

For discussion on  
22 July 2011

## **Bills Committee on Pyramid Schemes Prohibition Bill**

### **Administration's Responses to Issues raised at the Meeting held on 24 June 2011**

#### **Purpose**

This paper informs Members of the Administration's responses to issues raised by the Bills Committee at its meeting held on 24 June 2011.

#### **The Administration's Responses**

*(a) Please provide pointers with illustrations for differentiating pyramid schemes as defined in the Bill from legitimate multi-level marketing schemes. Please also advise from which source members of the public might ascertain whether a scheme would be considered a pyramid scheme or not*

2. Multi-level marketing schemes usually refer to schemes that adopt a multi-level structure comprising networks of distributors or agents who make money by selling the schemes' goods or services, often in a face-to-face setting. Depending on the exact design of the scheme, distributors or agents may also earn a commission on goods or services sold by distributors or agents that they themselves have previously introduced to the scheme, aside from making money through the sale of goods or services by themselves. In other words, multi-level marketing is but an operation structure or mode in doing genuine businesses. In practice, many legitimate multi-level marketing schemes do not require a large upfront payment from new participants, and will encourage participants to acquire goods or services for onward distribution only when buyers are available. Very often, the goods or services are priced reasonably, and to consolidate buyers' confidence, money-back guarantees or arrangements for returning unsold goods or services are

provided.

3. On the other hand, pyramid schemes are schemes in which no or little (see paragraph 4 below) genuine businesses or economic activities exist. The entire operation is designed to make money by recruiting people, rather than by selling legitimate products or providing a service. Income comes from the participation fees that the new participants are required to pay. The participation fees that these new participants pay give them the “right” to recruit further new participants and receive income. Participants who joined the scheme earlier or who are higher in the layer of participants may receive income not only for recruiting new participants by themselves, but also for the recruitment of further new participants by the new participants whom they themselves have recruited before. In other words, participants earn money by having a share of the participation fees paid by new participants. Hence, the greater the number of participants or the number of layers of new participants that participants can recruit, the greater the income they may receive. Simply put, the only way for a participant to recover his participation fee and make money is to convince other people to join and to part with their money as well. These schemes are designed for a continuous recruitment of new participants to maintain a constant flow of income. There may come a point where the participation fees paid by new participants will not be sufficient to cover the expected returns for the existing participants (e.g. many participants not able to recruit a “sufficient” number of new participants to recoup their initial participation fees) whereupon the scheme will collapse.

4. Where pyramid schemes do have businesses or economic activities like the sale of goods or service, these activities are no more than a disguise. That is, the participation fees that new participants are required to pay is disguised as a payment for purchasing goods or services. In these cases, the goods or services are extremely over-priced.

5. Anchoring on the above defining features, we propose to define a “pyramid scheme” under clause 3 of the Pyramid Schemes Prohibition Bill (“the Bill”) as a scheme with **all** of the following three characteristics:

- (a) to participate in the scheme, a new participant must provide a participation payment. A participation payment is a financial or a non-financial benefit at least part of which is provided to another participant or a promoter, or for the benefit of another participant or a promoter;
- (b) in making the participation payment, the new participant is entirely or substantially induced by the prospect held out to him that he will be entitled to a recruitment payment. A recruitment payment is a financial or a non-financial benefit at least part of which is provided to the new participant or for his benefit; **and**
- (c) the recruitment payment is entirely or substantially derived from the introduction to the scheme of a further new participant.

6. Clause 4 of the Bill provides pointers for the court to determine if a scheme involving the sale of goods or services is a pyramid scheme. Specifically, in determining whether the payment new participants pay is induced by the prospect held out to them that they will be entitled to a recruitment payment, the court will consider whether the payment bears a reasonable relationship to the value of the goods or services in question, having regard to the price of comparable goods or services if available elsewhere in the market. The court will also consider the emphasis given in the promotion of the scheme, *viz.* whether it is about the entitlement of new participants to the supply of goods or services or whether it is their entitlement to a recruitment payment. The court may also consider other matters it deems relevant.

7. We attach at Annex A a note setting out illustrative examples of what may or may not amount to a pyramid scheme as defined in the Bill.

