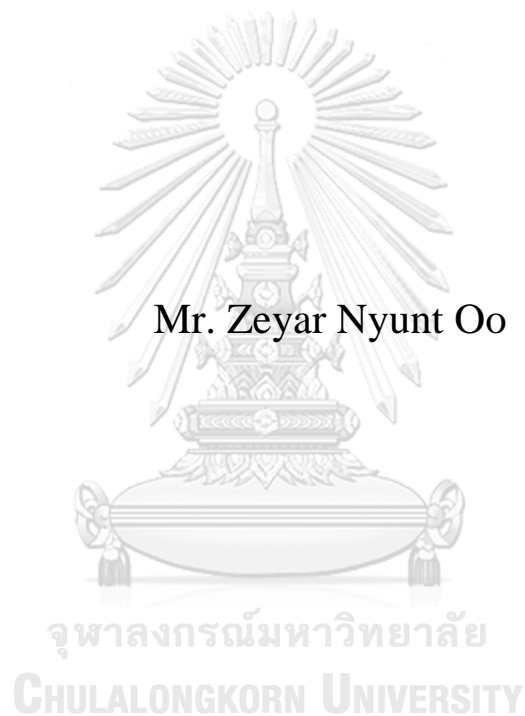


# Reforming Regulation of Multi-level Marketing in Myanmar



A Thesis Submitted in Partial Fulfillment of the Requirements  
for the Degree of Master of Laws in Business Law  
Common Course  
Faculty of Law  
Chulalongkorn University  
Academic Year 2018  
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ความจำเป็นในการกำกับดูแลธุรกิจขายตรงแบบหลายชั้นในสาธารณรัฐแห่งสหภาพเมียนมา



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Thesis Title	Reforming Regulation of Multi-level Marketing in Myanmar
By	Mr. Zeyar Nyunt Oo
Field of Study	Business Law
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เชย่า ย่น อ :

ความจำเป็นในการกำกับดูแลธุรกิจขายตรงแบบหลายชั้นในสาธารณรัฐแห่งสหภาพเมียนมา. ( Reforming Regulation of Multi-level Marketing in Myanmar) อ.ที่ปรึกษาหลัก : วิโรจน์ วาทินพงศ์พันธ์

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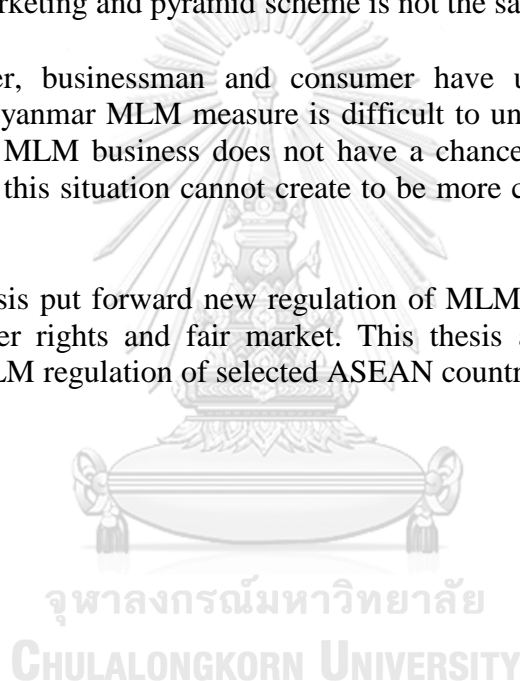
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D: Consumer Protection

Zeyar Nyunt Oo : Reforming Regulation of Multi-level Marketing in  
Myanmar. Advisor: Asst. Prof. WIROTE WATINPONGPUN, Ph.D.

The business of multi-level marketing is prohibited in Myanmar under the Notification no 46/2018. There are not only three paragraphs but also lack of the definition of MLM in this Notification. If distributors sell any product through MLM in Myanmar, they will be punished with imprisonment for a term exceeding three years under section 5 of the Myanmar Essential Goods and Services Law 2012. The study of the provisions on the business of MLM in selected ASEAN countries, Indonesia, Malaysia, Thailand, and Singapore indicates that the definition of multi-level marketing and pyramid scheme is not the same.

Moreover, businessman and consumer have unavoidable problems as follow; firstly, Myanmar MLM measure is difficult to understand because it is not clear. Secondly, MLM business does not have a chance to compete with normal business, thirdly, this situation cannot create to be more choice and better price for the consumer.

This thesis put forward new regulation of MLM in order to good balance between consumer rights and fair market. This thesis also studies the essential elements on a MLM regulation of selected ASEAN countries.



Field of Study: Business Law

Student's Signature

Academic Year: 2018

Advisor's Signature

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CHULALONGKORN UNIVERSITY

Zeyar Nyunt Oo

# TABLE OF CONTENTS

	<b>Page</b>
ABSTRACT (THAI) .....	iii
ABSTRACT (ENGLISH).....	iv
ACKNOWLEDGEMENTS.....	v
TABLE OF CONTENTS.....	vi
LIST OF TABLES.....	x
LIST OF FIGURES .....	xi
Chapter 1.....	1
Introduction.....	1
1.1 Background of the Study.....	1
1.2 Statement of Legal Research Problem.....	4
1.3 Hypothesis.....	6
1.4 Purposes of the Study.....	7
1.5 Limitations and Scope.....	7
1.6 Research Design and Methodology.....	9
1.7 Benefit of the Thesis .....	10
1.8 Literature Review .....	10
Chapter 2.....	12
Overview of Multi-level Marketing and Legal Concept.....	12
2.1 The Concept of Traditional Marketing.....	12
2.2 The Concept of Multi-level Marketing.....	13
2.3 Linkage between Limitation of Freedom of Contract and Multi-level Marketing .....	16

2.4 Legal Aspect of Multi-Level Marketing.....	18
2.4.1 Different Between MLM and Pyramid Scheme.....	19
<b>2.4.2</b> History backgroud of Multi-Level Marketing Business.....	21
2.4.2.1 Development of MLM.....	22
2.4.2.2 Pyramid Scheme.....	22
2.4.3 Multi-level marketing in Malaysia and Indonesia Countries .....	27
2.4.3.1 Malaysia Multi-level marketing .....	27
2.4.3.2 Indonesia Multi-level Marketing.....	28
2.4.4 Cases of Pyramid Scheme and Experience in Thailand.....	29
2.4.4.1 Chamoy case.....	29
2.4.4.2 Ufun case.....	30
2.4.5 Current Legal Situation of Myanmar .....	34
2.4.5.1 System and Mechanism of MLM in Myanmar Problem .....	38
2.5 MLM Business Environment.....	39
2.5.1 Doing Business Report by World Bank .....	39
2.5.2 ASEAN Competition Guideline.....	40
2.5.3 Benefits of MLM Business.....	41
2.6 Consumer Rights and Multi-level Marketing.....	42
2.6.1 Terms of Consumer .....	44
2.6.2 Terms of Consumer Rights.....	46
<b>2.6.3</b> Regulations of Multi-Level Marketing under Consumer Protection	
Umbrella of ASEAN Member States (AMS).....	47
Chapter 3.....	49



Comparative Study Relevant Laws of Multi-level Marketing in Indonesia, Malaysia, Thailand, Singapore and Myanmar .....	49
3.1 Approach of Consumer Rights .....	49
3.1.1 Regulatory Approach .....	53
3.1.2 Facilitation Approach .....	55
3.1.3 Administrative Actions Approach .....	58
3.2 Malaysia Direct Sales and Anti-pyramid Scheme Act 1993 .....	61
3.3 Indonesia Regulation of Trade Business Activities under Direct Selling System .....	64
3.4 Singapore Multi-level marketing and Pyramid selling (prohibition) Act 1973 .....	67
3.5 Thailand Direct Sales and Direct Marketing Act .....	68
3.6 Essential Elements of Multi-level Marketing Regulation in the Selected ASEAN Countries .....	74
3.6.1 Definition of Pyramid Scheme .....	74
3.6.2 Paid in Capital Requirement .....	75
3.6.3 License Requirements .....	75
3.6.4 Inventory Buyback .....	75
3.6.5 Consumer Protection .....	76
3.6.6 Cooling-off Period .....	76
3.6.7 Pros and Cons of Cooling-off Period .....	79
3.7 Relevant Regulations of MLM Business in Myanmar .....	80
3.7.1 The Consumer Rights and Market Mechanism for MLM .....	81
Chapter 4 .....	89
Proposal of Legal Measures for the Business of Multi-Level Marketing in Myanmar .....	89

4.1 Mechanism of MLM.....	90
4.1.1 Regulatory Bodies .....	90
4.1.2 Company is to be Reliable (registration, paid in capital, reporting).....	91
4.1.3 Dispute Settlement .....	91
4.1.4 Penalty .....	92
4.2 System of MLM .....	92
4.2.1 Pyramid Scheme.....	92
4.2.2 Cooling-off Period .....	93
4.2.3 Inventory Buyback.....	93
4.2.4 Protect to deceptive advertising .....	93
Chapter 5.....	95
Conclusion .....	95
5.1 Possibility Outcome.....	97
5.1.1 Policy Reform.....	97
5.1.2 Legal Reform.....	97
5.1.3 Governing Body Reform.....	98
5.2 Recommendations.....	99
5.2.1 Policy	99
5.2.2 Legal	99
5.2.3 Enforcement .....	99
APPENDIX 1 .....	101
APPENDIX 2.....	102
REFERENCES .....	111
VITA.....	115

## LIST OF TABLES

	<b>Page</b>
Table 1: Problems in system and mechanism of MLM in Myanmar.....	38
Table 2: Aadvancement of promotion and protection of economic interests of consumers through any of measure.....	55
Table 3: Comparative study between Thailand and Myanmar on facilitation.....	57
Table 4: Administration approach in Thailand and Myanmar.....	59
Table 5: Period and cause of cooling-off period in ASEAN countries .....	78
Table 6: Yearly approved amount of FDI by ASEAN countries - source: Myanmar Investment Commission (available from <a href="https://www.dica.gov.mm/en/topic/foreign-investment-country">https://www.dica.gov.mm/en/topic/foreign-investment-country</a> ) .....	80
Table 7 Country by Country Summary- Multi-level Marketing Regulation .....	86
Table 8 Elaborate reforming of new regulation.....	97

## LIST OF FIGURES

	<b>Page</b>
Figure 2: Traditional Marketing (source Clotthier 1992) .....	13
Figure 3: Multi-level marketing (source Clotthier 1992) .....	14
Figure 4 Structure of pyramid scheme .....	16
Figure 5: Victims lost money by using illegal MLM in Thailand .....	31



## Chapter 1

### Introduction

#### 1.1 Background of the Study

Myanmar is one of the members of Association of South East Asia Nations (ASEAN). Myanmar government is promoting investment and trade within the country and at the same time, making reforms and liberalization measures in various sectors.<sup>1</sup> These positive moves have been welcomed by the international community with constructive responses such as lifting of economic sanctions<sup>2</sup>, providing preferential treatments such as GSP.<sup>3</sup>

There are many reforms including economic reform in order to reintegrate into the international society in Myanmar since 2010. Myanmar's merchandise trade has enlarged from twenty five billion USD in 2013-2014 to twenty nine billion USD in 2016-2017 fiscal years.<sup>4</sup> Thailand, China, and India are Myanmar's main export partners, and China, Singapore, and Thailand are its main import suppliers.<sup>5</sup>

Other significant developments in legal framework<sup>6</sup> are;

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<sup>1</sup> Economics and Research Department, *Myanmar Unlocking the Potential Country Diagnostic Study*(Asia Development Bank, August 2014), 5,6.

<sup>2</sup> Ibid., 6-22.

<sup>3</sup> Newsletter of Myanmar Ministry of Commerce available from <https://www.commerce.gov.mm/>

<sup>4</sup> **Static** of Myanmar Ministry of Commerce available from <https://www.commerce.gov.mm/en/content/>

<sup>5</sup> Ibid.

<sup>6</sup> Union Attorney General's Office web available from [https://www.mlis.gov.mm/?locale=en\\_US](https://www.mlis.gov.mm/?locale=en_US)

- the Myanmar Investment Law (the Pyidaungsu Hluttaw enacted on 18<sup>th</sup>, October 2016 as Law No. 40/2016), its rules and regulations;
- Securities Exchange Law ( the Pyidaungsu Hluttaw enacted in 2013) that creates a Securities Exchange Centre and prescribes a guideline for securities industries and for capital market development;
- Myanmar Special Economic Zone Law 2014 that supports export-orientated industries by providing tax incentives and deregulation processes for investments in selected economic;
- Competition Law 2015 that establishes a Competition Commission for regulating anti-monopoly and unfair practices;
- Financial Institutions Law 2016 that supports for regulating Myanmar financial institutions; and

At the same time, Myanmar has been actively participating in ASEAN and ASEAN's (FTA) free-trade agreements with third countries including RECP. Myanmar is trying to comply with the AEC Blueprint 2025 B.2. Consumer Protection Para 28.<sup>7</sup> Therefore, New Consumer Protection Law was enacted by Myanmar Union of Parliament on the March 15<sup>th</sup>, 2019.<sup>8</sup> This new law repeals the previous law 2014.

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<sup>7</sup> The ASEAN Committee of Consumer Protection official page available from <https://asean.org/archive/the-asean-committee-on-consumer-protection-accp/>

<sup>8</sup> Myanmar trade portal official web page available from [http://www.myanmartradeportal.gov.mm/index.php/en/legals?keyword=consumer+protection&legal\\_type=&responsible\\_agency=&issuing\\_agency=&from\\_date=&to\\_date=](http://www.myanmartradeportal.gov.mm/index.php/en/legals?keyword=consumer+protection&legal_type=&responsible_agency=&issuing_agency=&from_date=&to_date=)

Objectives of the consumer protection law are to claim, protect, establish and ensure the consumer rights from fraud in misrepresentation the products or services.

On the other hand, there are many bad outcomes on consumers and environment due to the lower quality products. Some businesses only focus on their interests but not for consumer's health needs.

Myanmar President U Win Myint delivered speech at the ceremony to take oath of office at Union Parliament (Pyidaungsu Hluttaw) on 30<sup>th</sup> March 2018. There are 3 priority goals of the Union Government which are as follows:

- Rule of law and improvement of the socio-economic life of the people,
- National Reconciliation and building peace
- Amending the Constitution<sup>9</sup>

So, one of three Priorities is related to improve of Myanmar community life through having the protection consumers in their daily life.

Most of foreign companies sell paramedical products which use MLM technique. They said that a tablet which would kill cancer. In fact, it is not medicine for cancer but it is only nutritious supplement for patient.<sup>10</sup> Myanmar local people are not rich in knowledge. So, they will use everything if their friends encourage them to use. When consumer has got injure, he cannot find wrong doer in MLM.

Consumer protection Agencies are important because Consumer Protection Organizations are designed to protect consumer rights include government sectors and

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<sup>9</sup> <http://www.president-office.gov.mm/en/?q=briefing-room/speeches-and-remarks/2018/03/31/id->

8618

<sup>10</sup> Ibid

private sector which is participated, such as Consumer Protection Board in Thailand<sup>11</sup> and the Myanmar Consumer Protection Commission<sup>12</sup> in Myanmar.

2<sup>nd</sup> Pyithu Hluttaw(Myanmar Union Parliament) 3<sup>rd</sup> regular session held 13<sup>th</sup> day meeting urged that the Myanmar government should have a plan to prohibit and take legal action on MLM companies because of an unfair business to consumer commercial practices.<sup>13</sup>

## 1.2 Statement of Legal Research Problem

There are a lot of reasons why Myanmar Union Parliament focused on it. According to the World Health Organization information revealed in 2015, life expectancy in Myanmar is: Male 64.6, female 68.5 and total life is 66.6 that provide Myanmar a World Life Expectancy ranking of 129.<sup>14</sup> And also, Daily average income of a Myanmar citizen is around 3 dollar per day.<sup>15</sup> Local people are not rich in knowledge.

So, community health is not good; income is low and lack of knowledge is also an important issue. This means that unregulated suppliers can sell easily their close friend and relative who is uneducated consumer.

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<sup>11</sup> Thailand Consumer Protection Act B.E 2522

<sup>12</sup> Myanmar Consumer Protection 2019

<sup>13</sup> 2<sup>nd</sup> Pyithu Hluttaw (Myanmar Union Parliament), "3<sup>rd</sup> Regular Session Meeting Record,"(Myanmar Union Parliament, 2016), 21-27.

<sup>14</sup> <http://www.who.int/countries/mmr/en/>

<sup>15</sup> Myanmar Minimum Wages for employee Notification No 2/2018 issued by National Committee of Minimum Wages (available from <https://www.mlis.gov.mm/ordinSc.do>)



In Myanmar, The Ministry of Health issued the notification No6/93 that contains the procedure for sale of pharmaceuticals under the National Drug Law.<sup>16</sup> This Notification No6/93 does not have any provisions in respect of Multi-level marketing. It is only for normal business for selling medicine in Myanmar.

Independent Distributor and recruited down line distributor of MLM must obey the Myanmar Contract Act 1872 which even as it approach its 150 years anniversary. Today business is not exactly the same as 1872 business.

Myanmar Consumer Protection law 2019 is lack of provision of Multilevel Marketing Business. Myanmar Consumer Protection Central Committee is created by Myanmar consumer protection law 2019. This Central Committee does not have authority for it.

Ministry of Commerce issued prohibiting order relating to Multi-level Marketing business through MLM.<sup>17</sup> However, there are not only three paragraphs but also lack of the definition of MLM in this order. If independent contractors sell any product through MLM in Myanmar, they will be punished with imprisonment for a term exceeding three years.<sup>18</sup> One of the legal problems is that the Order cannot exist permanently under the Essential Goods and Services Law 2012.<sup>19</sup>

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<sup>16</sup> Myanmar Food and Drug Administration official web (available from <http://www.fdamyanmar.gov.mm/?cat=16>)

<sup>17</sup> Notification No 46/2018 issued by Myanmar Ministry of Commerce (available from <http://www.myanmartradeportal.gov.mm/en/legal/213>)

<sup>18</sup> Section 5 of the Essential Goods and Services Law 2012

<sup>19</sup> Section 9 of the Essential Goods and Services Law 2012

Therefore, businessman and consumer have unavoidable problems as follow; firstly, Myanmar MLM measure is difficult to understand because it is not clear. Secondly, MLM business does not have a chance to compete with normal business, thirdly, this situation cannot create to be more choice and better price for the consumer. At the moment, Myanmar has not specific law regulating Multi-level marketing business.

