

ANALYTICAL STUDY ON THE LEGALITY OF MULTI-LEVEL-MARKETING*

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Abstract

Multi-Level-Marketing (MLM) business is a form of direct sales with special characteristics. MLM business was introduced in Myanmar more than two decades. On 16 September 2018, the Ministry of Commerce declared the MLM marketing as essential service and it is banned in Myanmar. Prior to that date, the legality of MLM business is a controversial issue in Myanmar. In fact, MLM business is not totally banned in every. “Can the Order of the Ministry of Commerce totally eliminate the MLM business in Myanmar?” is a key question in this research paper. This paper aimed to analyze the legality of Multi-level Marketing in the context of US and Singapore Regulations as Model Laws to suggest a solution for Myanmar. It stresses the characteristics of the MLM and case study. It is conducted by exploring the ethical issue of MLM business and the countermeasures taken in the US and Singapore. By studying the US and Singapore practices on anti-MLM, it is found that there are different methods to deal with MLM issues. During the period which unable to pass the anti-MLM Law, Myanmar should make sure in enforcing the Prohibition Order which banned MLM business in Myanmar. It is suggested that the Law eliminating the illegal MLM business is urgently needed to pass in Myanmar.

Keywords: Legality, Multi-Level-Marketing, Pyramid scheme.

Introduction

Multi-Level-Marketing (MLM), which is also called network-marketing or pyramid selling, is a form of direct sales with special characteristics. In other words, a system of selling products which members get paid for selling products to other members and if that member recruits others, the second layer is called down line of the first member. The first member gets the override from all sales of the down lines.

Multi-Level-Marketing was introduced in Myanmar more than two decades. Recently, the campaigns groups that oppose the MLM business bring

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up the voice of victims who were falling in the trap of MLM sales. The legality of MLM business is a controversial issue due to its negative impact on Myanmar society. Currently, there is no Anti-MLM Law in Myanmar. The Bureau of Special Investigation, Ministry of Home Affairs and the Department of Foods and Drugs Administration (FDA) under Ministry of Health are the authorities to take action on the MLM Company.¹ From February 2018, the Bureau of Special Investigation investigates all the documents of 44 MLM Companies. Recently, the FDA, with the cooperation of the Bureau of Special Investigation, sued the one of the well-known MLM Company in Myanmar, Aim Star Network (MNR) Co.ltd on 16 June 2018.² There were previous cases which the FDA sued two MLM companies, such as Entry Trading Co.Ltd., Myint Mo Khun Arr Co.Ltd., World Class Innervation (Myanmar) Co.Ltd., the Wisdom Plus Co.Ltd., J&C Center Import Export Co.Ltd., on the date of 8 June 2018. The ground for taking action was due to failing to take approval from the FDA.³

On 18 September 2018, the Ministry of Commerce declared that all MLM businesses are banned and violation of the Prohibition Order shall be punished under Section 5 of the Essential Supplies and Services Law 2012. According to section 4(c), the Ministry may issue prohibiting order, supervision order, preventing order relating to service stipulated and declared as essential service. Under section 5, whoever violates any order under section 4, shall on conviction, be punished with imprisonment for a term from a minimum of six months to maximum of three years and shall also be liable to fine not exceeding five hundred thousand Kyats.

According to the Ministry's Order, MLM is considered as essential service under section 4(c). As a consequence, each MLM company announced to suspend selling products due to the Ministry's Order. And the MLM

¹ Tun Myat Thu,(2018), "Well –known MLM Company is charged by the Government", The Voice Journal issued on 18 June 2018. Retrived from: <http://thevoicemyanmar.com/news/22549-mlm>

² Tun Myat Thu, (2018), Opcit.

³ Toe Wai Aung (2018), "Four Landscaping MLM company to be opened by the Food Section31", Myanmar Times Weekly Journal issued on 8 June 2018. Retrieved from: <https://myanmar.mmtimes.com/news/111270.html>.

companies are not dissolved. Therefore, the products of all MLM companies may continue distributing their products by other means of marketing.