8. Members of the public should exercise extra caution when they are told that they can make easy and big money by recruiting new members into a plan, a scheme or a club. While independent legal

advice may need to be sought as to the propriety of any schemes or enterprises, there are signs or tactics that members of the public could watch out for:

- prospective participants are asked to pay a **substantial sum of money upfront** for participating, but there is **no apparent benefit except for the chance of making money by recruiting new participants**. *We should ask ourselves what we are asked to pay for.*
- the emphasis is on **making big and easy money simply by recruiting new participants to similarly pay up**. It is also often stressed that no working experience, qualification etc are required. *The question is, is it too good to be true?*
- the payment upfront may be described as a payment for acquiring goods or services for personal consumption or onward distribution, or a payment for training or personal enrichment, but little attention is drawn to or emphasis placed on the nature and quality of such products/services etc. *In these cases, prospective participants should check how much similar goods or services or training sessions are charged in the market.*
- there may be **high-pressure meetings or seminars**, where **testimonials** about the huge sum of money made by recruiting new members are often made. *One should avoid to be tempted to rush into a decision and hand over money at these settings.*

9. The Police is at present responsible for the enforcement of the Pyramid Selling Prohibition Ordinance (Cap. 355) (“the Ordinance”). It will be responsible for the enforcement of the Bill if enacted. The Police is committed to eliminating pyramid schemes and other types of fraudulent, criminal activities. Members of the public should report to the Police any suspected pyramid schemes. In parallel, the Government and the Consumer Council have been promoting public awareness of such pyramid schemes. A copy of an article in the CHOICE magazine issued

by the Consumer Council recently is at Annex B. We will step up at public education efforts. Although not in a position to provide specific advice on whether certain schemes or plans are pyramid schemes or not, the Consumer Council will continue to provide general advice to interested members of the public.

(b) *Please provide a copy of the Code of Conduct issued by the Direct Selling Association of Hong Kong*

10. A copy of the Code of Conduct (downloaded from the Association's website<sup>1</sup>) is at Annex C. Relevant extract of the Frequently Asked Questions published by the Association on its website is at Annex D.

(c) *Please provide information about the situation in Macao in respect of the elimination of pyramid schemes*

11. We understand that in May 2008, legislative amendments aimed at tackling pyramid selling activities were enacted in Macao. Under Article 45A of Macao's *em piramide*, pyramid selling is defined in the following manner:

- (a) pyramid selling means the activity of transacting goods or services which is conducted in or facilitated by the form of networks or the like; and
- (b) whether participants in the activity can obtain benefits depends mainly on the number of new participants whom they recruit into the activity rather than the volume of goods or services genuinely sold by themselves or by new participants whom they recruit. Alternatively, on or after joining the activity, participants are required to purchase a specified volume of goods or services at a price which is manifestly above the normal market price or in the absence of any fair arrangements for returning unsold goods or services.

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<sup>1</sup> [www.hkdsa.org.hk](http://www.hkdsa.org.hk)

12. While we are not in a position to comment on the law enforcement situation elsewhere, we note that the definition of “pyramid selling” under the laws of Macao is similar to the definition in our present Cap. 355, in that an element of sale of goods or services is incorporated. As explained in paragraphs 13 to 14 below, the requirement of an element of sale of goods or services in our current law makes it difficult for us to tackle variants of pyramid schemes not involving this element.

*(d) Please provide details on past cases in which defendants charged with the offence of promoting pyramid selling schemes were acquitted due to insufficient evidence and/or difficulties in establishing constituent elements of pyramid selling schemes*

13. The Ordinance currently prohibits pyramid selling schemes. Section 2 of the Ordinance defines pyramid selling schemes as follows:

“pyramid selling scheme” means a scheme whereby -

- (a) a participant in the scheme is granted a licence or right to introduce another participant into the scheme who is also granted such licence or right and who may further extend the chain of persons who are granted such licence or right, notwithstanding that there may be a limitation to the number of participants or that there may be any further conditions affecting eligibility for such licence or right; and
- (b) a participant receives a reward on, or at any time after, the introduction into the scheme by him of another participant which reward is based, whether wholly or in part, otherwise than on the fair market value of **goods or services actually sold by him or by or through that other participant** (emphasis added).