### 1.3 Hypothesis

Multi-level Marketing Regulation must be adopted to be good balance between consumer rights and affordable multi-level marketing in Myanmar.

There are the research questions as follow;

- How can regulate Multi-level marketing?
- Whether Myanmar existing laws can effectively supervise on any product through multi-level marketing (MLM) business model for consumer or not.
- What form of multi-level marketing is focusing on? Direct selling or Pyramid selling?
- Why should not be allowed pyramid selling and should only be Multi-level marketing in Myanmar as Thailand model?
- Using the Thailand experience how did they determine the selling model problem and how did they regulate it;
- The last question came up for this problem is if multi-level marketing is affordable?

#### **1.4 Purposes of the Study**

There are three related purposes in the Thesis as follow;

1. To understand the definition of Multi-level marketing
2. To make balance between consumer rights and affordable Multi-level marketing business
3. To examine the legal problem of multi-level marketing business in Myanmar;

#### **1.5 Limitations and Scope**

The Scope of the Thesis is a comparative study between Myanmar laws and Thailand laws in respect of multi-level marketing because some Thailand companies set up, operate and sell some products and nutritious supplements which are used MLM technique in Myanmar since 2013.<sup>20</sup> Therefore, Myanmar Consumer Protection law 2019 is lack of provision Multilevel Marketing Business.

Therefore, the Thesis is focused on making an affordable MLM business that is more responsible for consumer satisfaction and safety. This means that it needs to be transparent, and there must be a way of connecting the consumer to the distributor and back to the manufacturer.

The next chapter will explore why the topic is important in Myanmar. It will classify four parts; history, legal, business and protection of consumer rights. The direction of every part is to require a specific regulation for MLM business. According to the objectives and scopes of the research in chapter 1, chapter 2 will discuss the overview of multi-level marketing. We must denote that MLM business

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<sup>20</sup> Directorate of Investment and Company Administration of Myanmar's official web (available from <http://www.myco.dica.gov.mm>)

has practiced since the development of trading. Some businessmen abused the concept of MLM and committed fraud to their consumers.<sup>21</sup> So, governments regulated specific law and regulation to govern certain aspects of the operations of MLM schemes.<sup>22</sup> Nowadays, many MLM companies are a rapidly growing method of selling products in many countries. The chapter 3 is analyzed on minimum requirements of multi-level marketing regulation. The minimum requirements will find out in Thailand Direct Sale and Direct Marketing Act B.E 2545, Act Governing Direct Sale and Direct Marketing (Release 3) B.E2560, Indonesia Regulation of Minister of Trade Number 32/M-DAG/ PER/2008 Regarding implementation of Trade Business Activities Under Direct Selling System, Malaysia Act 500 Direct Sales and Anti pyramid Scheme Act 1993, Singapore Multi-level marketing and pyramid selling (prohibition) Act 1973. The thesis will also find out which model of these countries is suitable for Myanmar. Chapter 4 will be proposed new model regulation for multi-level marketing business. There are conclusion and recommendation in the chapter 5.

I will explore the need for increased regulations and powers for Myanmar Consumer Protection Central Committee to function effectively.

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<sup>21</sup> Yuval Emek et al., "Mechanisms for Multi-Level Marketing" (paper presented at the Proceedings of the 12th ACM conference on Electronic commerce, 2011), 2.

<sup>22</sup> Peter J. Clothier, *Multi-Level Marketing : A Practical Guide to Successful Network Selling*, 3. ed.(London: Kogan Page, 1997), 226-27.

## 1.6 Research Design and Methodology

The Thesis involves two types of qualitative method: literature survey and secondary data of Myanmar non-government organizations such as, Myanmar Consumer Protection Union and Anti-MLM Myanmar Group.

Arranged by the Faculty of Law Chulalongkorn University, the thesis had been got practical experience in Thailand Office of Consumer Protection Board for one month as a student internship program. During the student internship, Consumer Protection Act, Product Liability Act and Direct sale and Direct Marketing Act of Thailand in English were collected. Moreover, thesis data had been got by interview with Thailand consumer officers. I think that maybe I could find some ideas for positive and negative consequences and reason for these regulations. But the Thesis will mainly use documentary research.

## 1.7 Benefit of the Thesis

1. Multilevel marketing business is affordable and safe;
2. Striking balance between consumer protection and viability of the business;
3. Becoming highly competitive situation between the Normal business and the MLM business in Myanmar;

## 1.8 Literature Review

**Multilevel-marketing a Practical Guide to Successful Network Selling by Peter Clothier** is very useful for the information of US multi-level marketing, benefit of MLM and illegal pyramid scheme. But there are no mentions about legal responsibilities and duties of MLM businessman.

**2<sup>nd</sup> Pyithu Hluttaw (legislature of Myanmar), 3<sup>rd</sup> Regular Session Meeting Record (Myanmar Union Parliament 2016)** is a book which can be downloaded by every person from the official website. When the thesis problem is proved, this Meeting Record book is useful for the thesis. <https://www.pyithuhluttaw.gov.mm/en>

**Myanmar law information system** is an official website platform to provide laws of Myanmar. This system is developed by the Myanmar Attorney General Office. Every Myanmar law information and laws which are mentioned in the thesis had been got from this system. ([https://www.mlis.gov.mm/?locale=en\\_US](https://www.mlis.gov.mm/?locale=en_US))

**Consumer Protection Law (second edition) Geraint Howells and Stephen Weatherill** is mentioned that it was difficult to sue businessman at the court for weaker consumer. Therefore, consumer complies with the instruction of consumer protection agency, when he enter into contract with businessman.

**Direct marketing pharmaceuticals to consumer by Alen Lyles** is an academic article about drug Manufacture Company is only care benefit of shareholders, not to consumer. There are three key players who are consumer, businessman and government in this article. The article proposed that the US Federal FDA issues regulation for manufacture to provide their direct to consumer advertising method to the FDA for preliminary comments. The manufactures must show that the summary of side effects and effective of their product. US consumer must have awareness about FDA regulation. This article only discussed about marketing of pharmaceuticals.

**Direct to Consumer Prescription Drug Advertising: Trends, Impact and Implications by Michael S. Wikes, Robert A, Belt and Richard L. Kravil** is about unclear advertisements. The authors proposed to solve this problem of unclear,

inaccurate advertisement that the government could be monitor advertisement on new forms of media, notably internet and other forms of electronic platform. But there is no rights and duties of businessman and consumer in respect of advertisement in this article.



## **Chapter 2**

### **Overview of Multi-level Marketing and Legal Concept**

When we study the concept of multi-level marketing, we must also study the concept of traditional business. Every transition has various contracts between business and business or consumer.

In order to be acceptable multi-level marketing business, government is used to control and monitor on the activities of MLM business. Government usually set up the conditions of contract between MLM company and distributors or consumer. This is one of the control mechanisms. Occasionally, MLM company also need to report the government about its MLM activities.

The activities of Multi-level marketing are based on limitation of freedom of contract. On the other hand, traditional business is based on freedom of contract.

This part will explore the relation of between Limitation of freedom of contract and multi-level marketing.

## 2.1 The Concept of Traditional Marketing

At the ancient time, a person cultivated some fruit and vegetable. He needs to find consumers in the market. Salespeople act to promote his product and find the consumer. Around 1800s years, the number of salesmen kept growing in the US.<sup>23</sup> In the traditional marketing, the manufacturer needs to produce and sell his production in the large quantities and best profit. The manufacturer also needs to employ salesman to receive orders from wholesalers. And then wholesalers sell to retailers.<sup>24</sup>

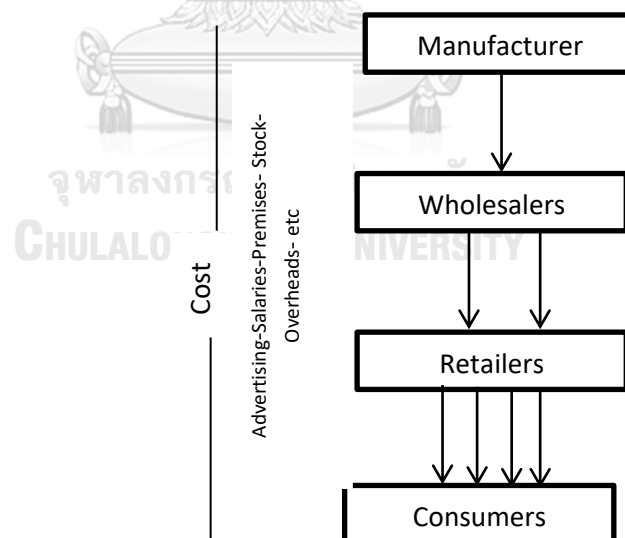


Figure 1: Traditional Marketing (source Clotthier 1992)

<sup>23</sup> Peter Clothier, *Multi-Level Marketing a Practical Guide to Successful Network Selling*(1992; repr., second), 19-23.

<sup>24</sup> *ibid.*, 18-19.



## 2.2 The Concept of Multi-level Marketing

On the other hand, when we talk about Multi-level marketing, it is a tool of relationship marketing. So, we must know about relationship marketing. It is building strongly relation between customers and stakeholders in order to obtain benefit.<sup>25</sup> Relationship benefit is a key of it. In Theory of MLM, Parent company does not have responsible for selling and Promotion. Distributor must do for selling and promotion of products. And also distributor is getting income as commission by selling product, different between wholesale price and retail price.<sup>26</sup> Distributor want to getting big marketing quickly by using the Multi-level marketing method.<sup>27</sup> Generally, there is only relationship between manufacturer and Distributors in Multi-level marketing model. There is no cost for salary for salesman, distribution, and advertising.<sup>28</sup> Multi-level marketing is a technique of direct selling.<sup>29</sup> Each distributor brought into the company brings in many new distributors who become a part of his downline. "The downline is means that all of the MLM distributors who are recruited under a first distributor and from whom are generated overrides on product sales."<sup>30</sup>

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<sup>25</sup> vivek tripathi, "Multi L-Level Marketing - a Tool of Relation Marketing" (university of Delhi, 18,january ,2016), 31-32.

<sup>26</sup> Ibid., 34.

<sup>27</sup> Clothier, *Multi-Level Marketing a Practical Guide to Successful Network Selling*, 47-52.

<sup>28</sup> Ibid., 36.

<sup>29</sup> Ibid., 22.

<sup>30</sup> Jon M Taylor, "When Should an Mlm or Network Marketing\* Program Be Considered an Illegal Pyramid Scheme," *Consumer Awareness Institute* (2000): 6.

The first distributor makes profits not only on his own sales but also earns commissions on downline sales.<sup>31</sup>

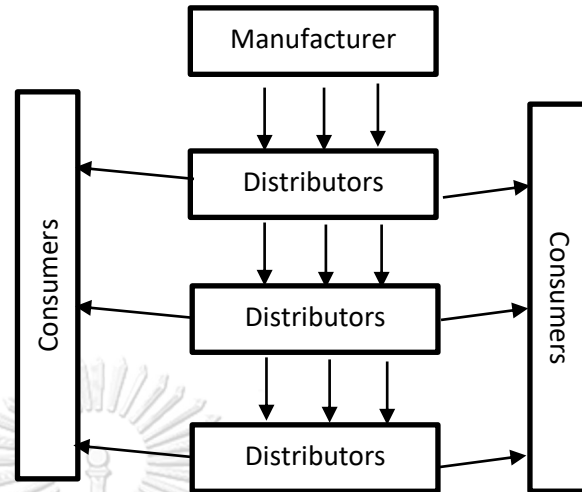


Figure 2: Multi-level marketing (source Clothier 1992)

Some bad businessman creates illegal pyramid scheme. Consumer can be victimized in various ways.<sup>32</sup> Some of which seems to be fraudulent and unethical conduct of businessman.

In a pyramid scheme, the distributors at the top-level attract to other people to participate as down line distributors. The down line distributors are pushed for recruiting next distributor. They give some money to top level distributors as member fees. The system of the pyramid scheme is not like multi-level marketing. But it is

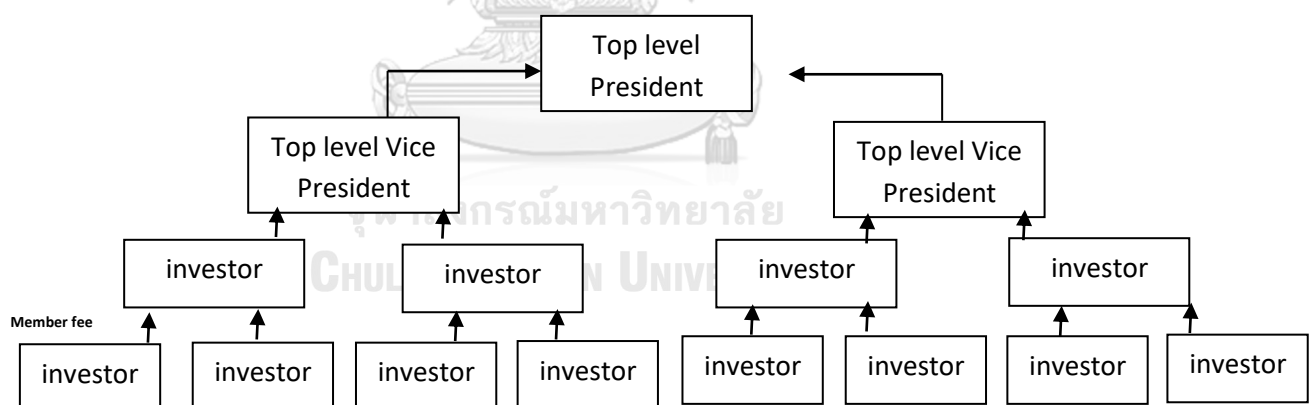
<sup>31</sup> Paul Herbig and Rama Yelkurm, "A Review of the Multilevel Marketing Phenomenon," *Journal of Marketing Channels* 6, no. 1 (1997): 19-21.

<sup>32</sup> Clothier, *Multi-Level Marketing a Practical Guide to Successful Network Selling*, 26-28.

comparable' chain letter'.<sup>33</sup> The 'Chain Letter' means that information of goods is made a number of copies and sent it out to others. Top level distributors control the flow of money and return some money to down line as award.<sup>34</sup>

Pyramid sales is not the same method of the 'Endless Chain'. Operator of Pyramid scheme sells his product to many people and recruits them in his Pyramid scheme. For example, B, C and D are sold by the product of A. A also instructed to B,C and D to recruit other as new member with member fees. They recruit new member under their downline in order to getting member fees.<sup>35</sup>

In the pyramid scheme method, top- level distributors often said that they are not distributors but investors. Their down line people do not need to sell goods or services. Actually, it is a way deception of pyramid scheme.<sup>36</sup>



<sup>33</sup> Claire Angelique RI Nolasco, Michael S Vaughn, and Rolando V Del Carmen, "Revisiting the Choice Model of Ponzi and Pyramid Schemes: Analysis of Case Law," *Crime, law and social change* 60, no. 4 (2013): 377.

<sup>34</sup> *Ibid.*, 378.

<sup>35</sup> James P Collins Jr, "Pyramid Sales Participants: Victims or Perpetrators," *Temp. LQ* 47(1973): 377.

<sup>36</sup> Nolasco, Vaughn, and Del Carmen, "Revisiting the Choice Model of Ponzi and Pyramid Schemes: Analysis of Case Law," 377.

### Figure 3 Structure of pyramid scheme

Down line investors do not know the number of members and the levels of the pyramid scheme. Every members of the pyramid scheme do not tell their level, income and number of members of the pyramid scheme with each other's. <sup>37</sup>

### 2.3 Linkage between Limitation of Freedom of Contract and Multi-level Marketing

“[F]reedom of contract means that the ability of parties to bargain and create the terms of their agreement as they desire without outside interference from government”.<sup>38</sup>

If the contract parties use a freedom of contract principle, this principle will carry a flavor to the economy systems. It comes from liberalism before the 19<sup>th</sup> century.<sup>39</sup> The freedom of contract principle is a basic of the law of contract. The judge would have no interest in whether it is fair or unfair at that time. Principle of freedom of contract depends on the parties of Contract. It does not depend on the government agency and on the court.<sup>40</sup> The limitation of freedom of contract aims to balance the principle of freedom of contract and a binding contractual obligation of the parties because some contractual obligation is not fair for one of the parties<sup>41</sup>.

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<sup>37</sup> Ibid., 376.

<sup>38</sup> [https://www.law.cornell.edu/wex/freedom\\_of\\_contract](https://www.law.cornell.edu/wex/freedom_of_contract)

<sup>39</sup> Geraint G. Howells and Stephen Weatherill, *Consumer Protection Law*, 2nd ed. ed.(Aldershot, 2005), 14-15.

<sup>40</sup> Sarah Field & Bookboon.com, *Introduction to the Law of Contract*

first ed.(2016), 38.

<sup>41</sup> Ibid., 80.

The intervention of freedom of contract was necessary in 20<sup>th</sup> century.<sup>42</sup> Some contract conflicted with public policy and fair business. For example, there are various goods with different quality at price varying from 100 to 500 in the market. Consumer does not know to figure out these goods on the quality. So, consumer buys lower quality goods at the higher price. As a consequence, a quality goods does not exit longer in that market. The limitation of freedom of contract can solve the problems caused by the deception conduct.<sup>43</sup>

So, Traditional Marketing business is based on the concept of freedom of contract.

In considering an area of consumer protection, the relationships between individual consumer (buyer) and the business (seller) base on Contract. The principle of the Contract law lay down the conditions in which promises made by parties to a contract will be legally binding on each other. It also lays down the remedies available to aggregate party, if other party fails to honor his promise.<sup>44</sup> It was difficult to sue businessman at the court by weaker consumer.

There must be balance with consumer production and freedom of contract. Consumer Protection limits the value of contractual freedom in the market.<sup>45</sup> It is an element of fairness to consumers as the economically weaker parties.<sup>46</sup>

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<sup>42</sup> Howells and Weatherill, *Consumer Protection Law*, 15-16.

<sup>43</sup> *Ibid.*, 11.

