

## **The Submission of Consumer Council on the Pyramid Schemes Prohibition Bill (“the Bill”)**

1. The Consumer Council warmly welcomes the Bill as it positively responds to the Council's call for plugging the loopholes of the current Pyramid Selling Prohibition Ordinance (“the current statute”), which allows multi-level marketing schemes equally culpable to slip through the net merely because they do not envisage selling of goods or services by participants.

2. It is noted that Clause 3(1) of the Bill in effect proposes to expand the definition of “pyramid selling scheme” of the current statute to enable the prohibition to cover business schemes under which the substantial inducement for joining the schemes is the payment receivable as a result of introduction of further new participants, regardless of whether the schemes involve the marketing of goods or services or not. The Council supports this approach as it pinpoints at the non-sustainable business model of pyramid schemes which relies on recruitment of new participants as the main source of income for participants and operators. Such an approach will also distinguish pyramid schemes from legitimate multi-level marketing under which rewards are tied in with sale of goods and/or services rather than introduction of new participants.

3. The Council is also pleased to see that the Bill proposes a remarkable improvement to the current statute in that provisions preventing evasion are added. It appears that Clause 3(2) and (3) spell out the principle that substance rather than form will count in determining whether a business is a pyramid scheme. The provisions may tackle the trickery and disguise that seek to get around the prohibition delineated by the definition of “pyramid scheme” set out in Clause 3(1). The Council finds such provisions useful in addressing the deceitful and aggressive tactics often found in the promotion of pyramid schemes. Besides, one further advantage of the provisions is that they enhance the clarity of the statutory definition of “pyramid scheme”.

4. Clause 4 gives guidance for determining the issue as to “whether the participation is entirely or substantially induced by the prospect held out to the new participant of entitlement to a recruitment payment”, which is the key element of pyramid scheme prohibited under the Bill. The provision serves not only guidance for the court in judging, but also the police in enforcement and the multi-level marketers in compliance. The non-exhaustiveness manifested

in Clause 4(2) will allow the court to determine the issue in light of the circumstances other than those set out in sub-clause (1) and this would address the capricious nature of pyramid scheme marketing.

5. It is the position of the Council that the regulatory regime of pyramid scheme should be extended to culpable participants of the scheme, but care should be taken to prevent the net from being cast so wide that innocent participants are caught. The Council is pleased to see that the Bill proposes to create an offence for participation in the scheme, with provisions tightly drafted. As provided in Clause 5, mere participation will not attract the offence. In addition to participation, the prosecution has to prove beyond reasonable doubts that the participant has induced or attempted to induce another person to participate in the scheme with the knowledge, either actual or constructive, that the benefits they may get from joining the scheme are entirely or substantially derived from the introduction of further new participants. This would keep the innocent out of the sanction under the Bill.

6. From the Council's experience, it is often a dodgy trick of operators of fraudulent schemes to evade personal liability by scapegoating or using shelf companies. They would simply close down the business after having the assets dissipated, leaving the participants out of pocket. Clause 6 which imposes personal liability on the management of the scheme could be an effective weapon against such a practice.

7. The Council also welcomes the provisions on compensation order under Clause 7. It is noted that the court is empowered to award compensation to any person who has suffered financial loss resulting from a pyramid scheme offence. This will take the burden of expensive litigation from the victims who may simply recover the compensation ordered as a civil debt. Debt recovery in such a case would normally be less expensive than an action for damages.

8. To conclude, the Council is impressed by the Government's efforts made to plug the loopholes of the current pyramid scheme legislation. It pledges its full support to the Bill and heartily looks forward to its coming into operation in the very near future.

Consumer Council  
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