MLM business is not totally banned in some countries like the United States but it is considered illegal business in some countries such as Singapore, Japan and China. In the US, although it is considered that all MLM businesses are not illegal, for protecting consumers' rights, the Federal Trade Commission of the US (hereinafter the FTC) issues the guidelines and opens the complaints center for consumers. In this paper, "Can the Ministry's Order absolutely eliminate the MLM business in Myanmar?" is a key question. In order to contribute in studying MLM system, the paper describes the perspectives of MLM systems and the practices in the US and Singapore is explored. The factors in some leading cases which can determine the legality of MLM business in the US and Singapore are analyzed. Suggestion for Myanmar is finally includes as the outcome of the paper.

Aims and objectives

The purpose of this paper is to examine the legality of Multi-Level-Marketing in the United States and Singapore. It aims to distinguish the accepted MLM and unacceptable MLM under the US practice and to study the Singapore Practice in eliminating the unlawful MLM business. This paper provides not only the knowledge of the moral and ethical problems of MLM business but also the solution of the problems. It enables to suggest Myanmar how to deal with the issues of MLM.

Methodology

To achieve the goal of this paper, MLM Laws in the US and Singapore are studied. In order to consider how Myanmar should deal with the controversial issue on the legality of MLM business, the criteria to determine illegal pyramid scheme, Article 5 of the FTC Law and Consumer guidance issued by the FTC is analyzed. In addition, the provisions relating to the MLM scheme under some States in the US are studied. Furthermore, it examines the Singapore's Anti-MLM Law. It analyzes the perspectives under Section 2 of the Multi-Level Marketing and Pyramid Selling (Prohibition) Act and the (Excluded Schemes and Arrangements) Order. Then, this paper discusses how

the US and Singapore view on the MLM business. Furthermore, the archival cases from the Singapore court, the US federal court, circuit court, and court of appeal in the US are studied and analyzed. This paper is categorized as a qualitative research paper using scholar's articles, laws, order and judgments of the courts.

Findings

In the United States, not all MLM is a legal, ethical manner of doing business and Pyramid scheme are illegal. According to case study, the Federal Trade Commission (FTC) takes action harshly on the companies which are marketing using illegal pyramid scheme. In determining the legality of MLM, Singapore's has different view. The legality of MLM must be checked by three principal conjunctive requirements under the Multi-Level Marketing and Pyramid Selling (Prohibition) Act, and the (Excluded Schemes and Arrangements) Order. In Myanmar, there is no statute to control MLM business exclusively. Currently, the Prohibition Order issued by the Ministry of Commerce is a tool to take action of MLM business, Unlike Singapore practices, which does not allow any individual or corporate to apply for registration of business intending to promote MLM, punishment under the existing law cannot eliminate MLM in Myanmar. From the date of issuing the Order, there is no MLM company dissolved. In addition, Bureau of Special Investigation and the Department of Foods and Drugs Administration (FDA) take action on some MLM businesses according to the FDA Law for selling, distribution of unregistered products. Under the existing FDA Law, it is unable to make MLM business as an unlawful Company based on their marketing structure. Instead, it can only sue the MLM Company for selling products without the approval of the FDA. Under the FDA Law, if the MLM Company gets the approval from the FDA, there is no problem for selling products despite using pyramid scheme or arrangements. For these reason, Myanmar should make sure of monitoring the MLM companies' activities, whether they are complied with the Prohibition Order. Moreover, education for Consumer is needed for not being victim of MLM traps and Consumer Complaint center for MLM issues should be established. Furthermore, Myanmar should enact the Law eliminating the illegal MLM business as fast as possible.

Ethical Problem of MLM Business

Since a MLM operates by recruiting a network of salespeople, the chances of such organizations to easily degenerate into unethical, fraudulent, recruitment-centered pyramid schemes is quite high. The distributor's compensation depends entirely on the organization they build.