<sup>44</sup> *Ibid.*, 18-22.

<sup>45</sup> *Ibid.*, 11-14.

<sup>46</sup> *Ibid.*, 14.

From these illegal practices, we can protect to be made of a regulation approach, supervision approach and facilitation approach. So, the thesis will explore that which approach is better for Myanmar situation.

So, the contracts of multi-level marketing is needed to control the freedom of contract because the contractual obligations of MLM consumer may be unfair.

## **2.4 Legal Aspect of Multi-Level Marketing**

Generally, MLM is legitimate. But legitimate MLM and illegal pyramid are very complicating. The Compensation plan is important to decide whether the MLM strategy is legal or not. Some function of MLM is not like the function of the traditional marketing business.

### **2.4.1 Different Between MLM and Pyramid Scheme**

Multi-level marketing and Pyramid scheme are not same strategy. MLM is one of the forms of direct selling in which distributor sale to consumer in his home. Distributor only focuses to sell his product. On the other hand, pyramid scheme is focused to recruit new members.<sup>47</sup> Main income of Multi-level marketing is a

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<sup>47</sup> Ralph E Stone and Jerome M Steiner Jr, "The Federal Trade Commission and Pyramid Sales Schemes," *Pac. LJ* 15(1983): 881.

commission by selling product, different between wholesale price and retail price. Whereas Pyramid scheme primarily membership fees paid by new recruit.<sup>48</sup>

The Compensation plan is method and system how to get income and organization of new distributor of MLM. If pyramid style compensation plans mainly focus on recruit new members, the plan will be illegal.<sup>49</sup>

Different countries have a different provision of illegal practice of MLM. There are five requirements to illegal pyramid scheme as follow:<sup>50</sup>

- (1) it was forms of endless chain marketing schemes;
- (2) consumer are recruited into such a scheme and forced to buy their products;
- (3) company does not buy back from its product from distributors;
- (4) company gives commissions and bonuses to more distributor levels than are functionally justified.
- (5) company does not focus on selling its product.

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<sup>48</sup> THE FEDERAL TRADE COMMISSION, "In the Matter of Amway Corporation, Lng, Et Al. Final Order, Opinion. Etc., in Regard to Alleged Violation of the Federal Trade Commission Act Docket 902:/, Complaint, March 25, 1975 - "(Final Order, May 8, 1979), 618.

<sup>49</sup> Clothier, *Multi-Level Marketing a Practical Guide to Successful Network Selling*, 26-17,205.

<sup>50</sup> Taylor, "When Should an Mlm or Network Marketing\* Program Be Considered an Illegal Pyramid Scheme," 10-26.

	Multi-level Marketing	Pyramid Scheme
Business focus <sup>51</sup>	Businessman sales of their product.	Businessman is not to sales of product but focus to recruit new members.
Profits <sup>52</sup>	Main income from the sales of product and services by the distributor. Percentage of income from sales by downline member is not mainly income.	Main income form membership fees from downline member.
Products or services for sale <sup>53</sup>	Household goods or services is sold to consumers for their daily use. The price of goods or services is competed with traditional retail business.	The goods or service is not useful for consumer daily life. Its price is not reasonable for consumer.
Start-up costs <sup>54</sup>	New businessman does not need to pay any money.	New businessman must pay for membership fees, training fees and buy their products.
Getting easily information <sup>55</sup>	There is low pressure on MLM. Businessman wants to answer the questions about business activities	Businessman does not want to answer the question of consumer. Even information is not access

<sup>51</sup> Cristinel CONSTANTIN, "Multi-Level Marketing - a Tool of Relationship Marketing," 2 no. 51 (2009): 33.

<sup>52</sup> Ibid., 34.

<sup>53</sup> "Multi-Level Marketing-a Tool of Relationship Marketing," *Bulletin of the Transilvania University of Brasov. Economic Sciences. Series V* 2(2009): 34.

<sup>54</sup> "Multi-Level Marketing - a Tool of Relationship Marketing," 34.

<sup>55</sup> Ibid.



	and payment plan.	among businessmen in the same Pyramid scheme company.
Consumer and businessman rights	Consumer can exercise the cooling-off period (warranty policy). MLM company has the buyback policy and buys its product from businessman when he resigns.	There is no right for consumer and businessman.

Table 1 comparison between MLM and Pyramid scheme

#### 2.4.2 History backgroud of Multi-Level Marketing Business

There are three parts of the MLM of United States, such as evolution, development, and illegal activities. MLM business is originated in the USA. The California Vitamin Company that is used Multi-level marketing technique is originated in 1934. This company is also today called Nutrilite (Amway product) and exported worldwide.<sup>56</sup> MLM strategies can be considered as legal when the MLM company and its distributors follow the legal framework and regulations made by the different legislations around the world.<sup>57</sup>

<sup>56</sup> Herbig and Yelkurm, "A Review of the Multilevel Marketing Phenomenon," 21-22.

<sup>57</sup> Diana Cardenas, "Is Multi-Level Marketing of Nutrition Supplements a Legal and an Ethical Practice? ,," *Clinical Nutrition ESPE* N 25 (2018) 133e138: 134-36.

### 2.4.2.1 Development of MLM

In 1945, Mr. Mytinger and Mr. Casselberry were distributors. They founded Nutrilite Company for the exclusive American distributor of Nutrilite products.<sup>58</sup> They created the first compensation plan of Multi-level marketing. A new distributor enjoyed a 35% discount. So, A distributor bought a Nutrilite product for \$3 and then sold them for \$10 = \$7.00 profit. It is intended to sell more of their product. The distributor also enjoyed bonus on the total sales.<sup>59</sup> In 1950, Rich DeVos and Jay Van Andel formed the Amway Company. In 1972, they acquired Nutrilite Company.<sup>60</sup>

### 2.4.2.2 Pyramid Scheme

Charles Ponzi, an Italian cheat, is well known for the famous financial crime. In 1920, He started offering with extremely impossible high rates of return to investors within ninety days. But he did not intend to do any business. He induced investors into giving him millions of dollars. Then he paid them to return with dollars of other investors much sooner than ninety days. Before he was arrested for fraud, he had not paid out any profit of nine million to investors. He spent 14 years in jail.<sup>61</sup>

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<sup>58</sup> Clothier, *Multi-Level Marketing : A Practical Guide to Successful Network Selling*, 24.

<sup>59</sup> *Ibid.*, 25.

<sup>60</sup> Stone and Steiner Jr, "The Federal Trade Commission and Pyramid Sales Schemes," 881-75.

<sup>61</sup> Clothier, *Multi-Level Marketing a Practical Guide to Successful Network Selling*, 26-28.

In 1975, The Federal Trade Commission (FTC) of USA sued against Amway Company for operating as an illegal pyramid scheme.<sup>62</sup> Moreover, there were three policies in Amway which was to encourage salesman to sell the products of company.<sup>63</sup> First, Amway distributors buy back their products from their recruited members. Second, distributors can sell seventy percent of the products that purchased each month to the consumers. Thirdly, distributors make at least sale to each of ten different consumers in one month.<sup>64</sup>

The FTC found that these policies of Amway prevented their salesman from buying or forcing other consumers to buy unneeded their product. Thus, Amway did not fit the definition of the illegal pyramid scheme under section 5(a) (1) of the Federal Trade Commission Act.<sup>65</sup>

*Section 5(a) (1) of the Federal Trade Commission Act states that*

*'Unfair method of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.'*

<sup>62</sup> Stone and Steiner Jr, "The Federal Trade Commission and Pyramid Sales Schemes," 887-89.

<sup>63</sup> Ibid., 887-88.

<sup>64</sup> COMMISSION, "In the Matter of Amway Corporation, Lng, Et Al. Final Order, Opinion. Etc., in Regard to Alleged Violation of the Federal Trade Commission Act Docket 902:/. Complaint, March 25, 1975 - " 29-38.

<sup>65</sup> Ibid., 92.

This Act does not have specifically the definition of pyramid scheme. So, every States of US regulated law relating to MLM. For example Act concerning pyramid promotional schemes and supplementing title 2A and chapter 200 of title 2C of the New Jersey statutes (effective May 12, 2016), Oklahoma Pyramid Promotional Scheme Act (effective November 1, 1995 )

Pyramid business model is confused to understand for consumers and law enforcement government official. Sometime, it is compared with other legitimate business models, franchising, direct selling, solely product distributorship and small business operation.<sup>66</sup>

In the America, The Federal Trade Commission (FTC) enacted the regulation of MLM business. Moreover, the Directive 2005/29/e of the European Council that is regulated for MLM practices.<sup>67</sup> However, some MLM organization has many of the same characteristics of illegal marketing scams (called pyramid scheme companies).<sup>68</sup> Looking at this market from a legal point of view, whether marketing plan is legal or not, the issue is not clear and entails more complicated consideration. Sometimes it is

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<sup>66</sup> Taylor, "When Should an Mlm or Network Marketing\* Program Be Considered an Illegal Pyramid Scheme," 7-8.

<sup>67</sup> Cardenas, "Is Multi-Level Marketing of Nutrition Supplements a Legal and an Ethical Practice? , ," 2.

<sup>68</sup> Stone and Steiner Jr, "The Federal Trade Commission and Pyramid Sales Schemes," 881-82.

a challenge for regulators and for customers to identify companies that operate in the “grey area” .<sup>69</sup>

According to the definition of a pyramid scheme, Legal processes and definition of USA and Europe are not same. In 2011, after a long process of a Belgian court found Herbalife, a global nutrition company, to be a pyramid scheme after examining its marketing plan.<sup>70</sup> On the other hand, the USA FTC determined in 2016 that Herbalife was not a pyramid but it is a “problematic” scheme mainly because the distributors obtained their monetary benefits primarily from recruiting rather than by selling goods to consumers. Several measures were introduced to ensure that the MLM businesses do not operate as illegal pyramid schemes.<sup>71</sup> Herbalife was asked to change their model and to pay \$200 million in an agreement with the FTC to partially refund roughly 350,000 Herbalife distributors.<sup>72</sup> The economic impact would have been huge. Thus, considering that the MLM strategy is legally permitted in Europe, the US and many other Asia countries.<sup>73</sup>

Some businessman advertises insufficiency information of their product. In this situation, consumers do not have correct and sufficient information about the product. They lose their consumer right.

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<sup>69</sup> Cardenas, "Is Multi-Level Marketing of Nutrition Supplements a Legal and an Ethical Practice? , , " 2-3.

<sup>70</sup> Ibid., 3.

<sup>71</sup> Ibid., 2.

<sup>72</sup> Ibid., 3.

<sup>73</sup> Ibid., 3-4.

Direct to Consumer Advertisement means “[A]ny promotional effort by a pharmaceutical company to present prescription drug information to the general public in the lay media.”<sup>74</sup> In respect of direct to consumer drug advertisement, it is not sufficiency information of drug for consumer. Before 1985, manufactures promoted their drug products through physicians and doctors. But nowadays, they advertised by using media and distributors. Drug Manufacture Companies care benefit of shareholders but they do not care for the public’s health need. Therefore, the government changes their FDA regulation.<sup>75</sup> Nowadays, Myanmar also faced the problem like this.

In 1985, USA government regulated for direct to consumer advertisement advertising.<sup>76</sup> Under the regulation, manufacturers provide their direct to consumer advertising method to the FDA for preliminary comments.<sup>77</sup> Thailand Office of Consumer Protection Board has power like this.<sup>78</sup> But Myanmar does not have power to check advertisements. The thesis will study how can regulate for MLM business to protect consumer rights.

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<sup>74</sup> Michael S Wilkes, Robert A Bell, and Richard L Kravitz, "Direct-to-Consumer Prescription Drug Advertising: Trends, Impact, and Implications," *Health affairs* 19, no. 2 (2000): 112.

<sup>75</sup> University of Baltimore Alan Lyles. Health Systems Management, Baltimore, Maryland, "Direct Marketing of Pharmaceuticals to Consumers," (2002): 74-76.

<sup>76</sup> *Ibid.*, 76-77.

<sup>77</sup> *Ibid.*, 78-80.

<sup>78</sup> The Direct Sale and Direct Marketing Act B.E. 2545

Peter Clothier predicted in his book, multi-level marketing a practical guide to successful network selling , that multi-level marketing will be developed in the future in all over the world and the biggest changes will come through the continuing rapid developments in telecommunications and the internet.<sup>79</sup>

### **2.4.3 Multi-level marketing in Malaysia and Indonesia Countries**

#### **2.4.3.1 Malaysia Multi-level marketing**

Multi-level marketing is very popular technique in Malaysia. There are different levels of individual distributors in a MLM company. Such as silver, gold, platinum, diamond and so on. Among MLM companies, Tupperware Company is very early in Malaysia. This Company produces household goods around 1970.<sup>80</sup>

In 1980, MLM was developed. Most of MLM Company was set up by Foreigners. At that time, there was no specific regulation in Malaysia.<sup>81</sup> Some unethical businessmen designed the pyramid scheme that doesn't have intention to sell their products or services.<sup>82</sup> So, Malaysia Ministry Domestic Trade and Consumer Affairs tried to enact Direct Selling Act. Act 500 Direct Sales and Anti-Pyramid Scheme Act was enact in 1993 and amended in December 1, 2011.

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<sup>79</sup> Clothier, *Multi-Level Marketing a Practical Guide to Successful Network Selling*, 30.

<sup>80</sup> Osman Zain, Zahir A Quraeshi, and Mohd Ashaari Idris, "Direct Selling in Malaysia," *Journal of Asia-Pacific Business* 2, no. 4 (2000): 84-89.

<sup>81</sup> *Ibid.*, 94.

<sup>82</sup> *Ibid.*, 94-87.

### 2.4.3.2 Indonesia Multi-level Marketing

According to Indonesia Trade Law 2014, there are two kinds of distribution in Indonesia as follow:

- (a) indirect distribution
- (b) direct distribution

Indirect distribution is included distributors and their sub distributor (wholesaler and retailer), agents and their sub agents (wholesale agent and retail agent) and franchise.

Direct distribution is included independence distributors by using single level and multi-level. All kinds of distributors need to get license from Indonesia Ministry of Trade.<sup>83</sup> There is also specific regulation of trade business activity by direct selling system in Indonesia. The definition of direct selling is included multi-level marketing business activity.<sup>84</sup>

### 2.4.4 Cases of Pyramid Scheme and Experience in Thailand

Thailand has already faced with many cases in relation to the illegal pyramid selling before 2017. After Ms. Chamoi deceived the more than ten thousands Thai people by using her Chamoi Fund Company in 1997, Thailand is getting known about illegal scheme.

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<sup>83</sup> THE MINISTER OF TRADE OF THE REPUBLIC OF INDONESIA, "Regulation Number 22/M-Dag/Per/3/2016 Concerning General Provisions for Distribution of Goods."

<sup>84</sup> THE MINISTER OF TRADE THE REPUBLIC OF INDONESIA, "Regulation of Number: 32/M-Dag/Per/8/2008 Concerning Management of Trade Business Activity by Direct Selling System," (2008).



#### 2.4.4.1 Chamoy case

In 1960, Chamoy Thipyaso, Thai lady, founded a fund and offered to investors that the fund was made high return the money as oil share. Then she gives them to return the money from other investors. She committed the crime and was sentenced about 154,005 years in prison.<sup>85</sup>

At that time, Ms Chamoi worked for a Fuel company. She took advantage of her job to get believably from her injured persons.<sup>86</sup>

When she have many billions bath from the injured persons, her Chamoi Fund Company was bankrupted. So, many thousand Thai people loosed their hope in the high returns promised by that illegal company.<sup>87</sup>

Thailand government issued “the Emergency Decree on loans Money Amounting to Public Cheating and Fraud” in 1991. This emergency Decree was to be handling with pyramid scheme and also fraudulent investments scheme.<sup>88</sup>

Although Ms. Chamoi and her partners have been arrested and punish under the Thailand existing laws including the Emergency Decree, pyramid schemes are still exist in Thailand.

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<sup>85</sup> <https://www.bangkokpost.com/opinion/opinion/1389378/criminal-crackdown>

<sup>86</sup> KING-OUA LAOHONG & WASSAYOS NGAMKHAM, "A Pyramid Scam Waiting to Topple," *Bangkok Post* 2017. Available from <https://www.bangkokpost.com/news/general/1347466/a-pyramid-scam-waiting-to-topple>

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

#### 2.4.4.2 Ufun case

In 2015, April, Ufun Store Company was registered as online direct sale business. But the company was declared by the Thailand government as illegal pyramid scheme. Because Thai people complained for the public fraud base on illegal pyramid scheme.<sup>89</sup>

In the end of 2015, some members of the Ufun was arrested and charged in Thailand have been cheated by the Ufun Store company about 38 billion baht by using illegal pyramid scheme. The company, online sale transaction, persuaded Thai people to participate in its network.<sup>90</sup>

In 2017, 22 persons of the Ufun were sentenced with imprisonment from 20 years to 50 years respectively by the Thailand criminal court for violation under 2013 Transnational Organized Crime Prevention and Suppression Act, 2002 Direct Selling and Direct Marketing Act and Computer Act 2007.<sup>91</sup>

According to the Deputy Director-General Prawut Wongseenin of the Thailand Department of Special Investigation (DSI), many Billion baht was lost by the Ponzi scams in ever years. He said that the injured persons lost 729 million baht in

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<sup>89</sup> <https://www.bangkokpost.com/news/general/536043/ufun-may-have-cheated-victims-of-b38bn-in-thailand>

<sup>90</sup> <http://www.nationmultimedia.com/national/Politician-among-17-charged-in-UFUN-pyramid-scam-30275561.ht>

<sup>91</sup> <https://www.bangkokpost.com/news/general/1219257/ufun-fraudsters-sentenced-to-thousands-of-years>

2013, 316 million baht in 2014, 10.1 billion baht in 2015, 808.6 million baht in 2016 and 1.2 billion baht in 2017.<sup>92</sup>

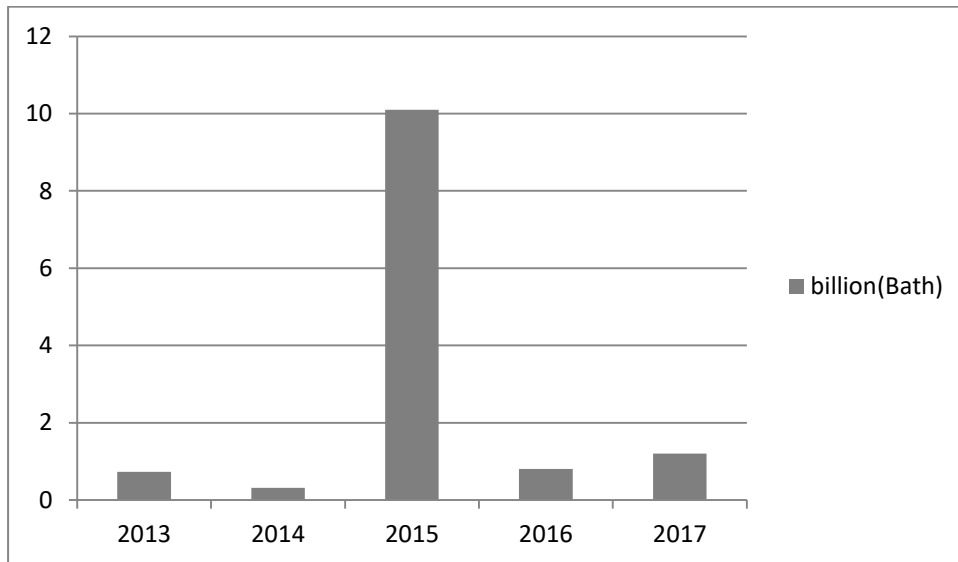


Figure 4: Victims lost money by using illegal MLM in Thailand

So, we can assume that after the Direct Sales and Direct Marketing Act was enacted in 2002, Thailand has a lot of experience on the illegal Multi-level marketing. In 2015, Thailand lost their money 10.1 billion Baht. It is very high amount in 5 years because Ufun company violated the Thailand existing laws.

