

## New Burden for Direct Marketers

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Government now requires direct marketing operators to place a guarantee with the Office of the Consumer Protection Board of Thailand (“**OCPB**”) in order to protect consumers. The Ministerial Regulation, issued under the Direct Sales and Direct Marketing Act B.E. 2545 (A.D. 2002), and already published in the Government Gazette, became effective on 20 November, 2018. The new law intends to enhance Thailand’s consumer protection framework.

Responsible parties, and the corresponding rates, are:

1. New Applicants	Type	Rate (Baht)
	Individual	5,000
Juristic Person	25,000	
2. Existing & Registered Direct Marker	Revenue per Year (Baht)	Rate (Baht)
	Individual Up to 25 million	5,000
	Juristic Person Up to 25 million	25,000
	25-50 million	50,000
	50-100 million	100,000
	More than 100 million	200,000

## What is Direct Marketing?

According to the Direct Sales and Direct Marketing Act, direct marketing is the marketing of goods where a seller communicates directly to consumers through a variety of media, including websites and mobile services. Thailand’s direct marketing law has been in effect since 2002.

## New Law, Newer Challenges

New applicants and existing, registered direct marketers face new compliance burdens. The new law requires existing, registered- and new direct marketers to place a guarantee with the OCPB.

New applicants must place a guarantee within 30 days from the date of notification issued to them by the OCPB. Existing, registered direct marketers must place a guarantee within 90 days from the enforcement date of the Ministerial Regulation, i.e. by 17 February 2019.

Guarantees, according to the new law, can be in the form of cash, bank guarantees, government bonds, or State-enterprise bonds. New applicants are subject to a fixed-rate guarantee, while existing, registered direct marketers are subject to a revenue-based guarantee.

## Author's Note:



*OCPB will send a letter to existing, registered direct marketing operators requesting the guarantee. The required sum will be based on the annual revenue of the particular operator. Operators must place the guarantee once they receive the OCPB letter, but no later than 17 February 2019.*

*The guarantee will be used as compensation to consumers who have suffered damages from the operator's direct marketing activities. Once monies have been used to compensate consumers, the OCPB will notify the operators in writing to replenish the guarantee. The Operator must do so within 60 days from the notification date. Where the value of the damages suffered by consumers exceeds the guarantee placed, the direct marketer will be liable to those consumers for monies owed.*

*The guarantee and relevant other details must be in the form published by the OCPB. As of this publication, the form has not published in the Government Gazette.*

*From our experience, ambiguities arise where a website owner hires a service provider to operate its website, sell its goods to a service provider for retail to consumers, and directly contact consumers. In these cases, it may be unclear who operates as the direct marketer liable under this new law.*

*\*By Mr. Piyasak Chotipruk, Partner Dherakupt International Law Office Ltd.*

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