription form at the following link: https://www.noandt.com/en/newsletters/nl_thailand_legal_update/

Should you have any questions about this newsletter, please contact us at [<thailand-legal-update@noandt.com>](mailto:thailand-legal-update@noandt.com).

Please note that other information related to our firm may be also sent to the email address provided by you when subscribing to the NO&T Thailand Legal Update.