Deputy Director General of DSI also said that illegal practices of MLM remain in Thailand as these companies offer the higher income than the usual. Pyramid scheme companies are restructured base on people's changing lifestyles and new technologies.<sup>93</sup>

<sup>92</sup> NGAMKHAM, "A Pyramid Scam Waiting to Topple."

<sup>93</sup> Ibid.

In the case of Ufun, it is registered to operate as direct sales company in Thailand relevant government agencies. 120,000 people were cheated by the Ufun store company out of three hundred fifty million baht from 2007 to 2015.<sup>94</sup>

164 peoples who suspected in relation with Ufun illegal company were arrested by the Thailand Police.<sup>95</sup> The Deputy Director-General Prawut Wongseenin of the Thailand Department of Special Investigation (DSI) said that illegal practices of the Ufun have been improved base on new technology. They cheat the Thai people by using the names and positions of richest man or popular people to recruit new member of their Ufun company. Social media also is used to getting pocket money from university students.<sup>96</sup>

The Ufun recruited for new member not only businessmen but also students, farmers and other many sectorial people.

In Thailand, 2000 to 3000 baht was paid for new member fees of illegal MLM by the university students and they can sell product to others. The residents of upper country of Thailand were cheated by other similar pyramid schemes for selling traditional medicine. Actually, the pyramid schemes did not focus to sell their product. They focus to get the money for new membership fee.<sup>97</sup>

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<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

Thailand government has arrested and prosecuted more than one hundred of illegal MLM in recent years. Digital Crown Holdings Ltd, KS Marine and Governor Service Ltd were arrested and prosecuted by the government because the two companies have practiced the technique of pyramid scheme.<sup>98</sup>

The Crime Suppression Division of Central Investigation Bureau (CIB) takes legal action against all types of illegal schemes including overseas business scams and the business of fake lotteries and land scams.<sup>99</sup>

At the present, direct selling business of Thailand has been improved average 5-7% growth annually.<sup>100</sup> After enacting of the Direct Sale and Direct Marketing Act 2002, Thai direct selling business is about THB 71 billion in 2014.<sup>101</sup> Popular products of Thai direct selling business are personal care, cosmetics and dietary supplements.<sup>102</sup>

Nowadays, most of the distributors search their customers on the website platform. The Government needs to regulate for direct to consumer advertisement in

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<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Thai Direct selling Association, "Doing Direct Selling Business in Thailand ".downloaded from [www.tdsa.org/upload/](http://www.tdsa.org/upload/)

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

order to fulfill consumer safety and satisfaction.<sup>103</sup> Therefore, most countries including ASEAN countries have specific law relating to Multi-level marketing.

#### **2.4.5 Current Legal Situation of Myanmar**

Although there is no specific law relating to multi-level marketing in Myanmar, Myanmar does not allow operating the business of MLM according to the notification 46/2016 of the Myanmar Ministry of Commerce.<sup>104</sup> There are only three paragraphs in this notification. MLM definition and specific implementation process are not prescribed in the notification.

Ministry of Commerce issued this notification according to the instruction of The Government of the Republic of the Union of Myanmar. The business of MLM will be prohibited on the September 18<sup>th</sup>, 2018, issued notification of the Ministry of Commerce. If anybody is found to still operation MLM business, a person will be punished with imprisonment for a term from a minimum of six months to a maximum of three years and shall also be liable to a fine not exceeding five hundred thousand Kyats.<sup>105</sup>

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<sup>103</sup> Alan Lyles. Health Systems Management, "Direct Marketing of Pharmaceuticals to Consumers," 73-88.

<sup>104</sup> <https://www.commerce.gov.mm/en/commands%20>

<sup>105</sup> Notification No 46/2018 issued by Myanmar Ministry of Commerce (available from <http://www.myanmartradeportal.gov.mm/en/legal/213>

As there is currently no specific MLM law for supervision which is headed to regulate new law for MLM business.

From 2000 to 2015, Foreign MLM companies set up and distributed their products in Myanmar by using MLM method. Some companies are famous in Thailand and other ASEAN countries.<sup>106</sup>

According to the statics of Myanmar Directorate of Investment and Company Registration, Shine Hope MLM company and Gano Excel company are founded in Myanmar since the 2000 year.<sup>107</sup> But at that time, the MLM method was not developed among Myanmar local people. But, beginning of 2013, the MLM method was a popular marketing method in Myanmar because there are a lot of foreign MLM companies that registered in Myanmar. For examples, Amway Company and Aim star Company expanded to Yangon in 2013, Unicity Company (2014), Zhulian (2015), Tiens(2016) are registered in Myanmar.<sup>108</sup>

Research indicates that some MLM foreign companies which lose reputation in neighboring countries choose Myanmar because Myanmar Consumer Protection Law does not have strong. Direct sale and marketing regulation and enforcing agencies do not have in Myanmar. Distributors sold their products on fraudulence advertisement. Some of the local people suffer financially.

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<sup>106</sup> Parliament), "3rd Regular Session Meeting Record."

<sup>107</sup> <http://www.dica.gov.mm>

<sup>108</sup> <https://www.myco.dica.gov.mm/>

2<sup>nd</sup> Pyithu Hluttaw( Myanmar Union Parliament) 3<sup>rd</sup> regular session holds the 13<sup>th</sup> day meeting urged that the Myanmar government take legal action on unfair business to consumer commercial practices.<sup>109</sup>

In a discussion of 2<sup>nd</sup> Pyidaungsu Hluttaw( Myanmar Union Parliament) 3<sup>th</sup> regular session holds the 13<sup>th</sup> day meeting, U Aung Kyaw Kyaw Oo, a representative member of Pyidaungsu Hluttaw (Myanmar Parliament) said<sup>110</sup> that 'daily average income of a Myanmar citizen, which is only about 3 dollar per day. They cannot afford to buy expensive goods. However, they take medicine for their health. Some medicine from India, Thailand and China are cheap.<sup>111</sup> Most foreign companies sell paramedical products which use MLM technique. A tablet which would kill cancer, as they said, cost over 10 dollars. It's the cheapest price we can say.<sup>112</sup> Some even cost more than 50 dollars for daily consumption. If cancer patients want to consume for a month, he has to spend more than 500 USD sometimes. It's extremely expensive for local people. Some paramedical products, which came from china, Thailand and several countries, are not approved by the Department of Myanmar Food and Drug Administration (FDA).<sup>113</sup> Myanmar local people are not rich in knowledge. So, they will use everything if their friends encourage them to use.'

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<sup>109</sup> Parliament), "3rd Regular Session Meeting Record."

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.



2<sup>nd</sup> Pyithu Hluttaw (Myanmar upper Parliament) 3<sup>rd</sup> regular session holds 14<sup>th</sup> day meeting urged that Myanmar Government have to draw up National Level Plan for consumer protection rights implemented by the relevant Ministries.<sup>114</sup>

Therefore, Myanmar Ministry of Commerce bans MLM business method on September 18<sup>th</sup>, 2018 under Essential Goods and Services Law 2012.<sup>115</sup> So, the question has risen whether this administrative regulation is conformity with competition policy or not. Business of normal marketing and MLM must have opportunity in the same level field.

The Thesis found that whether Myanmar existing laws can effectively supervise on product through multi-level marketing (MLM) business model for consumer or not.

#### **2.4.5.1 System and Mechanism of MLM in Myanmar Problem**

According to the Myanmar current problem situations of MLM business, we can divide into two kinds. One is system of MLM and another is mechanism of MLM. The system of MLM is included compensation plan, advertising, content that compels to buy, cooling-off period and relation with manufacturer, distributor and consumer. On the other hand, the mechanism of MLM is included regulatory bodies, license procedures, administered action, taking legal action.

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<sup>114</sup> Ibid.

<sup>115</sup> Notification No 46/2018 issued by Myanmar Ministry of Commerce (available from <http://www.myanmartradeportal.gov.mm/en/legal/213>)

System	Mechanism
<ul style="list-style-type: none"> <li>• Content that compels to buy</li> <li>• Fraudulence</li> <li>• Many downlines</li> <li>• No clear compensation plan</li> <li>• No directly complain to MLM company</li> <li>• No liability of MLN company</li> </ul>	<ul style="list-style-type: none"> <li>• No need to register;</li> <li>• No power of investigation to MLM business activities;</li> <li>• No power to balance consumer satisfaction and MLM business activities;</li> </ul>

Table 1: Problems in system and mechanism of MLM in Myanmar

We can assume that Myanmar MLM business is involved not only system but also mechanism of MLM. These situations are the problems of illegally pyramid scheme but it is not MLM. Business of pyramid scheme is not acceptable all over the world.

It means that Myanmar must not allow pyramid selling and reform the regulation of MLM business.

## 2.5 MLM Business Environment

On view of the business sector in Myanmar, there are divided into three portions in this part. Firstly, Doing Business Report indicates that Myanmar regulations need to reform as market-friendly regulatory environments. Secondly, competition policy must be created by the legal reform. Thirdly, Although MLM business may be complicated, there are many benefit for consumer and businessman.

### 2.5.1 Doing Business Report by World Bank

World Bank makes a project of ease of doing business in 190 countries since 2003.<sup>116</sup> It encourages relevant countries to compete towards more efficient regulations and offers measurable standards for legal reform in the business climate of countries.<sup>117</sup>

There are eleven areas in the Doing Business Report, such as regulation for starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts, insolvency and labour market regulation. World Bank measures the number of procedure, time, and cost in these areas.<sup>118</sup> The ease of doing business ranking ranges from 1 to 190.<sup>119</sup> The ranking of Myanmar is 171 for 2019 which is not good among other ASEAN members.<sup>120</sup>

Therefore, the evidence suggests that Myanmar regulations need to reform as market-friendly regulatory environments including MLM regulation. Legal scholar Diego Romero-Avila described Legal Traditions, Legal Reforms and Economic Performance as ' [N]owadays, Doing Business Report of WB is widely accepted both in the academic and law-making spheres that legal reforms to create market-friendly

<sup>116</sup> Daniel Oto-Peralías and Diego Romero-Ávila, *Legal Traditions, Legal Reforms and Economic Performance*(Springer, 2017), 14.

<sup>117</sup> Ibid., 38-52.

<sup>118</sup> Information are available from <http://www.doingbusiness.org/>

<sup>119</sup> World Bank, "Doing Business in Myanmar,"(World Bank, 2019), 3.

<sup>120</sup> Ibid., 4.

regulatory environments are important for economic growth. Indeed, some political leaders set as goals for their mandates to improve their countries ranking in doing business' .<sup>121</sup>

### 2.5.2 ASEAN Competition Guideline

In 1997, ten ASEAN countries laid down Vision 2020 of ASEAN. They predicted as a stable, prosperous, highly competitive ASEAN economic region. There is a free flow of goods, free flow of services investment and freer flow of capital, equitable economic development and reduced socioeconomic gaps. Competition policy is defined as those governmental measures that directly affect the behaviour of enterprises and the structure of industry and markets.<sup>122</sup> The main objective of the competition policy is to foster a culture of fair competition. Competition policy is important to be market liberalization.<sup>123</sup>

It should be realized that, there is in the competitive environment, all businessmen will try to offer consumer by a code of conduct of the most of satisfactory quality. Code of Conduct is one of the self-regulatory regimes. The United Nations laid down the Guidelines for Consumer Protection wherein it has been stated on this importance of Code of Conduct approach as follows:

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<sup>121</sup> Oto-Peralías and Romero-Ávila, *Legal Traditions, Legal Reforms and Economic Performance*, 1-3.

<sup>122</sup> ASEAN Secretariat, "Asean Regional Guidelines on Competition Policy," *ASEAN Secretariat, Jakarta* (2010): 3.

<sup>123</sup> R.Ian andThanitcul McEwin, Sakda, *Competition Law in Mainland Southeast Asia*(Winyuchon Publication House, 2018), 10.

‘[G]overnment need to, within their own national context, encourage the formulation and implementation by businesses, in cooperation with consumer organizations, of codes of marketing and other business practices to ensure adequate consumer protection. Voluntary agreements may also be established jointly by business, consumer organizations and other interested parties. These codes should receive adequate publicity’<sup>124</sup>

Therefore, properly designed legal reform must comply with competition policy of ASEAN to make markets work better.

### **2.5.3 Benefits of MLM Business**

If people want to do normal selling business, they will need money for premises, equipment, advertising, stock and a thousand other things including labor cost. These costs are eliminated with a business of MLM. But people need to choose the MLM company carefully.<sup>125</sup> We can classify the advantages of MLM in two parts, to businessman, to consumer. The details of advantages are<sup>126</sup> as follows;

To consumer

- (1) Consumer does not need to leave from his home for buying products;
- (2) Distributors can delivery quickly products to consumer;
- (3) MLM is created as more choice and better price for consumer;

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<sup>124</sup> David Harland, "The United Nations Guidelines for Consumer Protection," *Journal of Consumer Policy* 10 (1987) 245--266 10(1987): 13-15.

<sup>125</sup> Clothier, *Multi-Level Marketing a Practical Guide to Successful Network Selling*, 72.

<sup>126</sup> *Ibid.*, 45.

To businessman

- (1) Anybody can do MLM with a little amount of money for a starter kit, without risk or any experience. This amount of money for starter kit is refundable within a period of time.
- (2) There are no boss and no staff in MLM. In your business, you are the boss.
- (3) There are no specific working hours.

## 2.6 Consumer Rights and Multi-level Marketing

Consumers are harmed by the unfair or deceptive compensation of MLM.<sup>127</sup> Some compensation structures are incentive their participants to recruit new participants but not focus on selling their products.<sup>128</sup> Where such an unlawful compensation structure exists, participants of MLM will attempt to recruit new participants and pressure existing to buy the product with little concern for consumer demand.<sup>129</sup>

Therefore, Legal frameworks of Multi-level marketing are components of consumer protection umbrella. Consumer Protection Agency distinguishes between MLM and pyramid scheme how the structure of compensation as a whole operates in practice. If compensation of MLM is focused on recruit member, Agency will denote that it is unlawful MLM.

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<sup>127</sup> Stone and Steiner Jr, "The Federal Trade Commission and Pyramid Sales Schemes," 883.

<sup>128</sup> Clothier, *Multi-Level Marketing a Practical Guide to Successful Network Selling*, 74-83.

<sup>129</sup> *Ibid.*, 85.

In Multi-level marketing, operator of MLM distributes their product through a network of salesmen or distributors.<sup>130</sup> They are not employees of the MLM company. MLM distributors are contracting members of the MLM company.<sup>131</sup>

Consumer Protection Agency distinguishes between MLM lawful and unlawful how the structure of compensation as a whole operates in practice. If compensation of MLM is focused on recruit member but not sell the product, Agency will denote that it is unlawful MLM.

In the US, Federal Trade Commission enforces regulations for advertising, marketing, compensation of MLM to protect consumer rights.<sup>132</sup> US Federal Trade Commission periodically meets with consumer affairs associations, direct selling associations and other stakeholders to learn more about MLM practices for consumer satisfaction and safety.<sup>133</sup> Agency has also issued consumer and business educational materials.<sup>134</sup> Every consumer complains to Consumer Protection Agency about the illegal conduct of multi-level marketing.<sup>135</sup>

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<sup>130</sup> Ibid., 26-32.

<sup>131</sup> Ibid., 83.

<sup>132</sup> <https://www.ftc.gov/tips-advice/business-center/guidance/business-guidance-concerning-multi-level-marketing>

<sup>133</sup> <https://www.ftc.gov>

<sup>134</sup> Ibid

<sup>135</sup> Ibid

### 2.6.1 Terms of Consumer

Different countries have different definitions of consumer depending on their different purposes, contexts and needs.<sup>136</sup>

In 1962, United States President John F. Kennedy declared about the definition of consumer in the US Congress.

“[A] consumers, by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision. Two-thirds of all spending in the economy is by consumers. But they are the only important group in the economy who is not effectively organized, whose views are often not heard. The federal Government--by nature the highest spokesman for all the people--has a special obligation to be alert to the consumer's needs and to advance the consumer's interests. Ever since legislation was enacted in 1872 to protect the consumer from frauds involving use of the U.S. mail, the Congress and Executive Branch have been increasingly aware of their responsibility to make certain that our Nation's economy fairly and adequately serves consumers' interests”<sup>137</sup>

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<sup>136</sup> ASEAN Secretariat, "Handbook on Asean Consumer Protection Laws and Regulations," ed. ASEAN Secretariat(Jakarta 12110, Indonesia: The ASEAN Secretariat,Community Relations Division (CRD), June 2018), 3.