A MLM operates as pyramid or endless chain scheme is unethical. The ethical (and legal) problem is thus deception: distributors join a company to earn money, but overspend by buying company products they neither need nor are able to sell. It is unethical in two respects. They are fraudulent and recruitment rather than product-centered business. Pyramid schemes are fraudulent because they promise a large return for a small investment. Those who join pyramid scheme early often do make a great deal of money. Those who come later, however, make little or even lose money because there simply are not enough remaining people left to recruit into the network.¹ MLM typically identify various levels of performance- Pearl, Diamond, Manager, Supervisor, etc.² In the endless chain scheme, participants will receive money once they reached position 5 on the list. The Scheme looks like this:

Copies in generation	Participant's position
10	--
100	10
1,000	9
10,000	8
100,000	7
1,000,000	6
10,000,000	5

¹ Daryl Koehn, "Ethical Issues Connected with Multi-Level Marketing Schemes," *Journal of Business Ethics*, vol. 29, nos.1&2(2001):153-160.

² Daryl Koehn, (2001) "*Ethical Issues Connected with Multi-Level Marketing Schemes*", *Journal of Business Ethics*, vol.29. nos.1 & 2 , p.153.

Therefore, unless a participant can recruit 10,100,000 new members, he will not receive money. Some MLMs encourage participants to sell products to family members and friends and/ or to recruit them into the MLM. It is because the use and misuse of trust in private social relations. Customers and (prospective) distributors are mostly approached by people they know: family members, friends, acquaintances, or former classmates.¹

Determination of the Legality of MLM in the US

The common criteria to determine the legality of the MLM business is to assess the ways of income through the business activities. If the money earned from the sales to the public, it may be a legitimate MLM. If the money made is based on the number of recruited people and sales to them, it could be a pyramid scheme and it is illegal. In the US, each State has its own MLM Law respectively. There is no Federal Statute for anti-MLM, however, the decision of FTC and the Federal Court affect on the MLM more than legislation from individual State. States' Statute define the illegal pyramid schemes as prohibitions or restrictions applicable to pyramid promotional schemes, chain distribution schemes, multi-level marketing, etc.²

According to Georgia Code, "Pyramid promotional scheme" means any plan or operation in which a participant gives consideration for the right to receive compensation that is derived primarily from the recruitment of other persons as participants into the plan or operation rather than from the sales of goods, services, or intangible property to participants or by participants to others.³

New York General Business Law called "a chain distributor scheme" as a sales device whereby a person, upon condition that makes an investment, is granted a licence or right to solicit or recruit for profit or economic gain one or more additional persons who are also granted such licence or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such licence or right upon such condition. However,

¹ Daryl Koehn, (2001) "*Ethical Issues Connected with Multi-Level Marketing Schemes*", *Journal of Business Ethics*, vol.29. nos.1 & 2 , p.153.

² <http://www.mlmllegal.com>.

³ Georgia Code §10-1-410, cited from: <http://www.mlmllegal.com>.

it does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale.¹

According to Jeffrey Babener,² both MLM and pyramid scheme have multilevel payment systems. However, MLM is a legal, ethical manner of doing business and Pyramid scheme are illegal. Therefore, not all MLM businesses are illegal pyramid schemes.³

To determine whether a MLM business is a pyramid, a court must look at how the MLM business operates in practice.⁴The famous cases are studied how the FTC and the Court decided on legality of MLM. The FTC defines the MLM in the matter of Koscot Interplanetary, Inc.,⁵ the FTC characterized the Pyramid scheme as “the payment by participant of money to the Company in return for which they [the participants] receive (1) they receive the right to sell the product and (2) the right to receive the return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users.” Participant in the Koscot marketing plan paid an initial amount up to \$ 5000 to the company for the inventory and the right to recruit others. The distributors who recruited other received \$2650 of the recruit’s \$5000. The only way a Koscot distributor could get the payment back was to recruit more distributors.

In the matter of Amway Corporation, Inc., et al.,⁶ the Amway plan, the system is based on retail sales to consumers. However, the Amway system does not involve inventory fee for a new distributor. A kit of sales will pay back when the distributor decide to leave Amway. Making product sales a precondition to receiving the performance bonus, Amway buy back 70% and ten customers rule deter unlawful inventory loading Amway is not a business to sell distributorships and is not a pyramid distribution scheme.