14. The efficacy of the Ordinance in tackling objectionable schemes adopting a pyramid structure was called into question in two cases before the Court of Appeal. In 2003 and 2004, when hearing appeals in two cases involving alleged pyramid selling schemes (CACC 96/2003 and CACC 55/2004), the Court of Appeal quashed the

convictions of conspiracy to promote a pyramid scheme. In the judgments, the Court of Appeal raised the following problems in relation to the definition of “pyramid selling scheme” in the Ordinance:

- (a) paragraph (b) of the definition of “pyramid selling scheme” under section 2 of the Ordinance implies that the operation of a pyramid selling scheme **must** involve the selling of goods or services, and a reward for the selling of goods which means that schemes not involving the sale of goods or services would fall outside the scope of the Ordinance; and
- (b) paragraph (b) is also taken to imply that that a pyramid selling scheme must involve the sale of goods and services **by participants**. This means that schemes under which goods or services are not sold by participants (for example, sold by the company directly to new participants) would fall outside the scope of the Ordinance.

15. We have had full regard to the judgments in drafting the provisions of the Bill. We believe that the Bill will be able to tackle cases similar to examples 1 and 2 in Annex A which fall outside the regulatory reach of the current Ordinance.

### **Advice Sought**

16. Members are invited to note the contents of this paper.

Commerce, Industry and Tourism Branch  
Commerce and Economic Development Bureau  
July 2011

## **Bills Committee on Pyramid Schemes Prohibition Bill**

### **Illustrative Examples of Pyramid Schemes as defined under the Pyramid Schemes Prohibition Bill**

At the meeting of the Bills Committee held on 24 June 2011, Members asked for illustrative examples of what may amount to a pyramid scheme as defined under the Bill. All being fictitious, they are now set out below.

2. Members may wish to note that it is ultimately for the court to determine, in the light of the facts of individual cases, whether a scheme is a pyramid scheme as defined under the Bill if enacted.

#### **Example 1: a Scheme without any marketing activities**

##### **The case**

- A scheme known as the Cycling Scheme is established by Cycling Rich Ltd\*.
- Person E introduces Person F into the Scheme and provides Person F with a card with five numbered names (the original card).
  1. Person A
  2. Person B
  3. Person C
  4. Person D
  5. Person E
- Person F pays a total of \$6,000 for joining the Scheme: \$2,000 each to Cycling Rich Ltd, Person A (numbered 1 on the card, via Cycling Rich Ltd) and Person E (numbered 5 on the card).
- In return, Cycling Rich Ltd gives Person F via Person E three “cycling cards” for the recruitment of further participants into the Scheme. The

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\* Fictitious



names that appeared on the original card have all been moved up by one tier, with Person A's name (numbered 1 on the original card) removed and Person F's name added as number 5. The numbered names on Person F's three cards are thus as follows:

1. Person B
2. Person C
3. Person D
4. Person E
5. Person F

- For each person whom Person F further recruits, the same process kicks in.

### **The analysis**

- The payment of \$6,000 is a "participation payment" (clause 3(1)(a)).
- A prospect is held out to Person F that he will be entitled to the following payments:
  - ✓ \$6,000 (\$2,000 each from the three new participants whom Person F may successfully introduce to the Scheme); and
  - ✓ \$486,000 on Person F's name reaching the number 1 position (by the chain of further introduction of new participants by the three participants whom Person F has introduced)<sup>1</sup>
- The payment receivable by Person F is a "recruitment payment" (clause 3(1)(b)(i)) derived entirely from the introduction to the Scheme of further new participants (clause 3(1)(c)).
- The Cycling Scheme is a pyramid scheme as defined if as indicated by these facts it is accepted by the court that the making of the participation payment is substantially (if not entirely) induced by the prospect held out to new participants that they will be entitled to the recruitment payment (clause 3(1)(b)) which is substantially (if not entirely) derived from the introduction to the Scheme of further new participants (clause 3(1)(c)).

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<sup>1</sup> If each participant successfully introduces three further new participants, Person F is entitled to receive \$2,000 each from 243 participants when he reaches the number 1 position.

