

Introduction on Multi-level Marketing Supervision Act

In Taiwan, multi-level marketing is a very popular industry. In view of the fact that in recent years, disputes arising from the multi-level marketing businesses have been increasing, in order to assure sound transactions of the multi-level marketing businesses, to protect the rights and interests of participants, and to build up the legal system to supervise the multi-level marketing business, the government has upgraded the originally adopted “Supervisory Regulations Governing Multi-level Sales” from the status of an administrative regulation to be enacted into the status of a “law”. “Multi-level Marketing Supervision Act” (hereinafter referred to as “the Act”) was promulgated by the President on January 29, 2014, and it became effective from January 31, 2014. Since the Act has taken effect, the provisions in the Fair Trade Act relevant to multi-level sales shall no longer apply.

Definition of Terminology

1. **Multi-level Marketing:** In order to broaden the application of multi-level marketing, the Act does not restrict its application only to those participants who are required to “pay a certain consideration”. The Act is also applicable to those marketing practices that are to establish multi-level organization by having participants introduce new participants into multi-level marketing business, and to promote and sell goods or services. (Article 3 of the Act)
2. **Multi-level Marketing Business:** In view of the fact that the types of multi-level marketing businesses in practice are multiple and complicated, the Act explicitly specifies that the term “multi-level marketing business” means the companies, sole proprietorships or partnerships, groups or individuals that conduct overall planning or the carrying out of multi-level marketing activities. Further, because in recent years, many people joined foreign multi-level marketing businesses, in many cases, resulting in embarrassing situations where no channels are available for those victims to claim compensation for huge financial losses. Therefore, the Act adds the regulation that a participant of foreign multi-level marketing business or a third party that introduces or carries out the multi-level marketing plans or organizations of such business shall be deemed as a “multi-level marketing business”. (Article 4 of the Act)
3. **Participants:** In order to broaden the protection of the rights and benefits of

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participants, the term “participants” as used in the Act means the persons who may earn commissions, bonuses and other economic benefits through the following activities:

- (1) Promoting or selling goods or services.
- (2) Introducing other persons to participate.
- (3) The introduced persons promote or sell goods or services, or further introduce other persons to participate.
- (4) The persons who enter into an agreement with multi-level marketing business that after certain requirements are fulfilled such persons may get the qualification for promoting, selling goods or services, or introduce other persons to participate shall be deemed as participants from the time such contracts are entered into.

Filing with the Competent Authority by a Multi-level Marketing Business

A multi-level marketing business, prior to engaging in multi-level marketing operations, changing in the contents of already submitted and recorded documents and materials, or intending to cease its multi-level marketing operations, shall prepare a report to be filed with the Fair Trade Commission for record. The report shall contain the following items: (Articles 6 to 9 of the Act)

- (1) The basic information and business places of the multi-level marketing business: For any change of a business’ name, it shall be reported within 15 days after the change is in effect.
- (2) The multi-level marketing system and conditions of participation by the participants: The multi-level marketing system includes the multi-level marketing plans, the contents and conditions of the commissions, bonuses or other economic benefits to be distributed, and the highest percentage of such total amount to the total operational revenues (including the explanation for calculation).
- (3) The contracts that will be executed with participants.
- (4) Products or services’ items, prices and sources: Attaching the products information, import applications, other inspection registration permit issued by the relevant competent authority. For participants who provide services, they shall attach their contracts.

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- (5) The calculation methods, criterion, and reasons: when multi-level marketing businesses purchase back their products or services, what the standard is for the devaluation in terms of its calculation methods, criterion, and reasons.
- (6) The evidence of marketing practice in compliance with laws or regulations that the multi-level marketing business having ex-ante approval issued by the subject matter competent authority, or such other matters as may be required by the competent authority.

The “filing obligation” as required by the Act is only a performance of a legal obligation. It does not imply that all the activities of the multi-level marketing businesses are legal. However, if a multi-level marketing business fails to file a report as required by the law, the competent authority may order the violator to rectify its conduct within the time prescribed in the order and fine New Taiwan Dollar 100,000 or more but not more than New Taiwan Dollar 5,000,000, and so on. (Article 32 of the Act)