¹ N.Y Gen. Bus. Law §359-fff, cited from: <http://www.mlmlegal.com>.

² A network marketing legal expert and attorney based in Poland, Oregon.

³ Jeffery, A. Babener,(1992) “ Identifying illegal Pyramid Schemes”, *Home Office Computing Magazine*, issued in August.

⁴ <http://www.ftc.gov>, <https://law.justia.com/cases/kansas/supreme-court/1973/46-924-1.html>.

⁵ 86 F.T.C.1106. Retrieved from: <http://www.mlmlegal.com>.

⁶ 93 F.T.C 618. Retrieved from: <http://www.mlmlegal.com>.

In *FTC v. Skybiz.com, Inc., et al.*,¹ the Court distinguished the multi-level- marketing program and the prohibited marketing scheme. Accordingly, “multi-level-marketing program” means any marketing program in which participants pay money to the program promoter in return for which participants obtain the right to: (1) recruit additional participants, or have additional participants placed by the promoter or any other person into the program participant’s downline, tree, cooperative, income center or other similar program grouping; (2) sell goods or service; and (3) receive payment or other compensation, in whole or in part, based upon the sale of those in the participant’s downline, tree, cooperative, income center or other similar program grouping. Whereas, “prohibited marketing scheme”² means a pyramid sales scheme, Ponzi scheme, chain marketing scheme, or other marketing scheme or program in which participants pay money or valuable consideration to the company in return for in which they receive the right to receive in return for recruiting other participants into the program rewards which are unrelated to sale of product or services to ultimate users. For the purpose of this definition, “sale of product or services to ultimate users” does not include sales to other participants or recruits in the multi- level marketing program or to participants’ own accounts.

In *FTC v. Burn Lounge, Inc.*,³ Burn Lounge participants joined the scheme by buying packages, which included a Burn Page and merchandise. Participants earned rewards by recruiting others to join the scheme, i.e., by recruiting new participants to buy packages. In each of these scenarios, the participants sold something (inventory or packages), but the rewards the participants received in return were largely for recruitment, not for product sales. Burn Lounge required Moguls to purchase a product package to get the chance to earn cash rewards, provided cash rewards for the sale of packages by a Mogul’s recruits, and had no rules promoting retail sales over recruitment.

¹ No.01-CV-396(2001),01-5166(10th Cir 2003)

² For the purpose of this definition “sales of product or services to ultimate users” does not include sales to other participants or recruits in the multi- level marketing program or to participants’ own account.

³ No.12-55926 D.C. No.2:07-cv-03654-GW-FMO (9th Cir 2014).

In the US, an alleged pyramid scheme may be imposed one or more of the following:

- Fine or compensation or pay consumers redress
- Bar the company, for a limited period or permanently, from-
 - (i) participating in pyramid scheme,
 - (ii) engaging in advertising,
 - (iii) selling for a specific period or permanently,
 - (iv) sharing customer lists
- Court’s Order contains record-keeping provisions to allow the Agency to monitor compliance with the order.¹
- Imprisonment²
- Freeze the assets of the illegal pyramid schemes.³

Table 1: Difference between MLM and Pyramid Scheme⁴

No.	Pyramid Scheme	MLM
1.	Plans that promise profits mainly for recruiting new members	MLM plan only offers products or services that customers want. It is not based on sales to distributor.
2.	Gifting clubs that new recruits give money to current members with the promise that they will receive money from future recruits	There is no guarantee how much the money will be made.
3.	All payments are doomed to collapse.	Sustainable, based on repeat sales of products and services

To sum up, not all MLM business are illegal in the US. The legality of the LM is determines by whether MLM business acts in the form of pyramid scheme or not. The pyramid scheme is illegal under State Law.

¹ <http://www.ftc.gov>.

² The length of imprisonment may vary depending on the individual State’s Law.

³ *FTC v. Burn Lounge, Inc.*, No.12-55926 D.C. No.2:07-cv-03654-GW-FMO(9th Cir 2014).

⁴ www.fraud.org.

