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DIRECT SALES ACT 1993 [REPRINT 2002]

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Long Title & Preamble

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.

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I- PRELIMINARY

Section 1. Short title, commencement and application.

(1) This Act may be cited as the Direct Sales Act 1993 and shall come into force on such date as the Minister may, by notification in the Gazette, appoint and different dates may be appointed for the coming into force of different provisions of this Act.

(2) This Act shall apply throughout Malaysia and only in respect of-

- (a) negotiations carried on after the coming into force of this Act, leading to the formation of direct sales contracts; and
- (b) direct sales contracts entered into after the coming into force of this Act, notwithstanding that negotiations leading to the formation of the contract may have taken place before that date.

(3) This Act shall not apply-

- (a) where the purchaser or the prospective purchaser is a body corporate;
- (b) to any contract of insurance and reinsurance issued by an insurer registered under the Insurance Act 1963 [Act 89]; and
- (c) to any contract of takaful and re-takaful issued by a takaful operator registered under the Takaful Act 1984 [Act 312].

(4) The provisions of this Act shall be without prejudice to the Hire-Purchase Act 1967 [Act 212], the Sale of Goods Act 1957 [Act 382], the Contracts Act 1950 [Act 136] and the Companies Act 1965 [Act 125], and where there is any conflict between the provisions of this Act and the provisions of any of such Acts the provisions of this Act shall prevail.

Section 2. Interpretation.

In this Act, unless the context otherwise requires-

"advertisement" includes every form of advertising (whether or not accompanied by or in association with spoken or written words or other writing or sounds and whether or not contained or issued in a publication) by the display of notices or by means of catalogues, price lists, labels, cards or other documents or materials or by the exhibition of cinematograph films or of pictures or photographs, or by means of radio or television, or in any other way;

"Controller", "Deputy Controller" and "Assistant Controller" mean respectively the Controller of Direct Sales, a Deputy Controller of Direct Sales and an Assistant Controller of Direct Sales appointed under section 3;

"cooling-off period" means the period of ten working days commencing on the day after the date of the making of a direct sale contract;

"direct sale" means a door-to-door sale and a mail order sale within the meaning of this Act;

"door-to-door sale" means the sale of goods or services conducted in the following manner:

- (a) a person or any person authorized by him-
 - (i) goes from place to place not being a fixed place of business; or

(ii) makes telephone calls,

seeking out persons who may be prepared to enter, as purchasers, into contracts for the sale of goods or services; and

(b) that first-mentioned person or some other person then or subsequently enters into negotiations with those prospective purchasers with a view to the making of such contracts;

"fixed place of business" means-

(a) in relation to the sale of goods, the place at which the vendor normally carries on a business or at which goods of the description to which the sale relates, or goods of a similar description, are normally offered or exposed for sale in the course of a business carried on at that place;

(b) in relation to the sale of services, the place at which the vendor carries on business;

"goods" means every kind of movable property other than choses in action, negotiable instruments, shares, debentures and money;

"mail order sale" means the sale of goods or services which a person conducts, either by himself or through any person authorized by him, by receiving an offer for a sale contract by mail;

"Minister" means the Minister responsible for domestic trade and consumer affairs;

"prescribed" means prescribed by the regulations;

"purchaser" means the person to whom goods or services are supplied or are to be supplied under a contract and, if the rights of that person are transferred by operation of law, includes the person for the time being entitled to those rights;

"services" includes rights or benefits of any kind except the supply of goods;

"the regulations" means the regulations made under this Act;

"vendor" means the person who supplies or agrees to supply goods or services under a contract and, if the rights of that person are transferred by operation of law, includes the person for the time being entitled to those rights.

Section 3. Controller, Deputy Controllers, etc.

(1) The Minister may appoint, from amongst public officers, a Controller of Direct Sales and such number of Deputy Controllers of Direct Sales, Assistant Controllers of Direct Sales and other officers as may be necessary for the purposes of this Act.