<sup>137</sup> JOHN F. KENNEDY, "John F. Kennedy : Special Message to the Congress on Protecting the Consumer Interest," Online by Gerhard Peters and John T, <http://www.presidency.ucsb.edu/ws/?pid=9108>.



“[A] consumer might be generally understood as a purchaser of goods and services for the personal satisfaction of themselves or other members of their households, as distinct from use to generate further income.”<sup>138</sup>

“[C]onsumer means a person who buy or obtains services from a business man or a person who has been offered or invited by a businessman to purchase goods or obtain services and includes a person who duly uses goods or a person who duly obtains services from a businessman even he or she is not a person who pays the remuneration.”<sup>139</sup>

“[C]onsumer as defined by the Myanmar Consumer Protection Law is a person who takes or uses goods or services not for trading.”<sup>140</sup>

Consumer protection is the measures to protect and promote the consumer rights by the legal regulations.<sup>141</sup>

### **2.6.2 Terms of Consumer Rights**

In 1962, the late U.S. President John F. Kennedy delivered an historic address to the US Congress in which four basic consumer rights:

1. the right to be chosen;
2. the right to be informed;
3. the right to safety; and

<sup>138</sup> Secretariat, "Handbook on Asean Consumer Protection Laws and Regulations," 3.

<sup>139</sup> Section 3 of the Thailand Consumer Protection Act B.E 2522

<sup>140</sup> Section 2(b) of the Myanmar Consumer Protection Law 2019

<sup>141</sup> Secretariat, "Handbook on Asean Consumer Protection Laws and Regulations," 3.

4. the right to be heard.

The United Nation General Assembly adopted eight consumer rights in the United Nations' Guidelines for Consumer Protection as follow:<sup>142</sup>

- a. "the right to satisfaction of basic needs- to have access to basic, essential goods and services;
- b. the right to safety- to be protected of consumer from hazards to their health and safety;
- c. the right to choose- to be able to select from a various products and services;
- d. the right to be heard- to have consumer interests represented in the making of government agency;
- e. the right to redress- to receive a fair settlement of consumer claims;
- f. the right to consumer education- to acquire knowledge and skills of consumer rights;
- g. the right to a healthy environment- to live and work in an environment;"

### **2.6.3 Regulations of Multi-Level Marketing under Consumer Protection Umbrella of ASEAN Member States (AMS)**

Consumer protection is vital important for ASEAN Economic Community. Consumer's demand and belief are connecting to develop every business sectors.<sup>143</sup>

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<sup>142</sup> Harland, "The United Nations Guidelines for Consumer Protection," 7.

However, there are complex institutional and legal frameworks in AMS in order to protect the consumer rights in ASEAN.<sup>144</sup>

Consumer rights are violated by the problems in system and mechanism of MLM in Myanmar. The problems of Content that compels to buy and many recruited distributed members infringe on the rights of choice. The problems of Fraudulence and MLM payment plan which isn't focused on selling product are infringement on the right of correct information. The problem of liability of MLN companies loses the right to redress and right to be heard of consumer lose the right to be heard because government agency has not power to intervene the activities of MLM business.

“Relevant laws and regulations of consumer protection might include, but is not limited to the following elements:”<sup>145</sup>

- a. “General consumer protection”
- b. “Product safety and liability”
- c. “Weights, measures and standards”
- d. “Unfair contract”
- e. “Unfair commercial practices”
- f. “Misleading advertisement”
- g. “Direct selling, Multi-level marketing and Pyramid marketing”
- h. “E-commerce”

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<sup>143</sup> Secretariat, "Handbook on Asean Consumer Protection Laws and Regulations," 13.

<sup>144</sup> Ibid., 1-14.

<sup>145</sup> Ibid., 19-58.

i. “Redressed mechanism”

So, consumer protection is vital role for ASEAN economic community (AEC).one of the legal framework of consumer protection is the regulation of multi-level marketing. We assume that the regulation of MLN is also important for the AEC and distant from any other relevant regulations of consumer protection.



จุฬาลงกรณ์มหาวิทยาลัย

CHULALONGKORN UNIVERSITY

**Chapter 3**  
**Comparative Study Relevant Laws of Multi-level Marketing in  
Indonesia, Malaysia, Thailand, Singapore and Myanmar**

This chapter will draw on the study experiences of acceptable multi-level marketing in Indonesia, Malaysia, Singapore and Thailand to act as a model and lessons for Myanmar. According to the chapter 2, these countries have experienced of multi-level marketing regulation among the ASEAN countries.

This chapter will study how these selected ASEAN countries manage to be good balance between consumer rights and acceptable multi-level marketing by the regulations.

### 3.1 Approach of Consumer Rights

Indonesia, Malaysia, Singapore, Thailand and Myanmar are members of Association of South East Asia Nations (ASEAN). ASEAN has a plan to establish ASEAN Economic Community (AEC). The characteristics of AEC are (a) a ASEAN single market and production base; (b) a highly competitive economic region; (c) equitable economic development; (d) ASEAN integrate into the global economy<sup>146</sup>. ASEAN laid down AEC Blueprint to follow among member countries. Para 28of AEC Blueprint 2025 mentions the matters of consumer rights.

*'Consumer protection is an integral part of a modern, efficient, effective and fair market place. Consumers will demand the right of access to: adequate information to enable them to make informed choices, effective redress, and products and services that meet standard and safety requirements. Increased cross-border trade, use of e-Commerce and other new trading methods resulting from globalization and technological advancement require governments to find innovative ways of protecting and promoting the interests of consumers.'*<sup>147</sup>

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<sup>146</sup> Declaration on the ASEAN Economic Community Blueprint,

<sup>147</sup> Para 28 of AEC Blueprint 2025

Therefore, all members including Thailand and Myanmar have tried to protect sufficiently their consumer rights according to the AEC Blueprint. In respect of consumer rights approach in MLM business activities, although MLM business activities can create jobs, competition and opportunity to do freely the business for salesman, consumers become victims of illegal business activities. So, governments have tried to supervise the business for protection consumer rights. We would like to divide into three parts. One is regulatory, second is self-regulatory and finally, it is administrative approach.

#### Consumer Rights

Indonesia Consumer Protection Law no8 of 1999 came into force on 20 April 2000.<sup>148</sup> This law recognizes and protects the following rights of the consumers: Right to safety, right to choose, right to information, right to be heard, right to representation, right to education, right to redress.<sup>149</sup>

Malaysia Consumer Protection Act 1999 was amended in 2017. This Act covered various issues relating to consumers including e-commerce and unfair contract terms. There are four consumer rights as follow; Right to safety, right to obtain correct information and right to redress.<sup>150</sup>

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<sup>148</sup> Secretariat, "Handbook on Asean Consumer Protection Laws and Regulations," 25.

<sup>149</sup> Ibid., 26.

<sup>150</sup> Ibid.pp 33

In Singapore, the Consumer Protection (Fair Trading) Act was enacted in 2003. It is the principal enacted law on consumer protection. This Act was amended in several times. The latest one is in 2016.<sup>151</sup>

Singapore consumer protection Act aims to protect unfair practices and to give replace or repair for non-conformity goods.<sup>152</sup>

The Thailand Consumer Protection Act 1979 recognizes the consumer rights in 4 areas:

- (1) *‘ the right to receive correct and sufficient information and description as to the quality of goods or services*
- (2) *the right to enjoy freedom in the choice of goods or services*
- (3) *the right to be assured of safety in the use of goods or services*
- (4) *the right to receive a fair contract*
- (5) *the right to receive consideration and compensation for damage’s*<sup>153</sup>.

In respect of consumer rights, we can find the provisions for administrative approach for advertising, food safety and consumer complain mechanism. However, there is no provision for Multi-level marketing business in this Act.

On the other hand, section 19 of the Myanmar Consumer Protection Law 2019 also prescribes the rights of the consumers as follow:

- (1) *‘enabling to use safety of the goods or services;*

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<sup>151</sup> Ibid. Pp 46

<sup>152</sup> Ibid.pp 70

<sup>153</sup> Section 4 of the Consumer Protection Act B.E 2522

- (2) *enabling to choose the goods or services and enabling to obtain the promised value, terms and conditions and warranty;*
- (3) *having right to obtain completely and correctly of information relating to the condition and warranty of the goods or services;*
- (4) *claiming to hear*
- (5) *being settle on dispute related to goods or services used by the consumer, enabling to obtain consumer protection and enabling to obtain correct settlement;*
- (6) *receiving fair relationship that is non-discriminatory treatment and service.*
- (7) *Obtaining consumer education*
- (8) *Obtaining good environment'*

Generally, the provisions of Thailand and Myanmar are similar on the consumer rights. Myanmar Consumer Protection Law 2019 also does not have any provision of MLM business activities.

### **3.1.1 Regulatory Approach**

There are laws relating to consumer protection in Myanmar. Basic Principles of Myanmar Constitution 2008 indirectly imply consumer protection. Under these principles, the State will take care for the citizen's health and will protect the acts for



citizen's interests.<sup>154</sup> So, Democracy government enacted the consumer protection law. In the areas of consumer protection, we have related laws concerning with:-

1. Product Safety and Liability (The National Food Law 1997, The National Drug Law 1992, The Traditional Drug Law 1996, Fertilizer Law and Animal Health and Development Law)
2. Electronic Commerce (Electronic Transaction Law 2004)
3. Competition (The Competition Law 2014)
4. Labelling (The National Food Law 1997, The National Drug Law 1992 and the Traditional Drug Law 1996)
5. Consumer Credit (Financial Institution of Myanmar Law).

Every business transactions are based on The Myanmar Contract Act 1872. A Seller (MLM businessman) offers to a Buyer (consumer) for buying his product. When the Buyer accepts with some price on the purchasing product, the agreement is becoming valid contract.<sup>155</sup> Under the Myanmar Contract Act 1872, after signing on purchasing contract, The Buyer (consumer) cannot rescind this purchasing contract without the consent of the Seller (MLM businessman) because both parties must

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<sup>154</sup> Under section 3(c) of the Myanmar Constitution Law 2018 , 'the Union shall protect and prevent acts that the injure citizen's interests through monopolization by an group with unfair.'

<sup>155</sup> Section 10 of the Myanmar Contract Act 1872

agree to rescind the purchasing contract that need not be performed.<sup>156</sup> It means that there is no any provision for cooling-off period in Myanmar laws.

Section 62 of the Myanmar Contract Act 1872 prescribe 'If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

In Thailand, the existing law does not allow to sell medicine through Multi-level Marketing strategy.<sup>157</sup> If any person wants to operate nutritional supplement through multi- level marketing, they submit an application to the Office of Consumer Protection Board OCPB. Every entrepreneur of MLM shall be jointly liable to the injured person for the damages caused by unsafe product.

As the result of comparative study, there is important role of Office of Consumer Protection Board in Thailand. OCPB can involve with many existing laws. One of the major functions of OCPB is to protect consumer from unfair, unjust contract term. The OCPB can restrict the freedom of consumer and MLM operator form agreement.

Limitation of freedom of contract is not strange concept in Myanmar and Thailand existing laws. “[An] act is void if its object is expressly prohibited by law or is impossible, or is contrary to public order or good morals.”<sup>158</sup> This concept is a

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<sup>156</sup> Section 62 of the Myanmar Contract Act 1872

<sup>157</sup> Section 19 of The Drug Act B.E. 2510

<sup>158</sup> Section 150 of the Civil and Commercial Code

basic principle of common law system. Any parties can agree freely so long as they do not violate the law.<sup>159</sup> So, between Thailand and Myanmar are same concepts of freedom of contract. The aim of regulation is to protect and promote economic interests of consumers. If Myanmar has the provision of cooling-off period, Myanmar people will understand and follow about the cooling-off period because chapter 2 of the Myanmar Contract Act 1872 has the concept of limitation of freedom of contract.

Table 2: Advancement of promotion and protection of economic interests of consumers through any of measure

Measures	Thailand	Myanmar	Malaysia	Indonesia	Singapore
Consumer have opportunity to replace or repair for defect purchase product	Yes	yes	Yes	yes	yes
Provision of cooling-off period	Yes	No	Yes	yes	yes
Prohibit unethical marketing practices ( persuades consumers to participate in a MLM network in order to increase number of participants)	Yes	No	Yes	yes	yes

### 3.1.2 Facilitation Approach

This study will explore how encourage to organize non-government organizations and to make code of conduct of the business in these countries. Not only appropriate legal regulation approaches are important to monitor the MLM business activities but also facilitation approach may well be supplemented.

<sup>159</sup> Chapter 2 of the Myanmar Contract Act 1872

The Thailand Consumer Protection Board recognizes and encourages any association which is for protection of consumer rights or opposition against unfair trade competition.<sup>160</sup> The Thailand Direct Sale and Direct Marketing Act B.E.2545 is needed to establish the Direct Sale and Direct Marketing Committee which is headed by the Minister.<sup>161</sup> One representative of association of direct marketing and two representative of consumer protection association are organized in the Committee.<sup>162</sup>

At present, Thailand has much legislation to improve consumer rights such as technological misconduct. Thailand consumer protection agencies encourage to self-regulatory (code of conduct) approach among business activities.<sup>163</sup>

In Malaysia, the Federation of Malaysian Consumers Associations (FOMCA) is most notable non-governmental association. There are 13 consumer associations in Malaysia. These non-government associations would have negotiation for consumer dispute, awareness and consumer research.<sup>164</sup>

Indonesia Consumer Protection Law no 8 encourages the activities of consumer protection associations with regards to consumer education, dispute settlement and cooperation with government organizations. There are 3 consumer protection associations in Indonesia. They are Indonesia Consumer Association,

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<sup>160</sup> Section 10(8) of the Thailand Consumer Protection Act B.E 2522

<sup>161</sup> Section 8(1) of the Thailand Direct Sale and Direct Marketing Act B.E. 2545

<sup>162</sup> Section 8(3) of the Thailand Direct Sale and Direct Marketing Act B.E. 2545

<sup>163</sup> Proceeding of the workshop law on consumer protection Japan and Thailand 19-20 December 2000, Bangkok, Thailand

<sup>164</sup> Secretariat, "Handbook on Asean Consumer Protection Laws and Regulations." Pp 36

Institute for Consumer Development and Protection and Yogyakarta Consumer Institute.<sup>165</sup>

Singapore Consumers Association (CASE) is a popular non-profit organization for consumer protection. It provides consultation services, advice services, consumer education services.<sup>166</sup>

On the other hand, Thailand, Malaysia, Indonesia, Singapore have registered non- government association for multi-level marketing business. But Myanmar do not have registered association for MLM business.

Table 3: Comparative study between Thailand and Myanmar on facilitation

Measure	Thailand	Myanmar	Malaysia	Indonesia	Singapore
Notify and inform to consumers for the safe use and causing damage	Yes	Yes	Yes	Yes	Yes
Cooperation with non-government organizations	Yes	Yes	Yes	Yes	No clear
Give a chance to NGO as representatives of government agencies	Yes	Yes	Yes	Yes	No clear

<sup>165</sup> Ibid. pp 29

<sup>166</sup> Ibid. pp 49

### 3.1.3 Administrative Actions Approach

Firstly, the thesis will show that the Current Consumer Administration System in Myanmar. Certain regulatory bodies are formed in order to enforce aforesaid laws regulations. Among them Central Committee of Consumer Protection under Ministry of Commerce is most active institution in the area of consumer protection in Myanmar. Myanmar Food and Drug Administration (FDA) attempt to protect consumer especially in the areas of foods and beverages and drugs. Every year, this body takes the sample of products in the market and puts them under inspection. After doing testing and inspection, it announces the foods, drinks and drugs that are not suitable for consumption for the public health.

Secondly, the thesis will also explore the roles of the Office of Consumer Protection Board (OCPB) in Thailand. The chairman of the Consumer Protection Board is the Prime Minister. The Board has the powers and duties to implement the provisions of Consumer Protection Act B.E.2522. The secretary-general of OCPB is the secretary of the Consumer Protection Board<sup>167</sup>. Moreover, The secretary-general of OCPB is the secretary of Direct Sale and Direct Marketing Committee<sup>168</sup>. OCPB is also entitled to file a law-suit for damages fee on behalf of the injured person.<sup>169</sup> Competent authority has powers to issue a notice to any person to give any statement and any document of business operation of MLM, to enter a place of this business and

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<sup>167</sup> Section 9 of Consumer Protection Law B.E.2522

<sup>168</sup> Section 8 of Direct Sale and Direct Marketing Act B.E. 2545

<sup>169</sup> Section 10 of the Product Liability Law B.E. 2551

to collect or take a sample of goods in a reasonable amount in order to investigate without having to pay for the goods.<sup>170</sup> Multi-level marketing operator need to apply for registration to OCPB. MLM operator must operate in line with the instructions of OCPB.

Indonesia National Consumer Protection Agency is organized by the Consumer Protection Law. Ministry of Trade is focal ministry for consumer protection.<sup>171</sup> On the other hand, Ministry of Trade is also focal ministry for Trade activities. Multi-level marketing business is a part of Indonesia Trade Law.<sup>172</sup> But it is not clear how the relevant ministries collaborate to control and balance consumer protection and MLM business activities.

Malaysia National Consumer Advisory Council (NCAC) is set up by the law. Ministry of Domestic Trade, Co-operative and Consumerism is responsible for secretariat to the National Consumer Advisory Council.<sup>173</sup>

Table 4: Administration approach in Thailand and Myanmar

Measures	Thailand	Myanmar	Malaysia	Indonesia	Singapore
Conduct the study and research on the problems concerning the consumer protection	Yes	No	Yes	Yes	Yes
Encourage the providing of	Yes	Yes	Yes	Yes	Yes

<sup>170</sup> Section 5 of Direct Sale and Direct Marketing Actt B.E. 2545

<sup>171</sup> Secretariat, "Handbook on Asean Consumer Protection Laws and Regulations." Pp 28-29

<sup>172</sup> THE MINISTER OF TRADE OF THE REPUBLIC OF INDONESIA, "Foreign Trade Law No7 of 2014."

