

A BILL

To

Prohibit certain acts in relation to a pyramid scheme and to provide for related matters.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Pyramid Schemes Prohibition Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Commerce and Economic Development.

2. Interpretation

In this Ordinance—

goods (貨品) includes all chattels personal and things in action;

new participant (新參與者) includes a person who has applied, or been invited, to participate in a pyramid scheme;

Clause 3

participant (參與者) means a person who participates in a pyramid scheme;

participate (參與) means to take part in a pyramid scheme in any capacity other than as a promoter of the scheme;

participation payment (參與費)—see section 3(1)(a);

promote (推廣) means establish, advertise, manage or assist in the management of a pyramid scheme;

promoter (推廣者) means a person who promotes a pyramid scheme;

recruitment payment (招募得益)—see section 3(1)(b).

3. What is a pyramid scheme

(1) A pyramid scheme is a scheme with all of the following characteristics—

(a) to participate in the scheme, any or all new participants must provide either of the following (*participation payment*)—

(i) a financial or non-financial benefit to, or for the benefit of, any participant or any promoter of the scheme;

(ii) a financial or non-financial benefit partly to, or for the benefit of, any participant or any promoter of the scheme and partly to, or for the benefit of, another person;

(b) 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 of the following (*recruitment payment*)—

(i) a financial or non-financial benefit to, or for the benefit of, the new participant;

Clause 3

- (ii) a financial or non-financial benefit partly to, or for the benefit of, the new participant and partly to, or for the benefit of, another person;
 - (c) the recruitment payment referred to in paragraph (b) is entirely or substantially derived from the introduction to the scheme of a further new participant.
- (2) A scheme may be a pyramid scheme regardless of—
 - (a) who holds out to a new participant the prospect of entitlement to a recruitment payment;
 - (b) who is to make a recruitment payment to a new participant; and
 - (c) who is to introduce a further new participant to the scheme.
- (3) A scheme may be a pyramid scheme even if it has any or all of the following characteristics—
 - (a) the scheme involves the marketing of goods or services (or both);
 - (b) a participation payment may or must be made after a new participant begins to participate in the scheme;
 - (c) making a participation payment is not the only requirement in order to be eligible to participate in the scheme;
 - (d) making a participation payment is not the only requirement in order to be eligible to receive a recruitment payment under the scheme;
 - (e) the holding out of the prospect of entitlement to a recruitment payment does not give any new participant a legally enforceable right;
 - (f) the arrangement for the scheme is not recorded in writing (whether entirely or partly).

Clause 4

4. Matters to be considered by court in schemes involving marketing of goods or services

- (1) To determine, for the purpose of this Ordinance, whether a scheme that involves the marketing of goods or services (or both) is a pyramid scheme, a court must have regard to the following matters in determining whether a participation payment under the scheme is entirely or substantially induced by the prospect held out to a new participant of entitlement to a recruitment payment—
 - (a) whether the participation payment bears a reasonable relationship to the value of the goods or services that the new participant is entitled to be supplied with under the scheme, having regard to the price of comparable goods or services available elsewhere;
 - (b) the emphasis given in the promotion of the scheme to the entitlement of the new participant to the supply of goods or services by comparison with the emphasis given to the new participant's entitlement to a recruitment payment.
- (2) Subsection (1) does not limit the matters to which the court may have regard in determining whether a participation payment is entirely or substantially induced by the prospect held out to a new participant of entitlement to a recruitment payment.

5. Offences in relation to pyramid scheme

- (1) A person who knowingly promotes a pyramid scheme commits an offence.
- (2) A person who—
 - (a) participates in a pyramid scheme;

Clause 6

- (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.
- (3) A person who commits an offence under subsection (1) or (2) is liable on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years.

6. Liability of directors, partners, etc.

- (1) If an offence under this Ordinance is committed by a body corporate or by a person as a member of an unincorporated body, and it is proved that the offence has been committed with the consent or connivance or is attributable to the neglect of a person specified in subsection (2), that person also commits the offence and is liable to be proceeded against and punished accordingly.
- (2) The person referred to in subsection (1) is a person who, at the time of the offence, was—
 - (a) (in the case of a body corporate) a director, secretary, principal officer or manager of the body corporate;
 - (b) (in the case of a member of an unincorporated body) a partner or office holder in or a member or manager of the unincorporated body; or
 - (c) (in either case mentioned in paragraph (a) or (b)) purporting to act in the capacity of a person referred to in that paragraph.

Clause 7

7. Power to award compensation

- (1) If a person is convicted of an offence under this Ordinance, the court may, in addition to passing any sentence that may otherwise be passed by law, order the person to pay an amount of compensation that it thinks reasonable to any person who has suffered financial loss resulting from that offence.
- (2) An amount of compensation ordered to be paid to a person under subsection (1) is recoverable as a civil debt.

8. Saving of rights and claims

This Ordinance does not limit, restrict or otherwise affect any rights or claims a person would have had if this Ordinance had not been enacted.

9. Pyramid Selling Prohibition Ordinance repealed

The Pyramid Selling Prohibition Ordinance (Cap. 355) is repealed.

Explanatory Memorandum

The object of this Bill is to prohibit certain acts in relation to a pyramid scheme and to provide for related matters.

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 2 defines certain expressions used in the Bill.
4. Clause 3 defines what a pyramid scheme is. A pyramid scheme is a scheme with all of the following characteristics—
 - (a) to participate in the scheme, a new participant must provide a financial or non-financial benefit (*participation payment*);
 - (b) 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 a financial or non-financial benefit (*recruitment payment*);
 - (c) the recruitment payment is entirely or substantially derived from the introduction to the scheme of a further new participant.
5. Clause 4 provides for the matters which must be considered by the court when determining whether a participation payment under a scheme involving the marketing of goods or services (or both) is entirely or substantially induced by the prospect held out to a new participant of entitlement to a recruitment payment.
6. Clause 5 provides for offences in relation to a pyramid scheme. A person commits an offence if—
 - (a) knowingly promoting a pyramid scheme; or

Explanatory Memorandum
Paragraph 7

- (b) participating in a pyramid scheme and inducing (or attempting to induce) another person to participate in the scheme and knowing that any benefit gained from that participation is entirely or substantially derived from the introduction to the scheme of new participants.

The maximum penalty for both offences is a fine of \$1,000,000 and imprisonment for 7 years.

7. Clause 6 provides for the liability of a relevant person of a body corporate or unincorporated body if the body corporate or a person as a member of the unincorporated body commits an offence under the Bill.
8. Clause 7 empowers the court to order a person who is convicted of an offence under the Bill to pay compensation to any person who has suffered financial loss resulting from the offence.
9. Clause 8 clarifies that the enactment of the Bill is not to be interpreted as affecting any rights or claims.
10. Clause 9 repeals the Pyramid Selling Prohibition Ordinance (Cap. 355).