(2) The Controller shall, subject to the general direction and control of the Minister, perform the duties imposed and exercise the rights and powers conferred upon him under this Act and the regulations.

(3) The Deputy Controllers, Assistant Controllers and other officers appointed under subsection (1) shall be under the direction and control of the Controller.

(4) Except as provided in subsection (5), a Deputy Controller may perform all the duties imposed and exercise all the rights and powers conferred upon the Controller under this Act.

(5) The duties to be performed and the rights and powers to be exercised by the Controller under sections 6, 8, 9, 10, 11, 13 and 14 shall be performed and exercised by the Controller personally.

(6) The Controller or Deputy Controller may perform all the duties imposed and exercise all the powers conferred upon an Assistant Controller under this Act or the regulations.

(7) All officers appointed under this section shall be deemed to be public servants within the meaning of the Penal Code.

PART II - REQUIREMENT FOR A LICENCE TO CARRY ON DIRECT SALES BUSINESS

Section 4. Direct sales business to be carried on only under licence.

(1) Subject to sections 14 and 42, no person shall carry on any direct sales business unless it is a company incorporated under the Companies Act 1965 and holds a valid licence granted under section 6.

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

- (a) if such person is a body corporate, to a fine not exceeding two hundred and fifty thousand ringgit and, for a second or subsequent offence, to a fine not exceeding five hundred thousand ringgit;
- (b) if such person is not a body corporate, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both and, for a second or subsequent offence, to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding six years or to both.

(3) Where a person, being a director, manager, secretary or other similar officer of a body corporate, 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).

PART II - REQUIREMENT FOR A LICENCE TO CARRY ON DIRECT SALES BUSINESS

Section 5. Submission of application for licence.

(1) An application for a licence to carry on a direct sales business referred to in section 4 shall be made by submitting an application in writing to the Controller together with-

- (a) a copy of the memorandum and articles of association or other constituent documents under which the applicant is established, duly verified by a statutory declaration made by a director of the applicant;
- (b) a copy of the latest audited balance sheet, profit and loss account and the reports, if any, of the auditors and the directors of the applicant, if applicable;
- (c) a statement on-
 - (i) the name, place and date of the establishment of the applicant;
 - (ii) the names, places and dates of the establishment of its related corporations;
 - (iii) the principal business and field of operations of the applicant and of its related corporations;
 - (iv) the names and addresses of the directors of the applicant and its related corporations, and of the substantial share-holders, within the meaning of section 69D of the Companies Act 1965, of the applicant and its related corporations; and
 - (v) the marketing and trading scheme or the proposed marketing and trading scheme of the applicant in respect of that business; and
- (d) such other information or documents as may be specified by the Controller for the purposes of determining the application and the suitability of the applicant for the licence.

(2) For the purposes of subparagraph (1)(c)(iv), references to a company under section 69D of the Companies Act 1965 shall be so construed as to include a private company.

(3) At any time after receiving an application and before it is determined, the Controller may, by written notice, require the applicant or any person who is or is to be a director or manager of the applicant to provide additional information or documents.

(4) The matters specified under paragraph (1)(d) or the requirements under subsection (3) may differ as between different applicants, or different classes, categories or descriptions of applicants.

(5) An application under this section may be withdrawn at any time before it is granted or refused.

(6) Where any additional information or document required under subsection (3) is not provided by the applicant or its director or manager, as the case may be, within the time specified in the requirement or any extension thereof granted by the Controller, the application shall be deemed to have been withdrawn and shall not be further proceeded with, but without prejudice to a fresh application being made by the applicant .

(7) Any person who provides false or misleading information or documents under this section shall be guilty of an offence.

Section 6. Grant or refusal of licence.

(1) Upon receipt of an application together with the documents and information required under section 5, the Controller may grant the licence, with or without conditions, or he may refuse to grant the licence without assigning any reason for such refusal.

(2) The Controller may, in granting a licence under subsection (1), require the applicant to pay such amount of fees as may be prescribed.

(3) For the purpose of subsection (2), different fees may be prescribed in respect of different classes, categories or descriptions of applicants.