Regulations Governing the Implementation of Multi-level Marketing Activities

1. Notice in advance prior to participation

Before a participant takes part in a plan or organization of a multi-level marketing business, the business enterprise shall concretely inform the participant of the relevant particulars of the enterprise and the rights and obligations of the participant himself/herself, and shall make no concealment, false, or misleading presentations. When recruiting participants by advertising or other means, a multi-level marketing business shall make it clearly known that it is engaged in multi-level marketing activities and it may not recruit participants under the disguise of recruiting employees or on other pretense. When recruiting participants by means of declared cases of success, the enterprise or its participants shall concretely explain the facts of such cases. (Articles 10 to 12 of the Act)

2. Adoption of the contents of a participation contract

In order to implement the informing obligation of the business toward the participant, and to clarify the rights and obligations relationship between the two parties, the multi-level marketing business shall adopt into the participation contract the laws and regulations relevant to multi-level

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marketing, matters relevant to the goods and services, obligations arising therefrom and conditions of withdrawal from the organization or plan, the regulations of rescission, termination or renewal of a contract, the handling of returning or repurchasing goods, matters of breach of a contract, and other matters which the participant shall bear obligations and responsibilities, etc. And the business shall enter into a written contract with the participant and deliver an original of the contract to the participant. (Articles 13 to 15 of the Act)

3. Restriction on the qualification of participants

Multi-level marketing businesses may not recruit incapacitated persons to become participants. If a multi-level marketing business recruits a person with limited capacity to become a participant, it shall first obtain the written consent from the legal representative of such a person and also attach the said written consent to the contract. (Article 16 of the Act)

4. The obligation to disclose financial statements

A multi-level marketing business shall prepare the financial statements of the previous accounting year before the end of May each year and keep them in its main office. When the capital of a multi-level marketing enterprise reaches the amount specified in Article 20 of the Company Act (i.e. the current regulation is above New Taiwan Dollar 30,000,000) or the total business volume in the previous accounting year exceeds the amount announced by competent authority, the multi-level marketing business shall require auditing and certification by a certified public accountant for its financial statements. (Article 17 of the Act)

5. The limitation of the source of income

The major source of income of participants may not be earned mainly by introducing other people to become new participants. (Article 18 of the Act)

6. The restrictions on certain multi-level marketing behaviors

In order to prevent a multi-level marketing business to require a participant to pay any fee obviously incommensurate with the cost, or to pay any security deposit, penalty, or other fee, which is obviously unreasonable, or require a participant to purchase goods in a quantity that would obviously be impossible for an average person to sell out in a short period of time, or unduly request a participant to buy goods, or conduct other matters which are

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obviously unfair so that the multi-level marketing business may obtain illegal profits from those devious marketing behaviors, thus, the Act explicitly stipulates the regulations to prohibit such behaviors. (Article 19 of the Act)

7. Punishment

- (1) If anyone violates the above item 1, 2, 4, or 6, the competent authority may fine New Taiwan Dollar 50,000 or more but no more than New Taiwan Dollar 1,000,000; and after the lapse of a prescribed period, the violator still fails to rectify such conduct, the competent authority may again fine the violator New Taiwan Dollar 100,000 or more but no more than New Taiwan Dollar 2,000,000 each time, until the violator rectifies such conduct. (Article 34 of the Act)
- (2) If anyone violates the above item 3, the competent authority may fine New Taiwan Dollar 100,000 or more but no more than New Taiwan Dollar 2,000,000. (Article 33 of the Act)
- (3) If anyone violates the above item 5, if such violation is committed by any representative, agent, employee or other staff of a juristic person, such person may be punished by imprisonment for not more than seven years, and at the same time, the juristic person and the above-mentioned violators may each be fined not more than one hundred million New Taiwan Dollars. In the meantime, the competent authority may order the multi-level marketing enterprise to dissolve itself, suspense or terminate business operation not more than six months. However, where any other laws provide for more severe punishment than those prescribed in the Act, the provisions of such other laws shall apply. (Articles 29 to 31 of the Act)

Exercise of the Rescission or Termination Right of the Contract

1. Withdrawing within thirty (30) days after entering into the contract

In order to let a participant have an opportunity to recheck if himself is suitable for the work or reevaluate if he should participate in the multi-level marketing business, the participation contract may be rescinded or terminated within the grace period of thirty (30) days after the participant enters into such contract. Under such circumstances, the

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multi-level marketing business has to accept the returned goods and return to the participant all the payment for the goods made upon purchase and paid to the multi-level marketing business. (Article 20 of the Act)