Determination of the Legality of MLM in Singapore

Singapore enacted the Multi-Level Marketing and Pyramid Selling (Prohibition) Act in 1973 which was amended in 2000. The purpose of this Act is not to control the MLM business but to eradicate the MLM in Singapore. According to Minister of Finance in the debate of the Bill, he emphasized as “the objective of this Act should be to eliminate them rather than attempt to control them...because to contrary to the Public interest.”¹

According to Section 2 of the Multi-Level Marketing and Pyramid Selling (Prohibition) Act, “pyramid selling scheme or arrangement” means any scheme or arrangement for the distribution or the purported distribution of a commodity whereby—

- (a) a person may in any manner acquire a commodity² or a right or a licence to acquire the commodity for sale, lease, licence or other distribution;³
- (b) that person receives any benefit, directly or indirectly, as a result of—
 - (i) the recruitment, acquisition, action or performance of one or more additional participants in the scheme or arrangement; or
 - (ii) the sale, lease, licence or other distribution of the commodity by one or more additional participants in the scheme or arrangement; and
- (a) any benefit is or may be received by any other person who promotes, or participates in, the scheme or arrangement (other than a person referred to in paragraph (a) or an additional participant referred to in paragraph (b)).

The term “pyramid selling scheme or arrangement” is very broad on which covers nearly all schemes which incorporate an element of overriding

¹ Official Report (26 August 1973) vol. 32 at cl.1287.

² The term “commodity” is defined very widely to mean any goods, service, right or other property, whether tangible or intangible, capable of being the subject of sale, lease, or licence.

³ Multi-Level Marketing and Pyramid Selling (Prohibition) 2000 Ed. CAP. 190 2 Informal Consolidation—version in force from 3/1/2016

commission, or indeed schemes where any person benefits in any way as a result of the actions of other participants.¹

In **Chua Hock Soon James v. Public Prosecutors and other appeals**,² for unlawful business falls under the scope of the term “pyramid selling scheme or arrangement”, there are three principal conjunctive requirements:

- (a) a person (A) recruits another person(B) into the scheme wherein B acquires a commodity or a right or a licence to acquire the commodity for sale, lease, licence or other distribution.
- (b) B receives any benefit, directly or indirectly, as a result of the recruitment acquisition, action or performance of one or more additional participants (i.e., C, D, E and onwards) in the scheme.
- (c) Any benefit is or may be received by any other person (other than B and the participants recruited by B) who promotes or participates in the Scheme, e.g. A.

In addition, “pyramid selling scheme or arrangement” shall be taken not to include such schemes or arrangements for the sale, lease, licence or other distribution of a commodity, or any class of such schemes or arrangements, as the Minister may by order prescribe, subject to such terms or conditions as may be specified in the order.³

In the order, regarding the excluded scheme and arrangement, the definition of “pyramid selling scheme or arrangement” in section 2 shall be taken not to include Insurance company, Master Franchises, Direct Selling company.⁴

¹ Adrian Chan &Lim Kean Hao, “Multi-level Marketing in Singapore: The current Legislative Approach”, Retrieved from: [http:// vl.lawgazette.com.sg/2002-11/Nov02-focus2.htm](http://vl.lawgazette.com.sg/2002-11/Nov02-focus2.htm)

² [2017] SGHC 230.

³ Section2 of the Multi-level Marketing and Pyramid Selling (Prohibition) Act and Guidelines by Ministry of Trade and Industry Singapore (MTI).

⁴ The Multi-Level Marketing and Pyramid Selling (Excluded Schemes and Arrangements) Order 2000.