Section 7. Direct sales business in respect of which licence shall not be granted.

(1) Notwithstanding section 6, no licence shall be granted to a person who intends to carry on a direct sales business which involves any scheme or arrangement for the sale or distribution of goods or services where such person, for a consideration, acquires the opportunity to receive a pecuniary benefit which is not dependent on the volume or quantity of goods or services sold or distributed or to be sold or distributed for purposes of resale but which is based, to any extent, upon the inducement, by himself or others, of additional persons to participate in such scheme or arrangement.

(2) Any licensee who, in the course of the direct sales business in respect of which a licence is granted under section 6, operates or participates, directly or indirectly in such scheme or arrangement as is described in subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit and, for a second or subsequent offence, to a fine not exceeding five hundred thousand ringgit.

(3) Where a person, being a director, manager, secretary or other similar officer of a body corporate is guilty of an offence under this section by virtue of section 38, he shall be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both and, for a second or subsequent offence, to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding six years or to both.

Section 8. Revocation of licence.

(1) The Controller may revoke a licence granted under section 6 if he is satisfied that-

- (a) the licensee has failed to comply with any obligation imposed upon it by or under this Act or the regulations;
- (b) the licensee has contravened any of the conditions imposed under the licence, or any other provision of the licence, or any provision of this Act or the regulations, regardless that there has been no prosecution for an offence in respect of such contravention;

- (c) the licensee or any person who is or is to be a director, manager, secretary or other similar officer of the licensee has, either in connection with the application for the licence, or at any time after the grant of the licence, provided false, misleading or inaccurate information to the Controller;
 - (d) the interests of persons dealing with the licensee or the interests of its purchasers are in any way threatened, whether by the manner in which the licensee is conducting or proposes to conduct its business or for any other reason;
 - (e) the licensee has ceased to carry on any one or more of the fields of business for which it is licensed;
 - (f) a compromise or arrangement with creditors has been made in respect of the licensee;
 - (g) a receiver or manager of the licensee's business has been appointed; or
 - (h) possession has been taken, by or on behalf of the holders of any debenture secured by a charge, of any property of the licensee comprised in or subject to the charge.
- (2) The Controller shall revoke a licence granted to a licensee under section 6 if he is satisfied that-
- (a) a winding up order has been made against it; or
 - (b) a resolution for its voluntary winding up has been passed.

Section 9. Imposition of restrictions in lieu of revocation of licence.

(1) Where the Controller is satisfied that there are grounds on which his power to revoke a licence is exercisable under subsection 8 (1) but the circumstances are not such as to justify revocation, the Controller may restrict the licence by-

- (a) imposing such limits on its duration as he thinks fit;
- (b) imposing such conditions as he thinks desirable or expedient for the protection of the purchasers or prospective purchasers or other persons dealing with the licensee; or
- (c) imposing both such limits and conditions.

(2) A limit on the duration of a licence shall not be such as to allow the licence to continue in force for a period longer than one year from the date on which it is imposed; and such a limit may in particular be imposed in a case where the Controller considers that the licensee should be allowed to repay its purchasers or other persons dealing with it in an orderly manner.

(3) The conditions imposed under this section may, in particular-

- (a) require the licensee to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way; or
- (b) prohibit the licensee from entering into any transaction or class of transactions, or permit it to enter into such transactions subject to such restrictions or conditions as may be specified.

(4) Any condition imposed under this section may be varied or revoked by the Controller and any limit imposed under this section on the duration of the licence may be varied but not so as to allow the licence to continue in force for a period longer than that provided in subsection (2).

(5) Failure to comply with any condition imposed under this section shall be a ground for the revocation of the licence but shall not invalidate any transaction.

Section 10. Power to impose new conditions and to vary or revoke conditions.

The Controller may at any time impose new conditions on a licence granted under section 6, or vary or revoke any condition imposed on such licence under section 6 or under this section, or may vary or revoke any condition already varied under this section.

Section 11. Notice of revocation of licence, imposition of restrictions, or variation, revocation or imposition of new conditions.