## **Example 2: A Scheme with marketing of goods and services**

### **The case**

- A company Bright Career Ltd\* establishes a scheme called Practical Putonghua Practice for Employment in the Mainland (“PPP”) and places advertisements in a number of local newspapers promoting the PPP. The advertisements state that parties interested in improving their Putonghua skills for enhancing their employability in the Mainland may join a free introductory talk for further details on the PPP.
- Attracted by the advertisements, Person G attends the introductory talk. During the talk, a manager of Bright Career Ltd tells Person G and other attendees that the PPP consists of two three-hour seminars and that a free pinyin book will be provided to each participant. To participate in the PPP, each person has to pay a tuition fee of \$3,000 to Bright Career Ltd.
- Without further explaining the contents of the PPP, the manager emphasizes that to help expand the PPP such that more persons can benefit from “building the PPP community”, each participant (“a Tier 1 participant”) is entitled to introduce four participants (“Tier 2 participants”) into the PPP, and for each Tier 2 participant introduced, entitled to an “incentive bonus” of \$500. Each of the Tier 2 participants, likewise, is entitled to recruit four new participants (“Tier 3 participants”). The Tier 1 participant who introduced the four Tier 2 participants will receive a “promotional bonus” of \$200 for each of the Tier 3 participants introduced by the Tier 2 participants. Each of the Tier 3 participants is entitled to recruit four more (“Tier 4 participants”), and the Tier 1 participant will receive an “elevation bonus” of \$100 for each of the Tier 4 participants so introduced. The Tier 1 participant is entitled to have two more Tiers introduced, and a “up-level bonus” of \$50 for each Tier 5 participant and a “graduation bonus” of \$20 for each Tier 6 participant. The manager emphasizes that if he successfully establishes such a full PPP community, the Tier 1 participant will receive a total bonus of \$44,880. Each attendee is given a 15-page “course brochure”, in which 8 pages are devoted to explaining the benefits (the various types of bonuses) derivable

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\* Fictitious

from “building the PPP community”, and four pages to “success stories” in which testimonials about money made from introducing new participants are stated.

### **The analysis**

- The payment of \$3,000 is a participation payment (clause 3(1)(a)). It is also a payment for a service and a piece of goods (the two three-hour seminars and the pinyin book).
- The tuition fee of a three-hour workshop on training in Putonghua interview skills in the form of a small group, offered by the continuing education departments by several local universities, is around \$500. A basic introductory text in Putonghua pinyin is about \$100.
- The PPP involves the marketing of goods and services. Clause 4 states the matters to be considered by the court in the determination of whether a scheme involves the marketing of goods or services (or both) is a pyramid scheme.
  - ✓ The participation payment of \$3,000 does not bear a reasonable relationship to the value of the goods and services provided by Bright Career Ltd under the PPP, having regard to the price of a three-hour workshop offered by the local universities and the price of an introductory textbook (clause 4(1)(a)).
  - ✓ The introductory talk and the contents of the “course brochure” being forms of promotion place the emphasis on the entitlement of new participants to the various types of bonuses in “building the PPP community”, rather than the contents of the PPP training (clause 4(1)(b)).
- The PPP is a pyramid scheme if as indicated by these facts, it is accepted by the court that the participation payment is substantially (if not entirely) induced by the prospect held out to a new participant of entitlement to the bonuses which are “recruitment payments” (clause 3(1)(b)) derived substantially (if not entirely) from the introduction of further new participants (clause 3(1)(c)).

### Example 3: A scheme with marketing of goods

#### The case

- A scheme called Network Power Club\* is established by Network Marketing Ltd.
- Each new participant in the Club is required to pay \$300 to Network Marketing Ltd.
- Wishing to earn additional income outside normal office hours, Person H pays \$300 (a “participation payment”, clause 3(1)(a)) to join the Club.
- As a participant, Person H is entitled to a commission on household products that are sold directly by him, calculated at 20% of the retail prices prescribed by Network Marketing Ltd. Person H is also encouraged to expand his direct marketing network. He is tasked to train the Club members he introduces on marketing skills, brief them on the characteristics of the products for sale, and conduct market niche researches with his Club members. Person H is rewarded with bonuses the amount of which is related to the quarterly sales volume of the whole network that he builds and calculated in accordance with a sliding scale as follows:

<b>Sales volume reaching</b>	<b>Bonus (% of sales volume)</b>
\$120,000	18%
\$90,000	15%
\$60,000	12%
\$40,000	8%
\$20,000	5%

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\* Fictitious

➤ To illustrate:

- ✓ In Quarter 1, Person H sold products at \$3,000 directly to his friends and family members. He received \$600 (20% x \$3,000). In the quarter, he also recruited three new participants (Person I, Person J and Person K).
- ✓ In Quarter 5, Person H received \$1,200 for products he sold at \$6,000 (20% x \$6,000). Person I sold products at \$10,000 and received \$2,000. Person J did less successfully, selling products at \$5,000 and receiving \$1,000. Person K was a weak communicator and could not sell any products after joining. He dropped out in Q5. As the total sales volume (by himself and Persons J and K) reached \$21,000 (\$6,000+\$10,000+\$5,000), Person H received a bonus of \$1,050 (\$21,000 x 5%).