<sup>173</sup> Secretariat, "Handbook on Asean Consumer Protection Laws and Regulations." Pp 36

Measures	Thailand	Myanmar	Malaysia	Indonesia	Singapore
education the consumers					
License requirement for MLM business	Yes	No	Yes	Yes	Yes
Paid in capital requirement for MLM business	Yes	No	Yes	Yes	Yes
Types of Product that can be sold by way of MLM	Yes, Medicine under Drug Act and hiring labour services under Labor law do not allow	No	No clear	No clear	No clear
Cooperation with other countries	Yes	Yes but only consumer protection issues	Yes	Yes	Yes
Government agencies acting on behalf of suffering consumers in the Court to redress against illegal conduct of MLM business	Yes	No	Yes	Yes	Yes



Measures	Thailand	Myanmar	Malaysia	Indonesia	Singapore
Government has a power to issue a notice, enter a place, exam their document and seize their product against illegal conduct of MLM business	Yes	No	Yes	Yes	Yes

### 3.2 Malaysia Direct Sales and Anti-pyramid Scheme Act 1993

This Act is provided for the licensing of persons carrying on direct sales business, for the regulation of direct selling and prohibiting pyramid scheme. There are seven parts in this Act; requirement for a license to carry on direct sales business, ;door-to-door sales and, mail order sales and sales through electronic transactions, direct sales contracts, cooling-off period and rescission, prohibition of pyramid scheme, enforcement and miscellaneous.

#### Definitions

The definition of “Direct sale” is included “door-to-door sale”, a “mail order sale” or a sale through electronic transaction within the meaning of this Act.<sup>174</sup>

“Door-to –door sale” means a person or any person authorized by him sells his product or service by personal or by telephone calls.<sup>175</sup>The promotion of a scheme or the payment of bonus or other benefits is solely or primarily and the bonus is paid to

<sup>174</sup> Section 2 of the Malaysia Direct Sales and Anti-pyramid Scheme Act 1993

<sup>175</sup> Ibid

the participants or the other benefits are received by the participants solely or primarily through recruitment or introduction of participants, into the pyramid scheme.<sup>176</sup>

#### Content of Regulations

##### - Requirement of license

If businessman wants to carry on a direct sale business in Malaysia, he must have a licence from the “Controller” .<sup>177</sup> Controller has an authority to control the business of direct sale in Malaysia.<sup>178</sup> If any person does not have a licence for direct sale business, he will be fine from minimum one million ringgit to maximum two million ringgit.<sup>179</sup>

##### - Requirement of documents

The law requires a copy of the memorandum, article of association, latest audited balance sheet, profit and loss account and the report. And also clear indication of name, place and date of corporations.<sup>180</sup> In the case of direct sale, direct sale contract shall be in writing and signed by

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<sup>176</sup>Section 27A of the Malaysia Direct Sales and Anti-pyramid Scheme Act 1993

<sup>177</sup> Section 4(1) of the Malaysia Direct Sales and Anti- pyramid Scheme Act 1993

<sup>178</sup> Section 3 of the Malaysia Direct Sales and Anti-pyramid Scheme Act 1993

<sup>179</sup> Section 4(2) of the Malaysia Direct Sales and Anti-pyramid Scheme Act 1993

<sup>180</sup> Section 5 of the Malaysia Direct Sales and Anti-pyramid Scheme Act 1993

both buyer and seller.<sup>181</sup> The buyer entitled to get a duplicated copy of sale contract.<sup>182</sup>

- Cooling-off period

The most powerful provision for consumer protection in this Act is the establishment of a cooling-off period. The buyer can exercise his right of cancellation during the period of ten working days after the date of the making of a direct sale contract.<sup>183</sup> The law require clear indication of cooling-off period in the sale contract as the statement ' this contract is subject to a cooling-off period of ten working days' .<sup>184</sup> If the buyer does not want to get the right of the cooling-off period, he can send the notice in writhing to deliver goods or service before the expiry of the cooling-off period.<sup>185</sup> Although the buyer want to waive his right of cooling-off period, the seller must deliver the goods or service after the three days from the time the contract was concluded.<sup>186</sup>

- Government monitoring

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<sup>181</sup> Section 23(1) of the Malaysia Direct Sales and Anti-pyramid Scheme Act 1993

<sup>182</sup> Section 23(2) of the Malaysia Direct Sales and Anti-pyramid Scheme Act 1993

<sup>183</sup> Section 2 of the Malaysia Direct Sales and Anti-pyramid Scheme Act 1993

<sup>184</sup> Section 23(1) (b) of the Malaysia Direct Sales and Anti-pyramid Scheme Act 1993

<sup>185</sup> Section 25(2) of the Malaysia Direct Sales and Anti-pyramid Scheme Act 1993

<sup>186</sup> Section 25(3) of the Malaysia Direct Sales and Anti-pyramid Scheme Act 1993

When there are any violations in this Act, the Minister of domestic trade and consumer affairs is a focal minister.<sup>187</sup> Controller of Direct sales is appointed by the Minister.<sup>188</sup> The rights and powers of the controller are search and seize any property and document of the business of direct sales. The controller may also power to arrest any person who has committed an offence against this Act.<sup>189</sup>

### **3.3 Indonesia Regulation of Trade Business Activities under Direct Selling System<sup>190</sup>**

This Regulation aims to protect consumer, create an encouraging business climate to support the increase in investment and to regulate the management of activities by a direct selling system including MLM.<sup>191</sup>

#### **Definition**

Direct sale is a marketing method for sale of goods or services directly to consumer in the consumer's home or other places outside the seller's permanent shop.

We can denote that the meaning of direct sales is included multi-level marketing.<sup>192</sup>

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<sup>187</sup> Section 2 of the Malaysia Direct Sales and Anti-pyramid Scheme Act 1993

<sup>188</sup> Section 3 of the Malaysia Direct Sales and Anti-pyramid Scheme Act 1993

<sup>189</sup> Section 29 of the Malaysia Direct Sales and Anti-pyramid Scheme Act 1993

<sup>190</sup> Regulation of Ministry of Trade number 32/MDAG/PER/2008 Regarding Implementation of Trade Business Activities Under Direct Selling System, Indonesia

<sup>191</sup> Ibid

<sup>192</sup> Article 1.1 of the Indonesia Regulation of Trade Business Activities under Direct Selling System

Direct seller is a person not only a member of the direct selling distribution system but also employed by a company.

Pyramid scheme is also called banned marketing network under Indonesia regulation. If there is opportunity to obtain the return from or obtained especially from the participation of others joining later or after the joining of these business partners, and not from the proceeds of goods sale or service, this business activities is called banned marketing network.<sup>193</sup>

Marketing plan is a program of company in marketing of goods or services that will be implemented distributors through single level or multi- level network.<sup>194</sup>

#### Content of Regulations

- Requirement of license

When every company runs direct sales, it must be registering direct selling company in Indonesia.<sup>195</sup> In the case of selling activities, the license may only allow for new companies to do business of MLM for one year.<sup>196</sup> The applicant must extend his license within two months before the term license expires. Extension license will be validity period of five years.<sup>197</sup>

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<sup>193</sup> Article 1.12 of the Indonesia Regulation of Trade Business Activities under Direct Selling System

<sup>194</sup> Article 1.8 of the Indonesia Regulation of Trade Business Activities under Direct Selling System

<sup>195</sup> Article 9 of the Indonesia Regulation of Trade Business Activities under Direct Selling System

<sup>196</sup> Ibid

<sup>197</sup> Ibid

- Requirement of documents

When they prepare for license, they need to be attached documents as follows: Copy of company registration certificate, copy of registration license and technical permit from the authorized agencies on goods or services is sold, copy of industrial business license if the company doubles as a producer. copy of contract of cooperation or appointment if the company obtains goods or services from producers or suppliers, copy of identity card of the company's board of directors and commissioners, brochures, leaflets or catalogues of goods or services used, list prices of goods or services, Marketing plan, code of ethics and company regulations.<sup>198</sup>

- Cooling-off period

There are giving grace period seven business days to consumers to return the goods if they failed to execute the sale contract.<sup>199</sup>

- Government monitoring

Ministry of Trade is focal ministry.<sup>200</sup> Department of Domestic Investment is focal department to monitor the business activities in Indonesia.<sup>201</sup>

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<sup>198</sup> Article 2 of the Indonesia Regulation of Trade Business Activities under Direct Selling System

<sup>199</sup> Ibid

<sup>200</sup> Article 1.15 of the Indonesia Regulation of Trade Business Activities under Direct Selling System

<sup>201</sup> Article 10 of the Indonesia Regulation of Trade Business Activities under Direct Selling System

### 3.4 Singapore Multi-level marketing and Pyramid selling (prohibition) Act 1973

In Singapore, multi-level marketing and pyramid selling are governed by the Multi-level Marketing and Pyramid selling(Prohibition) Act (Chapter 190) Multi-level marketing and pyramid selling (excluded schemes and arrangements) Order 2000.<sup>202</sup>

MLM and pyramid scheme are very similar. Both MLM and pyramid scheme are formed with participants who are benefited rewards for each new recruited participant as well as selling goods or services.

However, pyramid scheme is focused to recruit new participant more and more. The more participants in a scheme, the more rewards from new recruited participant. The result is that participants at the bottom of the pyramid are losing all their rewards.

“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 license to acquire the commodity for sale, lease, license or other distribution;

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<sup>202</sup> <https://www.mti.gov.sg/Legislation/Legislation/Multi-level-Marketing-and-Pyramid-Selling>

(b)That person receives any benefit directly or indirectly as a result of the recruitment, acquisition, action or performance of one or more additional participants in the scheme or arrangement.”<sup>203</sup>

### **3.5 Thailand Direct Sales and Direct Marketing Act**

Western Thailand has long border line with Myanmar. Thailand has experience about illegal pyramid selling. The Direct sales and Direct Marketing Act is enacted in 2002. The amendment of law is enacted in 2017 which is also called Act Governing Direct Sale and Direct Marketing BE 2560.

Thailand has specific law for Multi-level Marketing business. The business activities are supervised by the Direct Sale and Direct Marketing Act B.E. 2545 and Consumer Protection Act B.E. 2522. Act governing Direct Sale and Direct Marketing BE.2560 on May 14<sup>th</sup>, 2017. The Original Act contains the provisions to restrict rights and duties of business man.<sup>204</sup> There are including 7 chapters and 56 sections in the Act B.E.2545.

#### **Definition**

According to the section 3 of the Direct Sale and Direct Marketing Act B.E. 2545,

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<sup>203</sup> Section 2 of the the Multi-level Marketing and Pyramid selling(Prohibition) Act (Chapter 190)

Multi-level marketing and pyramid selling (excluded schemes and arrangements) Order 2000

<sup>204</sup> Preamble of the Direct Sale and Direct Marketing Act B.E.2545



*Direct sale means the marketing of goods and services by way of offering the sale directly to the a consumer at the place of residence or office of the consumer or of other persons, or at a place where the regular business is not carried on, through a direct sale agent or an independent distributor, either one level or multi-level.'*

Direct sale is that the marketing of goods and services by offering for sale directly to the consumer at his residence place other than at a place of seller residence, by a direct sale agent or an independent distributor, either one level or multi-level. Direct marketing is invitation for offering sale goods and services.<sup>205</sup> This Act covers distribution of goods through MLM and other businesses by using media and communication in order to have direct sale to the consumers.<sup>206</sup>

According to the section 3 of the Act Governing of Direct Sale and Direct Marketing BE.2560,

*“Direct marketing” means marketing with respect to goods or services which comprises offering information to promote sale of such goods or services, or direct sales of such goods to consumers at far distance, which require response from the consumer for the purchase of goods or services from the direct marketing business operator. Meanwhile, sale-purchase of such goods or services through electronic*

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<sup>205</sup> Section 3 of the Direct Sale and Direct Marketing Act B.E.2545

<sup>206</sup> Brochure of the Thailand's Office of Consumer Protection Board (available from [http://www.ocpb.go.th/ocpb\\_eng/more\\_news.php?cid=7](http://www.ocpb.go.th/ocpb_eng/more_news.php?cid=7))

*commerce is not considered as direct marketing and is subject to standards and terms specified in Ministerial Regulations”*

Section 3 of the Act Governing of DSDA 2017 repealed and replaced the definition of ‘direct marketing’ of the DSDA Act BE.2545. With a view to encourage the business of small and medium (SME) and the business of E-commerce, the sale of goods or services through e commerce is not considered direct marketing under the Royal Gazette on November 2018.<sup>207</sup> there are four types of business not to register at the Office of Consumer Protection Board as follow;

- (a) “sales of goods or services by an individual who get income of no more than THB 1.8 million a year by selling goods or services by using e-commerce.”
- (b) “sales of goods or services by a SME that registered under the Small and Medium Enterprise Promotion Act B.E. 2543 (2003)”
- (c) “sales of goods or services by a community enterprise registered under the Community Enterprise Promotion Act B.E 2545 (2005).”
- (d) “sales of goods or services by a cooperative and group of farmers registered under the Cooperative Act B.E 2542 (2002)”

### Regulatory Body

The Direct Sale and Direct Marketing Committee must be established.<sup>208</sup>

Chairperson must be a person who have knowledge on direct sale and marketing.<sup>209</sup>

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<sup>207</sup> <https://www.mazars.co.th/Home/Doing-Business-in-Thailand/Legal/e-Commerce-and-Direct-Marketing>

<sup>208</sup> Section 8 of the Direct Sale and Direct Marketing Act B.E.2545

The Office of Consumer Protection Board is a focal agency and shall be secretary.<sup>210</sup> Director General of the Department of Internal Trade, DG of the Department of Industrial Promotion, Commissioner General of the Royal Thai Police and the DG of the FDA are members of the Committee.<sup>211</sup> Minister<sup>212</sup> can appoint three or four members from the representatives person of non government organization and private sector. such as consumer protection association and direct selling association.<sup>213</sup>

The Minister can also appoint any government official as Competent Official.<sup>214</sup> The Competent Official have the powers to see and collect any document and goods of MLM business man.<sup>215</sup> the officer also has a power to enter a place of business operation of a MLM business during the office hours in order to investigation of the implementation of the Direct Sale and Direct Marketing Act.<sup>216</sup>

## Requirements

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<sup>209</sup> Section 8(1) of the Direct Sale and Direct Marketing Act B.E.2545

<sup>210</sup> Section 8(4)(2<sup>nd</sup> clause) of the Direct Sale and Direct Marketing Act B.E.2545

<sup>211</sup> Section 8(2) of the Direct Sale and Direct Marketing Act B.E.2545

<sup>212</sup> Section 3 of the Direct Sale and Direct Marketing Act B.E.2545 (Minister means the Minister who has charge and control of the Act)

<sup>213</sup> Section 8(3)(4) of the Direct Sale and Direct Marketing Act B.E.2545

<sup>214</sup> Section 5 of the Direct Sale and Direct Marketing Act B.E.2545

<sup>215</sup> Section 5(1) and (3) of the Direct Sale and Direct Marketing Act B.E.2545

<sup>216</sup> Section 5(2) of the Direct Sale and Direct Marketing Act B.E.2545

When any businessman wants to engage in the multi-level marketing, he must register at the Office of Consumer Protection Board.<sup>217</sup> The business man must have minimum capital of THB 500,000 for a partnership and if the business is organized as a limited company, he will show THB 1,000,000 as minimum registered capital.<sup>218</sup> This Act also prescribed that all businessman engage in MLM to deliver documents of product for sale to be written in Thai.<sup>219</sup> The document contains the consumer's right to terminate the contract.<sup>220</sup> The right to terminate a contract must clearly be written with letters.<sup>221</sup> Business man must submit a compensation payment plan to the Registrar.<sup>222</sup> He cannot revoke his registration within 5 years from registration date.<sup>223</sup>

In respect of the 'cooling-off period', Thailand direct sale and direct marketing Act provides a seven day period from which a consumer may return the thing purchased from the seller in cases he changes his mind.<sup>224</sup> The consumer is provided with a seven day period from the receipt of the goods to terminate the contract and

<sup>217</sup> Section 20 of the Direct Sale and Direct Marketing Act B.E.2545

<sup>218</sup> Act Governing of the Direct Sale and Direct Marketing B.E. 2560

<sup>219</sup> Section 30 of the Direct Sale and Direct Marketing Act B.E.2545

<sup>220</sup> Section 31 of the Direct Sale and Direct Marketing Act B.E.2545

<sup>221</sup> Ibid

<sup>222</sup> Section 38 of the Direct Sale and Direct Marketing Act B.E.2545

<sup>223</sup> Act Governing of the Direct Sale and Direct Marketing B.E. 2560

<sup>224</sup> Section 33 of the Direct Sale and Direct Marketing Act B.E.2545

deliver the purchased goods to the seller and the latter is obliged to refund the former with the full amount of money paid to him.<sup>225</sup> This refund must be given within 21 days from the termination of the sale.<sup>226</sup> If, however, the goods are lost or were damaged through fault of the consumer, he or she shall shoulder the loss and shall be financially responsible to the seller.<sup>227</sup>

### Prohibition of Pyramid Scheme

In respect of pyramid scheme, the Amendments and the Act has prohibited to encourage or recruit a business network strategy as pyramid scheme.<sup>228</sup> The MLM business man shall not charge a membership fee, training fee, materials fee for sale promotion.<sup>229</sup> The main income of a distributor shall depend on the volume of goods and services selling.<sup>230</sup> Distributor does not need to purchase the product of MLM without his consent.<sup>231</sup> The MLM company shall oblige to receive its product, when its distributor would like to return the product.<sup>232</sup> The distributor must receive a



<sup>225</sup> Section 34(1) of the Direct Sale and Direct Marketing Act B.E.2545

<sup>226</sup> Section 34(2) of the Direct Sale and Direct Marketing Act B.E.2545

<sup>227</sup> Ibid

<sup>228</sup> Section 19 of the Direct Sale and Direct Marketing Act B.E.2545

<sup>229</sup> Section 22 of the Direct Sale and Direct Marketing Act B.E.2545

<sup>230</sup> Section 21(2) of the Direct Sale and Direct Marketing Act B.E.2545

<sup>231</sup> Section 21(3) of the Direct Sale and Direct Marketing Act B.E.2545

<sup>232</sup> Section 25 of the Direct Sale and Direct Marketing Act B.E.2545

permission to enter into the place from the consumer occupy the place before entering into his place.<sup>233</sup>

### **3.6 Essential Elements of Multi-level Marketing Regulation in the Selected ASEAN Countries**

There are Essential elements of multi-level marketing regulation as the result of compare with Malaysia Direct Sales and Anti-pyramid Scheme Act 1993, Indonesia Regulation of Trade Business Activities under Direct Selling System, Singapore Multi-level Marketing and Pyramid Selling (Prohibition) Act 1973 as follow:

- a. Pyramid scheme definition
- b. Paid in capital requirements
- c. Cooling-off period
- d. Registration requirement
- e. Protection of consumer rights
- f. Inventory buyback

Essential element provisions of MLM can be described several laws and regulations of ASEAN countries as follow;

#### **3.6.1 Definition of Pyramid Scheme**

Although several countries have several definitions of the pyramid scheme, it is the same essence of the meaning of it. "Multi-level business means a business activity run through a network of participants levels and branches, which allows

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<sup>233</sup> Section 26 of the Direct Sale and Direct Marketing Act B.E.2545

participants to receive commissions, bonuses and other economic benefits from their sales activities of other people in the network”. The definition of pyramid scheme is the most important definition on the regulation.