1) Subject to section 12, where the Controller proposes-

- (a) to revoke a licence under section 8;
- (b) to restrict a licence under section 9 or vary any restriction or condition under that section; or
- (c) to vary or revoke any condition, or impose any new condition under section 10,

he shall give the licensee written notice of his intention to do so, specifying the nature of the proposed action and the grounds on which he proposes to take such action, and he shall give the licensee an opportunity to make written representations thereon within fourteen days from the date of service of the notice.

(2) After the expiry of the period of fourteen days mentioned in subsection (1) and after considering any representations made by the licensee under that subsection, the Controller shall decide-

- (a) whether to proceed with the proposed action;
- (b) whether to take no further action;
- (c) if the proposed action was to revoke the licensee's licence, whether to restrict the licence instead under section 9; or
- (d) if the proposed action was to restrict the licence under section 9, or to vary any restriction under section 9, or to vary a condition under section 10, whether to restrict or vary the restriction or to vary the condition in a different manner.

(3) The Controller shall give the licensee written notice of his decision under subsection (2), and the decision shall take effect from the date on which such written notice is served on the licensee.

Section 12. Surrender of licence.

(1) A licensee may surrender its licence by forwarding it to the Controller with a written notice of the surrender.

(2) The surrender of a licence shall take effect on the date the Controller receives the licence and the notice under subsection (1) or, where a later date is specified in the notice, on that later date.

Section 13. Prohibition on the carrying on of direct sales business upon revocation, expiry of duration, or surrender of licence.

Where the revocation of a licence granted under section 6 has taken effect, or the period of duration imposed on a licence as a restriction under section 9 has expired, or a surrender under section 12 has taken effect, the company to which the licence was granted shall immediately thereupon cease to carry on any business in respect of which the licence was granted.

Section 14. Authorization to carry on activities after revocation.

The Controller may, in writing, authorize a company whose licence has been revoked to carry on its activities for such duration as the Controller may specify in the authorization, but only for the purpose of winding up its affairs or for purposes which are beneficial to its purchasers or other persons dealing with it.

Section 15. Amendment or alteration of constituent documents of licensee.

Every licensee shall, within three months after the making of any amendment or alteration to any of its constituent documents, furnish to the Controller particulars in writing, duly verified by a statutory declaration made by a director of the licensee, of such amendment or alteration.

Section 16 . Appeal against Controller's decision.

(1) Any person who is aggrieved by any decision of the Controller under this Part may appeal to the Minister in the prescribed manner within one month from the date the decision is communicated to such person.

(2) The Minister's decision on an appeal under subsection (1) shall be final.

PART III - DOOR-TO-DOOR SALES AND MAIL ORDER SALES

Section 17. Calling at any premises for the purpose of negotiating door-to-door sales .

(1) No person shall call at any premises for the purpose of negotiating door-to-door sales on such days and between such hours as may be prescribed.

(2) Any person who calls at any premises for the purpose of negotiating door-to-door sales shall immediately indicate the purpose of his visit before entering the premises and shall leave the premises at the request of the occupier of the premises or any person acting with the actual or implied authority of the occupier.

(3) Any person who contravenes this section shall be guilty of an offence.

Section 18 . Persons negotiating door-to-door sales to produce identification card and authority card.

(1) Any person negotiating a door-to-door sale shall produce to the prospective purchaser-

(a) his national registration identification card; and

(b) his authority card which shall contain such particulars as may be prescribed.

(2) Any person who fails to produce his national registration identification card or authority card or who produces an authority card which contains any false or misleading information shall be guilty of an offence.

(3) Any person who issues any authority card which contains any false or misleading information shall be guilty of an offence.

Section 19 . Mail order sales.

(1) No person shall supply or advertise for the supply of, by mail order, 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.

Section 20 . Contents of advertisement in mail order sales.