2. Withdrawing after thirty (30) days after entering into the contract

After the lapse of the above-mentioned grace period, the participant may still at any time terminate the contract by a written notice, and request to return the goods. Within thirty (30) days from the termination of the participation contract, the multi-level marketing business shall buy back all goods possessed by the participant at ninety percent (90%) of the original purchase price. However, in order to reduce the costs of the returned goods borne by the business, the participant may not request to return the goods if the goods possessed by him have passed six (6) months since the goods can be accepted by him. (Article 21 of the Act)

3. No hindrance on the exercise of the rights by the participant

When the participant exercises the right to rescind or terminate the contract, the multi-level marketing business may not claim damages or levy penalties against the participant, or improperly hinder him from exercising his rights, or unjustifiably withhold his commissions, bonuses or other economic benefits. When the sold goods are supplied by third parties, and the participants exercise the right to rescind or terminate, the multi-level marketing business shall handle the returning of goods and repurchase the goods, and shall pay the damages or penalties charged by the third parties against the participants. (Articles 22 & 23 of the Act)

4. The regulation of the goods shall apply to services

The regulations relevant to the above-mentioned returning of the goods or repurchase of the goods shall apply mutatis mutandis to services. Except that the service provider does not apply the situation “where returning of the good shall obviously be unfair to the multi-level marketing enterprise because six (6) months have lapsed from the date the participant may accept the goods”. (Article 24 of the Act)

5. Punishment

If any person violates the regulations of the above items 1 to 3, the competent authority may fine the violator New Taiwan Dollar 100,000 or more but no more than New Taiwan Dollar 5,000,000; if after the lapse of

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a prescribed period of time, the violator still has not rectified such conduct, the competent authority may continue to fine the violator New Taiwan Dollar 200,000 or more but no more than New Taiwan Dollar 10,000,000 each time until the rectification of such conduct; if the situation is serious, the competent authority may order the violator to dissolve, suspend or terminate business operation not longer than six (6) months. (Article 32 of the Act)

Other Provisions

1. Business inspection

A multi-level marketing business shall record the organization development, sales of goods or services, payment of bonuses, and handling of goods returning within the territory of the Republic of China on a monthly basis and keep such records in its principal place of business for inspection by the competent authority. The competent authority may at any time dispatch personnel to inspect, or order an enterprise to provide materials about the operation and development within specific deadline, and may seize objects which may serve as evidence. (Articles 25 to 28 of the Act)

2. Transitional terms

(1) Filing or amending the report

If any multi-level marketing business which has not filed the report prior to the implantation of this Act, it shall complete the filing within three (3) months (i.e. prior to April 30, 2014) to the Fair Trade Commission after this Act takes effect. If any multi-level marketing business which has filed the report prior to the implementation of this Act, and if its recorded information has been changed, it shall apply for the amendment of the report within two (2) months (i.e. prior to March 30, 2014) after this Act takes effect. (Articles 36 & 37 of the Act)

(2) Revision of the participation contract

If any multi-level marketing business has filed the report prior to the implementation of this Act, it shall, within three (3) months after the implementation of this Act, revise the written participation contract originally entered into with the participants, notify participants the

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revision content in writing, and make announcement in its business places. After receiving the notification, if the participants do not object within specific period of time, it shall be deemed as they have accepted the revision. (Article 37 of the Act)

3. A protection institution for multi-level marketing activities

The Fair Trade Commission shall designate the multi-level marketing businesses having filed for record to donate certain property in order to establish a protection institution in charge of protecting the rights and interests of multi-level marketing business having filed for report, and participants and the disputes resolutions. Such protection institution shall serve the role as an arbitrator to solve the disputes of both parties. The enterprises may request the protection institution to offer protection only after paying the protection fund and annual fees, in order to maintain the operation of the institution. (Article 38 of the Act)

Conclusion

In the past, multi-level marketing activities were regulated in the Fair Trade Act. However, due to the nature of the regulatory rules is different because the Fair Trade Act is mainly regulating the restrictions on competition and unfair competition, the government therefore enacted a specific law to regulate multi-level marketing activities this time. At the present time (up to February 2014), according to the information from the Fair Trade Commission, there are 400 multi-level marketing businesses which have filed reports with the competent authority, and the number of participants has been over 3 million people. Therefore, in addition to strengthen the regulation on the multi-level marketing businesses, it is also very urgent to protect those businesses. The Fair Trade Commission has expressed that since the Multi-level Marketing Supervision Act has taken effect, it hopes that the multi-level marketing protection institution can be established as soon as possible, in order to assist the victims of illegal multi-level marketing businesses and the participants and so on to maintain their rights and interests.

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