### **3.6.2 Paid in Capital Requirement**

Selected countries of ASEAN have a provision of paid in capital requirement for MLM companies. Indonesia domestic investment companies shall have a capital investment of at minimum two billion Rupiah for domestic and five billion Rupiah for foreign companies.<sup>234</sup> Moreover, under Thai law, a minimum registered capital of THB 500,000 for a partnership and THB 1,000,000 for a limited company.<sup>235</sup>

### **3.6.3 License Requirements**

Every MLM companies must apply for license to carry out their business activities in all ASEAN countries. Under Thailand Governing of direct sale and direct marketing Act, applicants MLM companies are needed to provide a guarantee in the amount prescribed by the Thailand government.

### **3.6.4 Inventory Buyback**

When distributor resigns or is discharged by the company, the company must buy back their products from the distributor under section 2 (n) of Indonesia law. “Consumer can request to redeem to conduct within 30 days from the date of received goods. Total amount of refund is due if no grounds for withholding (administrative costs no less than 90% of amount that was paid for goods can be deducted.”<sup>236</sup> The

<sup>234</sup> Article 7 of the regulation of trade business activities under direct selling system 2008

<sup>235</sup> Act Governing Thailand Direct sale and Direct marketing (2017)

<sup>236</sup> Section 47 of the Vietnam Decree on management of multi-level sales No42/2-14/NDCP

provision of inventory buyback is prescribed in every MLM law of all ASEAN countries.

### **3.6.5 Consumer Protection**

Company operators must be jointly liable for suffering injury of consumers who purchase their products from their distributors under Thailand amendment Act (Act Governing of Direct Sale and Direct Marketing BE.2560, Singapore, Malaysia, Indonesia and Thailand prohibit against false and misleading direct advertisements to consumers.

### **3.6.6 Cooling-off Period**

A consumer commercial transaction can be divided into three main stages, namely, the advertising and searching stage, the ordering and payment stage and the delivery stage.<sup>237</sup> Among these stages, the cooling-off period is the most important at the ordering and payment stage because this is a right to choice of a consumer. The consumer can cancel his order to buy any goods or service. The rules regarding the cooling-off period may vary in different countries.

The cooling-off period is interval time relating to consumer rights that consumer can return goods or cancel the contract after that both businessperson and consumer entered into a contract of direct marketing.<sup>238</sup> This applies only to sell that result from direct marketing but not apply to sell that result from any other form of

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<sup>237</sup> World Trade Organization, "Development Implications of Electronic Commerce,"(RESTRICTED WT/COMTD/W/51 23 November 1998), 2.

<sup>238</sup> Byron D Sher, "The Cooling-Off Period in Door-to-Door Sales," *UCLA L. Rev.* 15(1967): 717.



marketing. Sometime, the consumers cannot have realist information about goods. Sometime, the consumer faces the high pressure of salesman for buying.<sup>239</sup> Sometime, the consumer cannot understand the terms and conditions of the sale contract.<sup>240</sup>

Country	Period of Cooling-off period	Cause of Cooling-off period
Malaysia  Direct Sales and Anti Pyramid Act 1993	Consumer can return goods or rescind the contract within ten working days that is commencing on the day after the date of the making of a sale contract.  (section 2)	<ul style="list-style-type: none"> <li>- 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.</li> <li>- before the expiry of seventy-two hours from the time the contract was concluded, a purchaser 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.</li> </ul>
Indonesia  Regulation of Ministry of Trade number32/MDAG/	Within 7 (seven) business days consumers can return the goods to business partners;	<ul style="list-style-type: none"> <li>- if in fact they failed to meet the agreement;</li> <li>- by returning the starter kit</li> </ul>

<sup>239</sup> Ibid., 711-12.

<sup>240</sup> Ibid., 713.

Country	Period of Cooling-off period	Cause of Cooling-off period
PER/2008 Regarding implementation of Trade Business Activities Under Direct Selling System	Giving grace period of 10 (ten) business days to the prospective business partners to decide to become a partner or cancel the registration  Section 2 (l) (m)	already obtained in its original conditions;
Thailand Direct Sale and Direct Marketing Act	Consumer has a right to terminate the contract within seven days from the date that he receives the goods or services. Section (33)	
Singapore Multi-level marketing and Pyramid Selling (Prohibition) Act (chapter 190)	- 7 Days "cooling-off period"  - Product must be distributed with a full refund or buy-back guarantee on reasonable commercial term within a period of at least 60 days from date of distribution of the product.  Section 2(c)(vii)	customers may cancel an order or contract and receive a full refund of their money on reasonable commercial terms. Direct Selling Association of Singapore Code of Ethics

Table 5: Period and cause of cooling-off period in ASEAN countries

### 3.6.7 Pros and Cons of Cooling-off Period

The advantages of cooling-off period are to correct high pressure of salesman and fraudulence sale products.<sup>241</sup> The businessperson is greater material knowledge

<sup>241</sup> Ibid., 711.

than the consumer. The consumer easily trusts on speech of the salesman.<sup>242</sup> Consumer has an opportunity to withdraw purchasing agreement, when he faces salesman's influence. Cooling-off period is caused to improve choice of consumer, one of the rights of consumer, in the market monopoly and information failure.<sup>243</sup>

Although the period can provide protection for consumer in many ways, some salesman argues that the period creates to intervene transaction process.<sup>244</sup> During the cooling-off period, consumers are entitled to freely cancel the consumer contract. After a consumer is making multiple use of product within the cooling-off period, he may return it and get the money back. So, this example may result in opportunistic behavior from a part of the consumer.

The Act Governing of Thailand Direct Sale and Direct Marketing Act (amending) has the provision of liability of managing director and director of multi-level marketing company.

### **3.7 Relevant Regulations of MLM Business in Myanmar**

Some MLM companies set up, operate and sell paramedical products which are used MLM technique in Myanmar since 2013.<sup>245</sup> Myanmar previous consumer protection law is enacted in 2014. Myanmar new Consumer Protection Law 2019 repeal the previous law 2014. Myanmar Consumer Protection law 2019 is lack of

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<sup>242</sup> Ibid., 723.

<sup>243</sup> Pamaria Rekaiti and Roger Van den Bergh, "Cooling-Off Periods in the Consumer Laws of the Ec Member States. A Comparative Law and Economics Approach," *Journal of Consumer Policy* 23, no. 4 (2000): 372-73.

<sup>244</sup> Ibid., 381-83.

<sup>245</sup> [www.dica.gov.mm](http://www.dica.gov.mm)

provision of Multilevel Marketing Business. Although investment of Singapore is more than investment of Thailand in Myanmar, the annual inflow of Thailand FDI increases year by year according to the static of Myanmar Investment Commission.

Table 6: Yearly approved amount of FDI by ASEAN countries - source: Myanmar Investment Commission (available from <https://www.dica.gov.mm/en/topic/foreign-investment-country>)

No	Country	Foreign Capital to be brought in	2014 - 2015	2015- 2016	2016- 2017
1	Brunei Darussalam	105.122	43.873	26.483	18.026
2	Indonesia	274.530		13.190	9.034
3	Malaysia	1963.124	6.724	257.221	21.390
4	Philippines	147.173	0.506		
5	Singapore	20088.906	4297.185	4251.223	3820.764
6	Thailand	11124.715	165.679	236.174	428.058
7	Viet Nam	2161.103	175.400	4.676	138.620

### 3.7.1 The Consumer Rights and Market Mechanism for MLM

Myanmar Consumer Protection Commission is created by Myanmar consumer protection law 2019. This Commission does not have authority for the business of Multi-level marketing it.

Under the Essential Goods and Services Law 2012, the Myanmar Government has been assigned to Ministry of Commerce to administer MLM business.<sup>246</sup> So, Ministry of Commerce issued prohibiting order relating to Multi-level Marketing business through MLM. If an independent contractor sells any product through MLM in Myanmar, he will be punished with imprisonment for a term exceeding three years.<sup>247</sup>

Section 5 of the Essential Goods and Services Law prescribed that

*‘whoever violates any order issued under section 4 shall, on conviction, be punished with imprisonment for a term from a minimum of six months to a maximum of three years and shall also be liable to a fine not exceeding fifty thousand Kyats.’*

One of the legal problems is that the Order cannot exist permanently under the Essential Goods and Services Law 2012. Section 9 of this law prescribed that

*‘The Ministry shall promptly annulled such order when the order is not required to continuously carry out after carrying out as necessary by issuing and stipulating the order of any goods or services as essential goods or essential service.’*

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<sup>246</sup> Section 2(b) of the Essential Goods and Services Law 2012 ‘The Ministry means any Ministry of Union assigned by the Union Government to administer under this Law’

<sup>247</sup> Section 5 of the Essential Goods and Services Law 2012

In Thailand, The Product liability Law was enacted B.E2551 (2008). Base on directives of EEC and Japan Laws.<sup>248</sup>

On the view of legal, Product liability Law is a civil law but on the view of marketing, it is aimed purpose to preventive measure keeping unsafe products away from the goods and services markets. There are two kinds of product liability law in Thailand. One is specific product liability law and other is general product liability law.

Every business men shall be jointly liable to the injured consumer for the damages caused by their unsafe products.<sup>249</sup> Managing Director, Director must be jointly liable for suffering consumer who buys their product from their distributors.<sup>250</sup>

In Myanmar, consumer cannot sue to Managing Director of MLM company because he do not buy the product from MD of MLM company. He buys from distributor. So he must sue to the distributor.<sup>251</sup> The Myanmar Contract Act 1872 is mentioned about Privity of contract as follow,

*The parties to a contract must either perform, or offer to perform their respective promises, unless such performance is dispensed with or*

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<sup>248</sup> Luke R Nottage and Sakda Thanitcul, "Economic Integration and Consumer Protection in Southeast Asia: Asean Product Liability Law and Safety Regulation," (2015).

<sup>249</sup> Section 5 of the Product Liability Act B.E. 2551

<sup>250</sup> Act Governing of the Direct Sale and Direct Marketing B.E.2560

<sup>251</sup> Section 37 of the Myanmar Contract Act 1872

*excused under the provisions of the death of such promisors before performance, unless a contrary intention appears from the contract.'*

Section 37 does not allow that the Duties of a contracting party move to other non-contracting person.

Therefore, Myanmar consumers cannot sue to MLM company. The court is also difficultly to find the guilty person because there are many distributors in the MLM network marketing.<sup>252</sup>

The National Drug Law of Myanmar

In Myanmar, The requirements for qualification of foreign company for selling medicine are prescribed in the National Drug Law. The Ministry of Health issued the notification No6/93 that contains the procedure for sale of pharmaceuticals. According to this notification, a person needs to apply a drug wholesaler's license or drug retailer's license from the Food and Drug Administration FDA. If any application for sale license make by mail or online any means other than in person, FDA will reject on this application. An application should be submitted in person by an authorized representative local company.

After receiving sale license from FDA, the premises for the sale of pharmaceuticals must have adequate lighting, good ventilation and appropriate space. Moreover the premises must be especially neat and clean. It must permit easy

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<sup>252</sup> Parliament), "3rd Regular Session Meeting Record."

cleaning. In addition, necessary arrangements must be made in the building and land so as to prevent the entry of insects.

This Notification No6/93 does not have any provisions in respect of Multi-level marketing. It is only for normal business for selling in Myanmar. Selling medicine through MLM is more risky than normal selling.

#### The Myanmar Contract Act

Distributor and recruited down line distributor of MLM do not need to comply with the Labor Laws of Myanmar because they are not employee of MLM company. But they need to obey the Myanmar Contract Act 1872 which even as it approach its 150 years anniversary.

Myanmar Contract Act was enacted by the British Colonial Government on September 1<sup>st</sup> 1872. Today contract is not exactly same as 1872 business.

Most of foreign companies sell paramedical products which use MLM technique. They said that a tablet which would kill cancer. In fact, it is not medicine for cancer but it is nutritious supplement for patient. Myanmar local people are not rich in knowledge. So, they will use everything if their friends encourage them to use.

When consumer has got injure, he cannot find wrong doer in MLM.

Section 23 of Myanmar Contract Act is mentioned about freedom of contract as follow,

*'the consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury*



*to the person or property of another or the court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.'*

Section 37 of Myanmar Contract Act 1872 is mentioned about Privity of contract as follow,

*'The parties to a contract must either perform, or offer to perform their respective promises, unless such performance is dispensed with or excused under the provisions of the death of such promisors before performance, unless a contrary intention appears from the contract.'*

Section 37 does not allow that the Duties of a contracting party move to other non-contracting person.

In conclusion, we can denote that the MLM regulations of selected ASEAN countries can balance between the consumer rights and activities of MLM business. Myanmar MLM measure does not create a situation of more choice and better price for consumer and competition between traditional marketing business and MLM business. So, multi-level marketing regulation must be adopted to be good balance between consumer rights in Myanmar.

Table 7 Country by Country Summary- Multi-level Marketing Regulation

Country	Law and Regulation	Pyramid Scheme Definition	Paid in Capital Requirement	Cooling off Period	License Requirements	Consumer Protections	Inventory buyback
Indonesia	Regulation of Trade Minister:32/M-DAG/PER/2008 Regarding implementation of Trade Business Activities Under Selling Direct System	Any business activity in any term or name where the participation of business partners is based on the consideration that there is opportunity to obtain the return from or obtained especially from the participation of others joining later or after the joining of these business partners, and not from the proceeds of goods sale or service Article (2.12)	5billion Rupiah (US\$375,000)	7business days	Must apply for license to carry out direct selling activities (renewable)	Period of time to return product(7days) Prohibition against false and misleading advertisements	10business days ( admin cost of maximum 10% of the initial purchasing price)
Malaysia	Act 500 Direct Sales and Anti-pyramid Scheme Act 1993 (effective December 1,2011)	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 participant.	<ul style="list-style-type: none"> <li>•RM5 million for companies with foreign equity;</li> <li>•RM 1.5 million for 100% Malaysia-owned company;</li> </ul>	10working days	Must apply for license to carry out selling  Distributors are require to obtain an ID card	Prohibition against false claims misleading advertisements -requirement to express intent to solicit.	The company must provide a refund policy.

Country	Law and Regulation	Pyramid Scheme Definition	Paid in Capital Requirement	Cooling off Period	License Requirements	Consumer Protections	Inventory buyback
Singapore	Multi-level marketing and selling Pyramid (prohibition) Act effective September 28, 1973	<p>'pyramid selling scheme or arrangement' means any scheme or arrangement for the distribution or the purported distribution of a commodity whereby-</p> <p>A a person may in any manner acquire a commodity or a right or a license to acquire the commodity for sale, lease, license or other distribution</p> <p>B that person receives any benefit, directly or indirectly as a result of</p> <p>C the recruitment, acquisition, action or performance of one of more additional participants in the scheme or arrangement</p>		7days	Must apply for license	<p>Prohibition against false claims and misleading advertisements</p> <p>-Period of time to return products (60) days</p> <p>-earnings disclosures of distributors</p>	Product must be distributed with a full refund or buy-back guarantee on reasonable commercial terms within a period of at least 60 days from date of distribution of the product
Thailand	Direct sale and marketing Act B.E 2545, Act governing direct sale and direct marketing B.E 2560	<ul style="list-style-type: none"> <li>- MLM business man shall not allow persuading to consumer for participating his network.</li> <li>- Compensation plan shall not focus to recruit members.</li> <li>- Shall not compel to purchase goods.</li> <li>- Shall not charge a member fee, training fee.</li> </ul>	THB500,000 for a partnership and THB 1,000,000 for a limited company	seven days from the date that he receives the goods or services	Must apply for license to carry out selling	<p>Sale and purchase document must be in Thai and include due date, place and method of payment, place and method of delivery of products,</p>	must buy back their goods from the distributors within fifteen days

Country	Law and Regulation	Pyramid Scheme Definition	Paid in Capital Requirement	Cooling off Period	License Requirements	Consumer Protections	Inventory buyback
						contract termination, return method, warranty conditions. Consumer dispute mediation available.	



## Chapter 4

### **Proposal of Legal Measures for the Business of Multi-Level Marketing in Myanmar**

We denoted that the legal problems of Myanmar MLM business are not only mechanism of MLM but also system of MLM. However, Thailand can generally control the mechanism and system of MLM. According to the functional comparative study in Chapter 3, this Chapter will analyze the mechanism requirements and system requirements of MLM business. There are three relationships in the MLM regulation. One is the relationship between government agencies and businessman and consumer. Another is the interaction between business and business. The last one is business to consumer.

Multi-level Marketing Regulation must be reformed to be good balance between consumer rights and affordable multi-level marketing in Myanmar. There are three parts to reform the regulation in our view. One is a progress that is the MLM business and consumer protection processes of improving. Second is a change that is becoming different situation for someone. Finally is totally change that is new treatment is one of the parts of reforming.

So, some legal measure has already enacted in Myanmar but it is generally not sufficient for consumer rights and market mechanism. For example, Myanmar Consumer Protection Commission has a duty to cooperate with international organization for the consumer protection under the existing law but not clear a duty for multi-level marketing. In the new regulation, regulatory body of MLM will have a duty to cooperate with any international organization to work together.

Moreover, some legal measure is new treatment for the business activities of MLM. For example, the measures of cooling-off period, regulatory body, reporting system and registration of MLM business are new treatment for MLM in Myanmar.

The new regulation must have two parts; mechanism and system of multi-level marketing.