(1) An advertisement by any person for the supply of goods or services by mail order shall contain-

(a) the name and licence number of such person;

(b) the address of such person, which address shall not be a postal box number;

(c) the telephone number of such person;

(d) a detailed description of the goods offered or services to be provided;

(e) the places and times where a sample of the goods may be inspected;

(f) the prices of the goods or services;

(g) the cost of delivery, if any, and the manner of delivery, of the goods; and

(h) the time when the goods or services could be expected to be delivered or performed.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

Section 21. Offence to furnish false information in advertisement.

Any person who furnishes false or misleading information in an advertisement for the supply of goods or services by mail order shall be guilty of an offence.

Section 22. Goods to be available for inspection.

(1) A person who supplies goods by mail order shall make available a sample of such goods for the inspection of the public at such places and at such times as may be specified in the advertisement.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

PART IV - DIRECT SALES CONTRACTS

Section 23. Requirements of direct sales contracts.

(1) A contract in respect of a door-to-door sale for the supply of goods or services having such value as may be prescribed, and a contract in respect of a mail order sale-

(a) shall be in writing;

(b) shall contain immediately above the place provided for the signature of the purchaser the statement "THIS CONTRACT IS SUBJECT TO A COOLING-OFF PERIOD OF TEN WORKING DAYS " printed in upper case in type not smaller than 18 point Times; and

(c) shall be signed by both the vendor and the purchaser.

(2) Where a contract in respect of a direct sale is concluded by a person authorized by the vendor, such person shall be deemed to be the vendor for the purposes of this section.

(3) A purchaser who enters into a contract to which subsection (1) applies shall be given a duplicate copy immediately after the making of such contract.

(4) Failure to comply with subsection (1) shall render the contract void.

(5) Failure to comply with subsection (3) shall render the contract voidable at the option of the purchaser.

Section 24. Contents of direct sales contracts.

(1) A contract in respect of a direct sale shall contain the following particulars:

(a) a detailed description of the goods or services to be supplied or, if the contract provides for the carrying out of work of a specified nature, detailed particulars of such work;

(b) the contractual terms of the contract including the total consideration to be paid or provided by the purchaser, or if the total consideration is not ascertainable at the time the contract is made, the manner in which it is to be calculated;

(c) the time, place and method for payment to be made;

(d) the time and place for delivery of goods or for the performance of services; and

(e) notices in such form as may be prescribed informing the purchaser of his right to rescind the contract before the expiry of the cooling off period.

(2) Failure to comply with subsection (1) shall render the contract void.

PART V - COOLING-OFF PERIOD AND RESCISSION

Section 25. Goods or services not to be delivered or performed during cooling-off period.

(1) Except in a case where subsection (2) applies, no goods shall be delivered and no services shall be performed under a contract in respect of a direct sale until the cooling-off period has lapsed.

(2) Where a purchaser, who has entered into a contract in respect of a direct sale, has served on the vendor a notice in writing requiring the vendor to deliver the goods or to perform the services at any time before the expiry of the cooling-off period, he shall be deemed to have waived his right to rescind the contract under section 26.

(3) Notwithstanding subsection (2), no notice under that subsection shall be served on the vendor before the expiry of seventy-two hours from the time the contract was concluded.

(4) No vendor or other person shall accept any money or other consideration from a purchaser under a contract made under this Act before the expiry of the cooling-off period.

(5) Any vendor or other person who contravenes this section shall be guilty of an offence.

Section 26. Rescission of contract.

(1) A purchaser who has entered into a contract in respect of a direct sale may rescind the contract by serving on the vendor a notice in such form as may be prescribed at any time before the expiry of the cooling-off period indicating his intention to rescind or withdraw from the contract.

(2) A notice referred to in subsection (1) shall be served by delivering it personally to the vendor or by sending it by registered post addressed to such vendor at the address specified in the contract.

(3) Where a notice is posted in accordance with subsection (2), the notice shall be deemed to have been served on the vendor on the expiry of three days from the date it is posted.

Section 27. Effect of rescission.

Where a notice of rescission is given pursuant to section 26-

(a) the contract to which it relates shall be deemed to have been rescinded by mutual consent and never to have had effect; and

(b) any contract of guarantee relating to the contract shall be deemed never to have had effect.