**The analysis**

- The products offered for sale by Network Marketing Ltd are not manifestly above normal market prices. The emphasis given in the promotional materials and activities is to the supply of goods rather than the entitlement to recruitment payments (clause 4(1)).
- The Network Market Club cannot be held to be a pyramid scheme unless the facts are altered in such a way to allow the court to be satisfied beyond reasonable doubt that the making of the participation payment is entirely or substantially induced by the prospect of receiving payments which are entirely or substantially derived from the introduction of new participants.

# 政府檢討層壓式推銷法例 諮詢公眾

政府剛剛公布取締層壓式計劃的條例建議，消委會歡迎政府發表文件，就如何加強打擊層壓式計劃，諮詢公眾意見。

層壓式計劃有別於一般直銷經營模式，參與者必須支付一筆參與費，才有權介紹其他新參與者；當中，報酬並非透過銷售貨品或服務賺取，主要誘因是通過招攬新參與者成為其「下線」會員，從而賺取金錢。由於層壓式計劃單靠招攬新會員取利，當最終無以為繼，而新參與者在無法再招募其他人加入時，便會蒙受金錢損失。

合法的傳銷方式是透過入會作為購買產品的途徑，然後由會員向外推銷產品和介紹他人入會，會員通過銷售產品獲利，但銷售者應是收入最高的一位，上線會員只會獲得銷售者總營業額某個百分比的酬金。非法的層壓式活動則以招收會員賺取報酬，最上層者獲益最多，這種「拉人頭、搵快錢」的手法，常標榜可不勞而獲、高回報等。

產品以人傳人的方式銷售，不經代理商經銷，本來是親切周到的個人服務；不過，非法之徒透過「層壓」方式，以「拉人頭」賺取佣金，標榜高回報，可於短時間內賺快錢，藉此招攬會員。香港早在1980年已立法禁止層壓式推銷，然而，隨着時代的演變，不良的層壓式推銷模式也不斷轉變，有需要修訂法例，以提供有效及適切的規管。事實上，一些懷疑涉及層壓式推銷計劃的個案，可能因為原有條例的釋義，令證據不足而需終止調查或放棄提出起訴。根據資料，警方自2007年至今年9月期間，共接獲10宗相關投訴，均因為證據不足，未有提出起訴。

歐盟的《不公平商業手法指令》已把層壓式推銷手法列入黑名單，是歐盟各國禁止採用的商業手法。另外，以澳洲為例，《澳洲消費者法》擴大層壓式推銷計劃的定義，令不涉及銷售貨品或服務的計劃也涵蓋在法例內，又訂明參與該等計劃屬刑事罪行。政府參考了海外的規管制度，提出條例建議，明確釐定「層壓式計劃」的定義，本會有信心會有助打擊這類以「拉人頭」形式運作的「銷售」計劃。

## 消費者自保術

消費者應小心認清層壓式推銷計劃的招攬伎倆：

- 游說你成立公司，再加入成為會員，從事高風險銷售活動；
- 強調吸納新會員可賺取可觀佣金；
- 收取高昂入會費；
- 入職不要求經驗、學歷，但要先行「貼錢」買貨；
- 游說你以信用卡或借貸方式購買大量貨品。

當有人邀請你付出巨額金錢加入傳銷或投資計劃，以取得「拉人頭、搵快錢」的機會時，你應份外小心！



封面人物：敖嘉年

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## GENERAL

### Preface

This Code contains guidance on the interaction between:

1. DSA member Companies and their existing and prospective sales representatives;
2. DSA member Companies and their sales representatives and Consumers of the Company's Products;
3. Member Companies as they compete in the marketplace; and
4. Individual Complainants, the DSA Code Administrator, and DSA member Companies.

#### 1.1 Scope

The Code contains sections entitled "Conduct For the Protection of Consumers", "Conduct Between Companies and Direct Sellers", and "Conduct Between Companies." These three sections address the varying interactions across the spectrum of direct sales. The Code is designed to assist in the satisfaction and protection of Consumers, promote fair competition within the framework of free enterprise and enhance the public image of Direct Selling.

#### 1.2 Glossary of Terms

For the purposes of the Code, capitalized terms have the following meaning:

##### **Code Administrator:**

The independent person or body appointed by DSA to monitor a Company's compliance with the Code and to resolve complains under the Code.

##### **Company:**

A business entity that (i) utilizes a Direct Selling distribution system to Markey its Products, and (ii) is a member of DSA.

