



## Submissions of The Law Society's Criminal Law & Procedure Committee on the Pyramid Schemes Prohibition Bill

The Criminal Law & Procedure Committee of The Law Society of Hong Kong has reviewed the Pyramid Schemes Prohibition Bill and has the following comments:

### The Definition

1. The Bill does not attempt to define a pyramid scheme but only describes the characteristics of it (section 3 (1) and (3)). This makes the concept of a pyramid scheme exceedingly complicated for ordinary people. There are concerns that legitimate multi-level marketing companies such as Amway and Groupon could be caught as “*pyramid scheme*” under the definition of the term as it is presently drafted in the Bill and that it is unclear what kind of protection will be afforded to innocent promoters and participants of such type of companies. We appreciate the complexity of the drafting is in order to plug all the possible loopholes. If the description of the pyramid schemes is not readily understandable, it will be a trap for innocent participants.
2. Amongst the characteristics of a pyramid scheme presently provided in Section 3(1) are: (1) the making of the participation payment is entirely or “*substantially*” induced by the prospect held out to the new participant that the new participant will be entitled to either a financial or non-financial benefit (Section 3(1)(b)); and (2) the recruitment payment is entirely or “*substantially*” derived from the introduction to the scheme of a further new participant (Section 3(1)(c)). The Committee has concern there will be difficulty to construe the exact meaning of the word “*substantially*” thereby resulting in innocent participants being prosecuted.
3. Proposals :
  - (A) *The Administration should consider simplifying the definition of a “pyramid scheme” and, at the same time, coming up with a clearer definitive description.*
  - (B) *The Administration should explain what protection will be afforded to legitimate multi-level marketing companies like Amway and Groupon.*

- (C) *Subject to the Administration coming up with a new definition of “payment scheme”, the words “or substantially” should be deleted from Sections 3(1)(b) & (c), 4(1) & (2) and 5(2)(b).*
- (D) *In any case, the Administration should take extra efforts to explain to the public the detail of the new Ordinance and to cite examples of different hypothetical schemes.*

#### **Offences in relation to the scheme**

4. In section 5 (2), the Bill creates an offence for the participants to a pyramid scheme as:

Any person who –

- (a) participates in a pyramid scheme;
- (b) knows or *ought reasonably to know* that any benefit that the person may get from participating in the scheme would be entirely or substantially derived from the introduction to the scheme of new participants; and
- (c) induces or attempts to induce another person to participate in the scheme, commits an offence.

(Emphasis added)

5. We submit that including ‘ought reasonably to know’ as to the knowledge of the benefit under (b) means the prosecution needs only to prove the mens rea of negligence. It means even though the participants have no personal knowledge or understanding of the operation of the scheme as to its benefit, the requisite knowledge may be imposed on them as a reasonable man would appreciate and understand the operation of the scheme as to its benefit. We submit that this is too harsh on innocent people who may be caught given the complexity of the description of the pyramid schemes drafted in the current form.
6. **Proposal** : *the reference to ‘ought reasonably to know’ be removed from the Bill.*

#### **Sentence**

7. The proposed penalty for mere participants appears to be heavy. We understand the possibilities that a participant may be so active in the scheme that his criminality may not be less than the promoters themselves and that a promoter may hide behind and pose as a participant, for which circumstances sentence for promoters and hard-core participants will be warranted. However, there could still be loud concern from the public of the indiscriminate sentencing sanctions. A way to lessen the severity of the

sentence is to make the offence triable either way. It could be triable summarily with a lesser penalty on those participants with much less involvement and thus who are less culpable.

8. ***Proposal*** : *the offence be triable summarily or on indictment depending on the seriousness of the case.*

**The Law Society of Hong Kong  
The Criminal Law & Procedure Committee  
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