PART VI - ENFORCEMENT

Section 28. Declaration of office.

Every officer appointed under this Act when acting against any person under this Act or the regulations shall forthwith declare his office and shall, on demand, produce to the person against whom he is acting such authority card as the Controller may direct to be carried by such officer.

Section 29. Power to enter premises and to inspect and seize goods and documents.

(1) If a Magistrate is satisfied on information given on oath that there is reasonable ground to believe -

(a) that there are on any premises any document or goods the inspection of which is likely to disclose evidence of the commission of an offence under this Act; or

(b) that any offence under this Act has been, is being or is about to be committed on any premises,

he may issue a warrant, which shall be in force for a period not exceeding one month, under his hand authorizing any officer appointed under this Act to enter those premises, if necessary by force, and to search those premises.

(2) Any officer who enters any premises under the authority of a warrant issued under subsection (1) may-

(a) require any person found on such premises to supply him with any information or to produce any goods or any documents relating to any direct sales business and take copies of, or copies of any entry in, any such document; and

(b) seize and detain any goods and documents which he has reason to believe may be required as evidence in proceedings for an offence under this Act.

(3) Any officer who seizes any documents and goods in the exercise of his powers under this section shall, as soon as possible, supply a list of the documents and goods seized to the person from whom they were seized.

(4) Where it is not practical for an officer to remove the goods or documents seized by him in the exercise of his powers under this section from the place where they are found by reason of their nature, size or amount, he may by any means seal such goods or documents in the premises in which they are found and it shall be an offence for any person without lawful authority to break, tamper with or damage such seal or to remove such goods or documents or to attempt to do so.

(5) Any officer entering any premises by virtue of this section 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 section 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.

Section 30. Powers of arrest.

(1) An Assistant Controller may arrest without warrant any person whom he has reason to believe has committed an offence against this Act 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.

(2) Any person arrested under subsection (1) shall thereafter be dealt with as provided by the Criminal Procedure Code [F.M.S. Cap. 6.].

Section 31. Obstruction of officers.

(1) Any person who-

(a) obstructs any person appointed under this Act acting in pursuance of this Act;

(b) fails to comply with any requirement properly made to him by an officer authorized under section 29; or

(c) without reasonable cause fails to give to such authorized officer any assistance or information which may reasonably be required by such officer for the purpose of the performance of his functions under this Act,

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

(2) If any person, in giving any such information as is mentioned in subsection (1), makes any statement which he knows or has reason to believe to be false, he shall be guilty of an offence and shall, on conviction, be liable to the penalty mentioned in that subsection.

(3) Nothing in this section shall be construed as requiring a person to answer any question or to give any information if to do so might incriminate him.

Section 32. Warrant admissible notwithstanding defects, etc.

A warrant issued under this Act shall be valid and admissible notwithstanding any defect, mistake or omission therein or in the application for such warrant and any goods or documents seized under such warrant shall be admissible in evidence in any proceedings under this Act or the regulations.

Section 33. Powers of investigation.

An Assistant Controller shall have the power to investigate the commission of any offence under this Act.

Section 34. Conduct of prosecution.

Prosecution in respect of any offence under this Act or the regulations may be conducted by any person appointed under this Act.

Section 35. Forfeiture of goods.

(1) All goods seized in exercise of any power conferred under this Act shall be liable to forfeiture.

(2) An order for the forfeiture or for the release of any goods seized in exercise of any power conferred under this Act shall be made by the court before which the prosecution with regard thereto has been held and an order for the forfeiture of the goods shall be made if it is proved to the satisfaction of the court that an offence under this Act has been committed and that the goods were the subject matter of or were used in the commission of the offence, notwithstanding that no person may have been convicted of such offence.

(3) If there be no prosecution with regard to any goods seized in exercise of any power conferred under this Act, such goods shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of service of a notice to the person from whom the goods were seized indicating that there is no prosecution in respect of such goods, unless a claim thereto is made before that date in the manner set out in subsections (4), (5) and (6).