#### **4.1 Mechanism of MLM**

Mechanism of MLM is required to organization, duty and power of regulatory bodies, registration requirements, paid in capital, reporting processes, dispute settlement and penalty.

##### **4.1.1 Regulatory Bodies**

Regulatory body is set up with relevant government agencies because there are many functions to control, monitor and review on the business of MLM. The Office of Thailand's Consumer Protection Board (OCPB) is focal agency. The Direct Sale and Direct Marketing Committee is the highest layer to monitor and supervise on the implementation of the Direct Sale and Direct Marketing Act. The OCPB has power to investigate, settle dispute between consumer and MLM businessman. And also the OCPB can coordinate with, inform to relevant government organizations and international organizations under the Direct Sale and Direct Marketing Act and the Consumer Protection Law. Thailand only has separated body for MLM. But Malaysia, Indonesia and Singapore has not separated regulatory bodies. Ministries of Trade in these countries are focal to implement.

Research indicates that there is no direct sale and marketing regulation and enforcing agencies in Myanmar. But the Commission of Consumer Protection and

Department of Consumer Affairs have only the power to implement in relation with consumer affair but not on MLM activities. The Direct Sale and Direct Marketing Committee is established to cooperative with different agencies for the implementation of the Thai Act.

So, in order to cooperative with different ministries and different international organization, Myanmar Committee for multi-level marketing business must establish under the new regulation in Myanmar.

#### **4.1.2 Company is to be Reliable (registration, paid in capital, reporting)**

Generally, unethical business does not intend permanently to set up and trade in the market. Therefore MLM company is necessarily to register, furnish guarantee and submit annual report to the Registrar. The purpose is let people know who owns a MLM business, where the MLM business is operated. MLM company bank account is also important that shows healthy business or not.

MLM product catalogue, compensation plan must be submitted to the registrar. MLM company cannot be revoke within specific years from registration date. When businessman change his company address, he must inform to registrar.

#### **4.1.3 Dispute Settlement**

Another element is provision of dispute settlement for multi-level marketing for Myanmar new regulation. If MLM company do not follow the new regulation of MLM, distributor or consumer must have an opportunity to complain government agency. In Thailand, when the consumer suffers due to the product of MLM, he can complain to the Office of Consumer Protection Board and also the Direct Sale and

Direct Marketing Committee reviews the complaint from the consumer who suffers injure from the undertaking of a MLM business man. Therefore, Consumer can avoid suing at the ordinary jurisdiction court.

Myanmar committee must have a power to review of complain in respect of MLM business.

#### **4.1.4 Penalty**

Any MLM business man violates the provision of the Act, he shall be liable to imprisonment for a term of maximum five years to minimum six months and to a fine. If MLM business man follows and obeys any provision of the existing laws, he will freely do his business.

#### **4.2 System of MLM**

The requirements of system of MLM are the rights and duties of the MLM company, distributor and consumer relationship.

##### **4.2.1 Pyramid Scheme**

Definition is essence of every law. For MLM regulation, definition of pyramid scheme is important because Multi-level marketing activities and pyramid scheme activities are very complex. The compensation payment plan of pyramid scheme is focused on recruiting member but not focused selling product. The fee shall be charged to join the business network by way of high volume of purchasing. There is not return policy between the company and its distributor.

The Thesis may denote that Myanmar encounter the problem of pyramid scheme. The problem is not created by the MLM business. However, MLM business



strategy is very complicate. Sometimes, pyramid scheme is pretended as lawful business. The order of Myanmar Ministry of Commerce, just one page, banned MLM business in Myanmar. There is no any provision of definition of MLM and Pyramid scheme.

#### **4.2.2 Cooling-off Period**

The provision of cooling-off period is for the rights and duties of MLM businessman and consumer. The consumer can return goods and terminate the contract after entering into the contract of purchasing and selling. The cooling-off period can protect right to correct information and right to choice of the consumer. Under the Thailand Direct sale and Direct Marketing Act, Consumer has a right to terminate the contract within seven days from the date that he receives the goods or services. There is no any provision of Cooling-off Period in Myanmar existing law.

#### **4.2.3 Inventory Buyback**

The provision of inventory buyback is for relationship between MLM company and distributor. Moreover, the inventory buyback can protect the illegal pyramid scheme. Although Thailand has the inventory buyback policy in the existing law, Myanmar laws do not have any provision inventory buyback.

#### **4.2.4 Protect to deceptive advertising**

The Thailand Direct Sale and Direct Marketing Act is linked with the Consumer Protection Act. In order to protect deceptive advertising, the offering of

MLM distributor must follow the instructions of the Office of Consumer Protection Board. It is also prevent the illegal pyramid scheme.

The essential elements to do legally on MLM business in Thailand under Thailand the Direct Sale and Direct Marketing Act are definition of pyramid schemed paid in capital requirements, cooling off period, registration and reporting process, inventory buy back and product liability.

In conclusion, Thailand laws can be balance between attracting foreign investment and protection consumer rights. Thailand Office of Consumer Protection Board has power to control and monitor the business activities of MLM. In Myanmar, there is no any provision of instruction to MLM company for buying its product back in specific price. Myanmar Contract Act 1872 is very old. It is not conformity with current situation of Myanmar. MLM company does not have any liability on its distributor performed under the Myanmar laws. Myanmar Consumer protection Agency have not power to control and monitor on the advertising and activities of MLM company.

## Chapter 5

### Conclusion

Multi-level marketing is prohibited in Myanmar in order to protect consumer and unethical business. But businessman and consumer have faced problems on consumer rights and market mechanism. First, Myanmar MLM measure is difficult to understand because it is not clear. Second, MLM business does not have a chance to compete with normal business. Third, this situation cannot create to be more choice and better price for consumer.

As mentioned early, Myanmar does not allow doing the business of MLM under the notification 46/2016 of the Myanmar Ministry of Commerce. The result of study is that the notification 46/2016 is weak. Businessman and consumer have unavoidable problems. This legal measure does not comply with consumer protection, competition for all business including traditional business.

Therefore, multi-level marketing regulation is needed to reform for consumer and also businessman.

There are two concepts in this thesis. One is basic concept that the prohibition of MLM business must move to promote the MLM in Myanmar. Every transaction is doing under the law of the Contract. Traditional marketing business is based on the principle of freedom of contract. Every country accept that the traditional marketing business is legal. On the other hand unethical businessman set up business scheme. he induces his partner and consumer with impossible high income after participating the

business scheme under the principle of freedom of contract. But it is illegal business. We often called that illegal business as pyramid scheme. Multi-level marketing business is exercised under the principle of limitation of freedom of contract. Our selected countries accept that is generally legal business. The thesis studied how to regulate new regulation.

In general, a comparative study of MLM regulations in the selected ASEAN countries, namely, Indonesia, Malaysia and Singapore show that there are six essential provisions on a MLM regulation. Multi-level marketing business activities are legal in these countries. These countries allow doing business of MLM with strictly conditions.

Provision of pyramid scheme definition is important for the MLM regulation because people may misunderstand that features of multi-level marketing are same feature of the pyramid scheme. The misunderstanding stops from the fact that the selected ASEAN countries put the provisions of difference between MLM and pyramid scheme in their laws.

This research also studies the essential provisions on a MLM regulation of selected ASEAN countries namely (1) definition of pyramid scheme; (2) paid in capital requirement (3) license requirement; (4) inventory buyback; (5) consumer protection; (6) cooling-off period (7) regulatory body. The result of the study indicates that every essential provisions base on the limitation of freedom of contract principle. If there are many provisions of limitation of freedom of contract, it will be reduced business and marketing skill of MLM company. On the other hand, if there are narrow provisions of limited freedom of contract, consumer will be suffered by the MLM business and it will also create illegal pyramid scheme.

## 5.1 Possibility Outcome

. There are three parts to reform the regulation in our view according to the studying about this topic; namely enhance, change and totally change.

Multi-level Marketing Regulation must be adopted in Myanmar. If there is specified regulation of MLM business in Myanmar, MLM business will be affordable and safe, balance between attraction FDI and consumer protection, competitive situation with normal business.

Enhance (A – A <sup>+</sup> )	Change (A – B)	Totally Change (A – 1)
<ul style="list-style-type: none"> <li>• Regulatory Body</li> <li>• Consumer Rights</li> <li>• Limitation of Freedom of Contract Concept</li> <li>• Market Mechanize</li> </ul>	<ul style="list-style-type: none"> <li>• Allow to do the business of MLM,</li> <li>• MLM is not same pyramid scheme business;</li> </ul>	<ul style="list-style-type: none"> <li>• Registration MLM</li> <li>• Paid in capital</li> <li>• Reporting system</li> <li>• Cooling-off period</li> <li>• Inventory buyback</li> </ul>

Table 8 Elaborate reforming of new regulation

### 5.1.1 Policy Reform

As the result of the studying, Multi-level marketing is not allowed to do business in Myanmar because of misunderstanding that the activities of MLM business are same the activities of pyramid scheme. But these two activities are absolutely different. The business activities of MLM shall be allowed in Myanmar. Policy reform is first priority to reform new regulation.

### 5.1.2 Legal Reform

According to the comparative study, Thailand model is appropriated to reform regulation of MLM for Myanmar situation because there are a lot of reasons for choosing Thailand model among other selected ASEAN countries. Thailand has

experienced on this topic. Thailand enacted recently new Act governing Direct Sale and Direct Marketing BE.2560 to amend the old law. The Direct Sale and Direct Market Committee is set up by the law. Every relevant government agencies and private sectors can cooperate to implement and control completely this business.

Ministry of Commerce issued prohibiting order relating to Multi-level Marketing business through MLM. If an independent contractor sells any product through MLM in Myanmar, he will be punished with imprisonment for a term exceeding three years.

Consumer cannot sue to Managing Director of MLM company because he do not buy the product from MD of MLM company. He buys from distributor. So he must sue to the distributor.

So, the prohibited order on MLM business must be overruled by the proposed new regulation. The provision of jointly liability for suffering consumer must be included by the new regulation in order to improve consumer rights.

### **5.1.3 Governing Body Reform**

After policy reform and legal reform, Body reform is important to enforce the new regulation. There are three kinds of license to do business of MLM; company license, MLM business and product license. These three licenses are issued by different government agencies. In respect of inspection, arrest and monitoring, different agencies have responsible to implement the new regulation. Therefore a governing body is set up by the new regulation of MLM.

## **5.2 Recommendations**

The following recommendations are only suggestion about the best tings to implement MLM business.

### **5.2.1 Policy**

When the important policy is laid down, government agencies and private sectors need to discuss about this policy in several times. Knowledge sharing of consumer right education and competition market mechanism is important to do among government agencies and also private sectors.

### **5.2.2 Legal**

The thesis is only focused to regulate MLM business because the legal problem is involved in Myanmar. It is not for other single level marketing and e commerce transaction. It is proposed that the new regulation is to be good balance between consumer rights and market mechanism. But new regulation may not be burden for businessman and government agencies.

### **5.2.3 Enforcement**

Controlling and monitoring mechanism are very useful for the enforcement of my proposal legal measures. At the 19<sup>th</sup> century, the civil court controlled all business transactions. It was sufficient at that time. Nowadays, government also necessarily intervened on the business with the controlling and monitoring. Conditions of contract, registration are the controlling mechanism and reporting system is the monitoring on that business. Registrar must designate the standards form of report and time periods. Where the place of the company is moved, or its payment plan is restructured, the company must inform to the Registrar.

The New regulation should be composed with these following recommendations,

- (1) Definitions the characteristics of Multi-level marketing and illegal pyramid scheme;
- (2) Providing a guarantee at a specific rate to the Registrar of MLM business.
- (3) Prescribe the procedures of license requirement;
- (4) Submitting annual report from MLM business to the Registrar;
- (5) Submitting annually their financial revenue, compensation payment plan, marketing promotion arrangement, paid income tax to the Registrar;
- (6) Delivering selling and purchasing document to the consumer;
- (7) Having competent official for investigation power, searching power and collecting power on any documents or goods or services and residence;
- (8) Prescribing inventory buyback and cooling-off period;
- (9) Setting up regulatory body which has relevant government agencies to implement and monitor the business activities of MLM.



**APPENDIX 1**

(CONVENIENCE TRASLATION)

**The Government of the Republic of the Myanmar****Ministry of Commerce****Minister's Office****Notification 46/2018****9th Waxing day of tawdalinn, 1380****(18th, September 2018)**

Ministry of Commerce hereby issues this notification according to the authority given by notification no 94/2018 of The Government of the Republic of the Union of Myanmar.

**Prohibit the Business of Multi-level marketing**

1. The Ministry of Commerce prescribes that business of Multi-Level Marketing is an essential service under the section 4 subsection (c) of the Essential Goods and Services Law 2012.
2. The business of MLM will be prohibited on the date of issued notification of the Ministry of Commerce.
3. Legal action will be taken against the business of Multi-level marketing found to be in operation under section 5 of the Essential Goods and Services Law 2012.

(Singed) Dr.Than Myint

Union Minister

Ministry of Commerce

## APPENDIX 2

## Legal Framework on Consumer Protection in AMS

AMS	General Consumer Protection Law	Product Safety and Liability	Weights, Measures & Standards	Unfair Commercial Practices	Unfair Contract Terms	Misleading Advertisement	Direct Selling/Pyramid Marketing	E-Commerce	Redress
<b>Brunei Darussalam</b>	Consumer Protection (Fair Trading) Order, 2011 (CPFTO)	No standalone legislation	Weights and Measures Act, 1983	The CPFTO listed 20 specific practices under its Second Schedule	Brunei Unfair Contract Terms Act, 1999	Covered under the CPFTO	Not regulated	Electronic Transactions Act 2001 (amended in 2008).	Complaints under the CPFTO could be filed with the Competition and Consumer Affairs Department (CCAD) or the Small Claims Tribunal
<b>Cambodia</b>	In drafting stage	Law on the Management of Quality and Safety of Products, 2000	Law on Standards, 2007	Not regulated	Not regulated	The LMQSP prohibits all forms of commercial advertising if they are deceitful,	Not regulated	Not regulated	Currently, consumers in Cambodia can only take legal action for tort or other actions



AMS	General Consumer Protection Law	Product Safety and Liability	Weights, Measures & Standards	Unfair Commercial Practices	Unfair Contract Terms	Misleading Advertisement	Direct Selling/ Pyramid Marketing	E-Commerce	Redress
<b>Lao PDR</b>	Law on Consumer Protection, 2010	Law on Food 2013, Law on Drugs and Medical Products 2011 Some general aspects covered by the Law on Consumer Protection 2010	Law on Standards 2014	Not regulated	Not regulated	Covered under the Law on Consumer Protection 2010	Not regulated	Electronic Transactions Law, 2013, Law on Cyber Crimes, 2015	Konsumen) Four (04) methods for settling disputes between consumers and suppliers: reconciliation (or direct negotiation), mediation, through administrative procedures conducted by the State organizations for consumer protection, and through court proceedings

AMS	General Consumer Protection Law	Product Safety and Liability	Weights, Measures & Standards	Unfair Commercial Practices	Unfair Contract Terms	Misleading Advertisement	Direct Selling/ Pyramid Marketing	E-Commerce	Redress
Malaysia	Consumer Protection Act (CPA) 1999	Covered under the CPA 1999 Food Act 1983, Food Regulations 1985	Covered under the CPA 1999	Covered under the CPA 1999	Covered under the CPA 1999	Covered under the CPA 1999	Direct Sales and Anti Pyramid Act 1993	Electronic Commerce Act 2006, Personal Data Protection Act 2009	Consumer complaints and claims could be addressed through the Tribunal for Consumer Claims (TCC), the Consumer Complaint Management Centre (CCMC) of the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC), or the National Consumers Complaints

AMS	General Consumer Protection Law	Product Safety and Liability	Weights, Measures & Standards	Unfair Commercial Practices	Unfair Contract Terms	Misleading Advertisement	Direct Selling/Pyramid Marketing	E-Commerce	Redress
<b>Myanmar</b>	Consumer Protection Law 2019 of the Union of Myanmar	Partly covered under the Consumer Protection Law 2019 National Food Law 1997 National Drug Law 1992	Law on Standardizati on 2014	Partly covered under the Consumer Protection Law 2019	Not regulated	Partly covered under the Consumer Protection Law 2019	Not regulated	Electronic Transaction Law 2004	Centre (NCCC). Consumers could lodge their complaints with the relevant Consumer Dispute Settlement Bodies or send their complaints to the Consumer Information and Complaint Center.
<b>Philippines</b>	Consumer Act, 1992 (Republic Act No. 7394)	Covered under RA 7394	Covered under RA 7394	Covered under RA 7394	Covered under RA 7394	Covered under RA 7394	Covered under RA 7394	E-Commerce Law of 2000	Under RA 7394, consumers can seek redress by filing a letter of complaint of complaint



AMS	General Consumer Protection Law	Product Safety and Liability	Weights, Measures & Standards	Unfair Commercial Practices	Unfair Contract Terms	Misleading Advertisement	Direct Selling/ Pyramid Marketing	E-Commerce	Redress
<b>Thailand</b>	Consumer Protection Act 1979 (CPA)	& Safety Requirement s) Act 1975 & its Regulations Consumer Protection (Consumer Goods Safety Requirement s - CGSR) Regulations 2011 Product Liability Act 2008 Drug Act 1967 Food Act 1979	Measurement Act 1999	Covered under the CPA 1979	Covered under the CPA 1979 and the Unfair Contract Term Act 1997	Covered under the CPA 1979	Direct Sales and Direct Marketing Act 2002	Electronic Transaction Act 2008,	In addition to submitting complaints to the OCPB, consumers in Thailand now could also file a “consumer case” in the Court of Justice, which performs as a



AMS												
	General Consumer Protection Law											
	Product Safety and Liability											
	Weights, Measures & Standards											
	Unfair Commercial Practices											
	Unfair Contract Terms											
	Misleading Advertisement											
	Direct Selling/Pyramid Marketing											
	E-Commerce											
	Redress											“Consumer Court”, in accordance with the Consumer Case Procedure Act of 2008



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The Direct Sale and Direct Marketing Act B.E 2545 (Thailand)

The Consumer Protection Act B.E 2522 (Thailand)

The Product Liability Act B.E 2551 (Thailand)



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