##### **Consumer:**

Any person who purchases and consumes Products from a Direct Seller or a Company.

##### **Direct Seller:**

A person or entity that is entitled to buy and/or sell the Products of a Company and that may be entitled to recruit other Direct Sellers. Direct Sellers generally market consumer products directly to Consumers away from a permanent, fixed retail location, usually through the explanation or demonstration of products and services.

A Direct Seller may be an independent commercial agent, independent contractor, independent dealer or distributor, employed or self-employed representative, or any other similar sales representative of a Company.

**Order Form:**

A printed or written document confirming details of a Consumer order and providing a sales receipt to the Consumer. In the case of Internet purchases, a form containing all terms of the offer and purchase provided in a printable or downloadable format.

**Product:**

Tangible and intangible consumer goods and services.

**Recruiting:**

Any activity conducted for the purpose of assisting a person to become a Direct Seller.

**1.3 Companies**

Companies pledge to adopt and enforce a code of conduct that incorporates the substance of the provisions of this Code as a condition of admission and continuing membership in the DSA. Companies also pledge to publicize this Code, its general terms as they apply to Consumers and Direct Sellers, and information about where Consumers and Direct Sellers may obtain a copy of this Code.

**1.4 Direct Sellers**

Direct Sellers are not bound directly by this Code, but, as a condition of membership in the Company's distribution system, shall be required by the Company with whom they are affiliated to adhere to rules of conduct meeting the standards of this Code.

**1.5 Self-Regulation**

This Code is not law, but its obligations require a level of ethical behavior from Companies and Direct Sellers which conforms with or exceeds applicable legal requirements. Non-observance of this Code does not create any civil law responsibility or liability. With termination of its membership in DSA, a Company is no longer bound by this Code. However, the provisions of this Code remain applicable to events or transactions that occurred during the time a Company was a member of DSA.

**1.6 Local Regulations**

Companies and Direct Sellers must comply with all requirements of law in any country in which they do business. Therefore, this Code does not restate all legal obligations; compliance by Companies and Direct Sellers with laws that pertain to Direct Selling is a condition of acceptance by or continuing membership in DSA.



### **1.7 Extraterritorial Effect**

Every national DSA pledges that it will require each member as a condition to admission and continuing membership in the DSA to comply with the WFDSA World Codes of Conduct for Direct Selling with regard to direct selling activities outside of its home country, unless those activities are under the jurisdiction of Codes of Conduct of another country's DSA to which the member also belongs.



[\[General\]](#) [\[Conduct Towards Consumers\]](#) [\[Conduct Towards Direct Sellers\]](#) [\[Conduct Between Companies\]](#) [\[Code Enforcement\]](#)

## CONDUCT FOR THE PROTECTION OF CONSUMERS

### **2.1 Prohibited Practices**

Direct Sellers shall not use misleading, deceptive or unfair sales practices.

### **2.2 Identification**

At the initiation of a sales presentation, Direct Sellers shall, without request, truthfully and clearly identify themselves; the identity of their Company; the nature of their Products; and the purpose of their solicitation to the prospective Consumer.

### **2.3 Explanation and Demonstration**

Direct Sellers shall offer Consumers accurate and complete Product explanations and demonstrations regarding price and, if applicable, credit terms, terms of payment, a cooling-off period, including return policies; terms of guarantee; after-sales service; and delivery dates. Direct Sellers shall give accurate and understandable answers to all questions from Consumers. To the extent claims are made with respect to product efficacy, Direct Sellers shall make only those verbal or written product claims that are authorized by the Company.

### **2.4 Order Form**

A written Order Form shall be delivered or made available to the Consumer at or prior to the time of the initial sale. In the case of a sale made via mail, telephone, the Internet, or similar non face-to-face means, a copy of the Order Form shall have been previously provided, or shall be included in the initial order, or shall be provided in printable or downloadable form via the Internet. The Order Form shall identify the Company and the Direct Seller and contain the full name, permanent address and telephone number of the Company or the Direct Seller, and all material terms of the sale. Terms of a guarantee or a warranty; details and limitation of after-sales service; the name and address of the guarantor; the duration of the guarantee; and the remedial action available to the Consumer shall be set out clearly in the Order Form or other accompanying literature provided with the Product. All terms shall be clear and legible.