(4) Any person asserting that he is the owner of the goods referred to in subsection (3) and that they are not liable to forfeiture may personally or by his agent authorized in writing give written notice to an Assistant Controller that he claims the same.

(5) On receipt of the notice referred to in subsection (4), the Assistant Controller shall refer the claim to the Controller who may direct the Assistant Controller to refer the matter to a Magistrate for his decision.

(6) The Magistrate to whom a matter is referred under subsection (5) shall issue a summons requiring the person asserting that he is the owner of the goods and the person from whom they were seized to appear before such Magistrate and upon their appearance or default to appear, due service of the summons being proved, the Magistrate shall proceed to the examination of the matter and on proof that an offence under this Act has been committed and that such goods were the subject matter or were used in the commission of such offence shall order the same to be forfeited and shall, in the absence of such proof, order their release.

(7) All things forfeited or deemed to be forfeited shall be delivered to the Assistant Controller and shall be disposed of in accordance with the directions of the Controller.

(8) Where any goods seized in exercise of the powers, conferred by this Act are of a perishable nature or where the custody of such goods involves unreasonable expense and inconvenience, such goods may be sold at any time and the proceeds of the sale held to abide by the result of any prosecution or claim under this section.

Section 36. No costs or damages arising from seizure to be recoverable.

No person shall, in any proceedings before any court in respect of the seizure of any goods seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or, subject to section 35, to any damages or other relief unless such seizure was made without reasonable or probable cause.

PART VII - MISCELLANEOUS

Section 37. Certain contractual terms prohibited.

(1) A contract to which this Act applies shall not contain -

- (a) any provision purporting to exclude, restrict, or modify any right conferred on a purchaser by this Act; or
- (b) any provision of a kind prohibited by the regulations .

(2) Where a contract to which this Act applies contains a provision contrary to subsection (1), the provision is void and the vendor and any person authorized by him to enter into such a contract are each guilty of an offence.

Section 38. Offences by body corporate and by employees and agents.

(1) Where any offence against any provision of this Act or the regulations has been committed by a body corporate, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of such body corporate, or was assisting in such management, shall be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Where any person (in this subsection referred to as "the principal") would be liable under this Act to any punishment or penalty for any act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his, or of the employee of such agent, if such act, omission, neglect or default was committed by the principal's employee in the course of his employment, or by the agent when acting on behalf of the principal, or by the employee of such agent in the course of his employment by such agent or otherwise on behalf of the agent.

Section 39. General penalty.

(1) Any person who is guilty of an offence under this Act or the regulations for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding twenty-five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and for a second or subsequent offence he shall be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) Any body corporate which is guilty of an offence under this Act or the regulations for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit, and for a second or subsequent offence it shall be liable to a fine not exceeding two hundred and fifty thousand ringgit.

(3) Where a person, being a director, manager, secretary or other similar officer of a body corporate, is guilty, by virtue of section 38, of an offence under this Act or the regulations for which no penalty is expressly provided, he shall be liable to the penalty provided for under subsection (1).

Section 40. Compounding of offences.

(1) The Controller or a Deputy Controller may compound any offence under this Act or the regulations which is prescribed to be a compoundable offence by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding such amount as may be prescribed.

(2) Upon receipt of the payment under subsection (1), no further proceedings shall be taken against such person in respect of such offence and where possession has been taken of any goods, such goods may be released, subject to such conditions as may be imposed.

(3) The power to compound offences under subsection (1) shall be exercised by the Controller or the Deputy Controllers personally.

Section 41. Jurisdiction to try offences.

Notwithstanding any written law to the contrary, a court of a Magistrate of the First Class shall have jurisdiction to try all offences under this Act or the regulations and to impose the full punishment provided therefor.

Section 42. Power to exempt.