Paragraph 2(1) (C) of the Amended Order 2001 then set out eight conjunctive conditions (ie., all eight conditions must be met at the same time) in order that any other scheme be exempted from the said definition of pyramid selling scheme or arrangement and similarly not be prohibited in Singapore. The eight conditions are as follows:

- i. No payment in order to participate¹
- ii. Method by which benefits accrue²
- iii. No benefits to be paid for recruitment³
- iv. No representations on accrual of benefits⁴
- v. No income claims⁵
- vi. No false or misleading representations or material omissions⁶
- vii. Sixty-day compulsory refund period⁷
- viii. Compulsory information in writing.⁸

It is unlawful for any person or company to promote or participate in the MLM business. Under Section 3(1), it shall be unlawful for any person to promote or participate in a multi-level marketing scheme or arrangement or a pyramid selling scheme or arrangement or to hold out that he is promoting or participating in such a scheme or arrangement.⁹

If the person committing an offence under this Act is a company, every individual who at the time the offence was committed was a director, general manager, manager, secretary or other officer of the company concerned in the management of the company or who was purporting to act in any such capacity, as well as the company, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. The Law restricts individual and company not to apply to be registered which

¹ Sub Paragraph 2(1) (c) (i) of the amended Order.

² Sub Paragraph 2(1) (c) (ii) of the amended Order.

³ Sub Paragraph 2(1) (c) (iii) of the amended Order.

⁴ Sub Paragraph 2(1) (c) (iv) of the amended Order.

⁵ Sub Paragraph 2(1) (c) (v) of the amended Order.

⁶ Sub Paragraph 2(1) (c) (vi) of the amended Order.

⁷ Sub Paragraph 2(1) (c) (vii) of the amended Order.

⁸ Sub Paragraph 2(1) (c) (viii) of the amended Order.

⁹ Section 3 of the Multi-level Marketing and Pyramid Selling (Prohibition) Act.

is designed to promote a multi-level marketing scheme or arrangement or a pyramid selling scheme or arrangement.¹

A person who contravenes section 4 (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 5 years or to both. Where a company which is designed to promote a multi-level marketing scheme or arrangement or a pyramid selling scheme or arrangement contravenes section 5 (1) by obtaining incorporation or registration under the Companies Act, that company and every officer thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 5 years or to both.

Thus, to recapitulate, the purpose of Singapore anti-MLM Law is to eliminate the MLM business in Singapore and the punishments for unlawful business are imposing imprisonment together with fine.

Conclusion

In the US, a MLM is legal, except lack of ethical manner in doing businesses and Pyramid scheme are illegal. According to case study, the Federal Trade Commission (FTC) takes action harshly on the companies which are marketing using illegal pyramid scheme. In determining the legality of MLM, Singapore has different view. The legality of MLM must be checked by three principal conjunctive requirements under the Multi-level Marketing and Pyramid Selling (Prohibition) Act. And the Excluded Schemes and Arrangements Order.

The differences between the US practice and Singapore practice are in three points;(1) the purpose of taking action, (2) the way to take action, and (3) concept it is based. The purpose of taking action by the FTC is just to control the illegal practices of MLM and not to eliminate the MLM marketing system. In contrast, Singapore anti-MLM Law expressly states the purpose of the Act is to eliminate the MLM business in Singapore, not to control the business. Regarding the ways to take action, the US methods prefer imposing fines rather than imprisonment. Whereas, Punishment accordance to

¹ Section 4 and 5 of the Multi-level Marketing and Pyramid Selling (Prohibition) Act.

Singapore practice are imposing imprisonment with fines. The differences between the methods of two countries are due to the concept each is based. The action taken by the US attempts to correct the business manner of MLM. Singapore assumed the MLM as an unlawful and punishable action done by business entity or individual.

In Myanmar, there is no statute to control MLM business exclusively. Most recently, the Prohibition Order issued by the Ministry of Commerce ban all forms of selling goods by MLM marketing system. However, it did not intend to dissolve all MLM companies. Unlike Singapore practices, which does not allow any individual or corporate to apply for registration of business intending to promote MLM, punishment under the existing law cannot eliminate MLM in Myanmar. From the date of issuing the Order, there is no MLM company dissolved. According to the lesson learned from the US and Singapore, Myanmar should make sure of monitoring the MLM companies' activities, whether they are complied with the Prohibition Order. Moreover, education for Consumer is needed for not being victim of MLM traps and Consumer Complaint center for MLM issues should be established. Furthermore, Myanmar should enact the Law eliminating the illegal MLM business as fast as possible.

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