### **2.5 Literature**

Promotional literature, advertisements and mailings shall not contain Product descriptions, claims, photos or illustrations that are deceptive or misleading. Promotional literature shall contain the

name and address or telephone number of the Company and may include the telephone number of the Direct Seller.

## **2.6 Testimonials**

Companies and Direct Sellers shall not use any testimonial or endorsement that is unauthorized untrue, obsolete or otherwise inapplicable, unrelated to the offer or used in any way likely to mislead the Consumer.

## **2.7 Comparison and Denigration**

Companies and Direct Sellers shall not use comparisons which are misleading. Points of comparison shall be based on facts which can be substantiated. Companies and Direct Sellers shall not unfairly denigrate any Company, business or Product, directly or implication. Companies and Direct Sellers shall not take unfair advantage of the goodwill attached to the trade name and symbol of another Company, business or Product.

## **2.8 Cooling-off and Return of Goods**

Whether or not it is a legal requirement, Companies and Direct Sellers shall offer a cooling-off period permitting the customer to withdraw from the order within a minimum of seven (7) days. Companies and Direct Sellers offering a right of return, whether conditioned upon certain events or whether unconditioned, shall provide it in writing.

## **2.9 Respect of Privacy**

Direct Sellers shall make personal or telephone contact with Consumers only in a reasonable manner and during reasonable hours to avoid intrusiveness. A Direct Seller shall discontinue a demonstration or sales presentation immediately upon the request of the Consumer. Direct Sellers and Companies shall take appropriate steps to ensure the protection of all private information provided by a Consumer, a potential Consumer, or a Direct Seller.

## **2.10 Fairness**

Direct Sellers shall respect the lack of commercial experience of Consumers. Direct Sellers shall not abuse the trust of individual consumers, or exploit a Consumer's age, illness, lack of understanding or unfamiliarity with a language.

## **2.11 Referral Selling**

Companies and Direct Sellers shall not induce a person to purchase goods or services based upon the representation that a Consumer can reduce or recover the purchase price by referring prospective customers to the Direct Sellers for similar purchases, if such reductions or recovery are contingent upon some uncertain, future event.



[\[General\]](#) [\[Conduct Towards Consumers\]](#) [\[Conduct Towards Direct Sellers\]](#) [\[Conduct  
Between Companies\]](#) [\[Code Enforcement\]](#)

## CONDUCT TOWARDS DIRECT SELLERS

### 3.1 Direct Sellers' Compliance

Companies shall require their Direct Sellers, as a condition of membership in the Company's distribution system, to comply with the standards of this Code.

### 3.2 Recruiting

Companies shall not use misleading, deceptive or unfair recruiting practices in their interaction with prospective or existing Direct Sellers.

### 3.3 Business Information

Information provided by Companies to prospective or existing Direct Sellers concerning the opportunity and related rights and obligations shall be accurate and complete. Companies shall not make any factual representation to a prospective Direct Seller that cannot be verified or make any promise that cannot be fulfilled. Companies shall not present the advantages of the selling opportunity to any prospective recruit in a false or deceptive manner.

### 3.4 Remuneration and Accounts

Companies shall provide Direct sellers with periodic accounts concerning, as applicable, sales, purchases, details of earnings, commissions, bonuses, discounts, deliveries, cancellations and other relevant data, in accordance with the company's arrangement with the Direct Sellers. All monies due shall be paid and any withholdings made in a commercially reasonable manner.

### 3.5 Earnings Claims

Companies and Direct Sellers shall not misrepresent the actual or potential sales or earnings of their Direct Sellers. Any earnings or sales representations made shall be based upon documented.

### 3.6 Relationship

Companies shall provide to their Direct Sellers either a written agreement to be signed by both the Company and the Direct Seller or a written statement, containing all essential details of the relationship between the Direct Seller and the Company. Companies shall inform their Direct Sellers of their legal obligations, including any applicable licenses, registrations and taxes.

### 3.7 Fees

Companies and Direct Sellers shall not require Direct Sellers or prospective Direct Sellers to assume unreasonably high entrance fees, training fees, franchise fees, fees for promotional materials or other fees related solely to the right to participate in the company's distribution system. Any fees charged to become a Direct Seller shall relate directly to the value of materials, products or services provided in return.

### **3.8 Termination**

If requested upon termination of a Direct Seller's relationship with a Company, Companies shall buy back any unsold, resaleable Product inventory, promotional material, sales aids and kits, purchased within the previous twelve months and refund the Direct Seller's original cost, less a handling charge to the Direct Seller of up to 10% of the net purchase price. The Company may also deduct the cost of any benefit received by the Direct Seller based on the original purchase of the returned goods.