(1) The Minister may by order exempt, subject to such conditions as he may deem fit to impose, any person or class of persons, or any direct sales business or class of direct sales businesses from all or any of the provisions of this Act or the regulations on the ground-

- (a) that the proceeds from the direct sales business are to be used exclusively for charitable, welfare, social, religious or educational purposes;
- (b) that the person who seeks to sell the goods or supply the services is a handicapped person;
- (c) that the person who seeks to sell the goods or supply the services is, in the ordinary course of his business, required to supply his goods or services by means of direct sale transactions for the convenience of the purchasers; or
- (d) that the giving of an exemption to such person or direct sales business will not, in the opinion of the Minister, prejudice the interests of the purchasers.

(2) The Minister may at any time by order published in the Gazette revoke any order made under subsection (1) if he is satisfied that such exemption should no longer be granted.

Section 43. Protection of Controller, Deputy Controllers, Assistant Controllers and other officers.

No action or prosecution shall be brought, instituted or maintained in any court against the Controller, Deputy Controllers, Assistant Controllers or any other officer duly appointed under this Act for or on account of or in respect of any act ordered or done for the purpose of carrying into effect this Act and the regulations and no suit or prosecution shall lie in any court against any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of the Controller, a Deputy Controller, an Assistant Controller or any other officer duly appointed under this Act if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served thereby.

Section 44. Regulations.

(1) The Minister may, from time to time, make such regulations as may be necessary or expedient for giving full effect to the provisions of this Act, for carrying out or achieving the objects and purposes of this Act or any provisions thereof, or for the further, better or more convenient implementation of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1) regulations may be made-

- (a) to regulate the issue, circulation or distribution of documents, whether advertisements, prospectuses, circulars or notices, which contain-
 - (i) an invitation to any person to become a participant in direct sales schemes; or
 - (ii) information calculated to lead directly or indirectly to any person becoming a participant in such schemes, or to prohibit any such document from being issued, circulated or distributed unless it complies with such requirements as to the matters to be included or not to be included in it as may be prescribed by the regulations;
- (b) to prohibit the vendor or any of the vendors of, or any participant in, direct sales schemes from-
 - (i) supplying any goods to a participant in the scheme;
 - (ii) supplying any training facilities or other services for such a participant;
 - (iii) providing any goods or services under a transaction effected by such a participant;

- (iv) being a party to any arrangements under which goods or services are supplied or provided as mentioned in subparagraph (i), (ii) or (iii); or
 - (v) accepting from any such participant any payment, or any undertaking to make payment, in respect of any goods or services supplied or provided as mentioned in subparagraph (i), (ii), (iii) or (iv) or in respect of any goods or services to be so supplied or provided, unless (in any such case) such requirements as are prescribed are complied with;
- (c) to prohibit certain provisions or classes of provisions from being included in a contract to which this Act applies;
- (d) to regulate all matters relating to direct sales schemes and the conduct of direct selling;
- (e) to prescribe the code of conduct of the vendor or the participants connected with a direct sale scheme;
- (f) to prescribe the offences under this Act or the regulations which may be compounded, the amount of such compound and the procedure to be followed in compounding such offences; and
- (g) to prescribe anything that may be or is required to be prescribed.
- (3) The power conferred on the Minister under this section may be exercised so as to -
- (a) make the contravention of any of the provisions of the regulations an offence;
 - (b) provide different provisions-
 - (i) in relation to different descriptions or classes of direct sales schemes to which this Act applies;
 - (ii) in relation to a direct sales scheme which is or was in operation on a date specified in the regulations; or
 - (iii) in relation to different descriptions or classes of participants in such schemes.
- (4) For the purpose of this section, "participants" means persons who take part in direct selling schemes and includes distributors, sales representatives, agents, dealers and purchasers.

LIST OF AMENDMENTS

Particulars under paragraphs 7(ii) and (iii) of the Revision of Laws Act 1968 (Act 1)

Amending law	Short title	In force from
	-NIL-	

REGULATIONS

Direct Sales (Schemes And Conduct) Regulations 2001 [P.U.(A) 248/2001];

Direct Sales Regulations 1993 [P.U.(A) 128/93].