### **3.9 Inventory**

Companies shall not require or encourage Direct Sellers to purchase Product inventory in unreasonably large amounts. Companies shall take reasonable steps to ensure that Direct Sellers who are receiving compensation for downline sales volume are either consuming or reselling the Products they purchase in order to qualify to receive compensation.

### **3.10 Other Materials**

Companies shall prohibit Direct Sellers from marketing or requiring the purchase by others of any materials that are inconsistent with Company policies and procedures. Direct Sellers who sell company approved promotional or training literature, whether in hard copy or electronic form, shall

- (i) utilize only materials that comply with the same standards to which the Company adheres,
- (ii) refrain from making the purchase of such sales aids a requirement of downline Direct Sellers,
- (iii) provide sales aids at a reasonable and fair price, equivalent to similar material available generally in the marketplace, and
- (iv) offer a written return policy that is the same as the return policy of the Company the Direct Seller represents. Companies shall take diligent, reasonable steps to ensure that sales aids produced by Direct Sellers comply with the provisions of this Code and are not misleading or deceptive.

### **3.11 Direct Seller Training**

Companies shall provide adequate training to enable Direct Sellers to operate ethically.

[\[General\]](#) [\[Conduct Towards Consumers\]](#) [\[Conduct Towards Direct Sellers\]](#) [\[Conduct  
Between Companies\]](#) [\[Code Enforcement\]](#)

## CONDUCT BETWEEN COMPANIES

### 4.1 Interaction

Member Companies of DSA shall conduct their activities in the spirit of fair competition towards other members.

### 4.2 Enticement

Companies and Direct Sellers shall not systematically entice or solicit Direct Sellers of another Company.

### 4.3 Denigration

Companies shall not unfairly denigrate nor allow their Direct Sellers to unfairly denigrate another Company's Products, its sales and marketing plan or any other feature of another Company.





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## FAQ

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**Q What is the difference between Direct Marketing and Direct Selling?**

**A** Direct Marketing can be referred as telemarketing, direct mailing and TV marketing. Direct selling refers to person-to-person selling. The major element lies in Direct Selling is that direct sellers take and sell their products directly to the hands of consumers without the need to get through various traditional channels such as exporters, importers, wholesalers and retailers.

**Q What is Pyramid Selling?**

**A** Pyramid Selling requires huge initial fee for registration. The source of income mainly comes from "member-get-member" programme instead of direct product selling. In addition, products sold are of low quality without buy back guarantee. When a participant quits, the company concerned usually rejects to buy back unsold, currently marketable inventory.

**Q What are the differences between legitimate and illegitimate direct selling?**

<b>A Legitimate Direct Selling</b>	<b>Illegitimate Direct Selling</b>
Low initial fee	Huge initial fee
Income generated by selling products	Income generated by recruiting new members
Quality products	Products of low quality
Goods sold are returnable within cooling-off period	No cooling-off period or high restriction on return of goods
Buy-back for unsold marketable inventory	No buy-back for unsold marketable inventory

**Q If I am not satisfied with the products brought from the direct sellers, can I return the goods and get cash refund? Are there any extra terms and conditions required?**

**A** Every direct selling company has its own operational mode. However, all member companies of HKDSA (including Amway Hong Kong, Best World Lifestyle, Infinitus, Herbalife, Mary Kay, Nu Life, Nu Skin and USANA) have to follow the rules set by HKDSA. The major rules include:

1. Offer of a minimum of seven-day cooling-off period;
2. Buy back unsold, currently marketable inventory at not less than 90% of the salesperson's original net cost less appropriate set-offs, if any.

**Q How does HKDSA supervise direct sellers?**

**A** HKDSA has set up the direct selling code of conduct, which includes true and accurate description of product features and applications, so as to supervise the sales activities of direct sellers.

**Q If I am not satisfied with the services provided by the direct seller, how can I make effective complaints?**

**A** If the company with which you are experiencing difficulties is a member company of HKDSA, you can lodge your complaint with the company concerned or HKDSA. However, if the company is not a member company of HKDSA, you should contact relevant organizations such as Consumer Council for further assistance.

**Q How to Join Membership of HKDSA?**

**A** To join membership of HKDSA, please click [here](#) to download the application form. Fill up the form and then mail to the Direct Selling Association of Hong