

## **Fair Trade Commission Disposal Directions (Guidelines) on Cases Relating to Multi-level Marketing**

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### **Chapter I General Principles**

1. In order to enforce the Multi-Level Marketing Supervision Act (hereinafter referred to as “the Act”), the Fair Trade Commission (the "Commission") adopts these Guidelines for investigations in multi-level marketing (“MLM”) cases.
2. A violation of Article 18 of the Act shall be found where the senior members participants of a MLM organization generate income primarily through their introduction of new participants and receive commissions from the latter's membership fees, rather than generate income from the marketing or sale of the goods or services at reasonable market prices.

## **Chapter II Report Filing Process**

3. When MLM businesses filing report to the Commission for record, the Commission shall review them item by item in accordance with Article 6 of the Act. If the information submitted is not in compliance with the regulations, the applicant will have 30 days from the date of report filing to comply. If the compliance is not met when the term expires, the Commission shall reject the submitted document, and a re-filing procedure may begin when all information is ready.
4. When MLM businesses report for any change in filed content, the Commission shall review them item by item in accordance with the Article 7 of the Act. If the information submitted is not in compliance with the regulations, the applicant will have 20 days from the date of report filing to comply. If the compliance is not met when the term expires, the Commission shall reject the submitted document, and a re-filing procedure may begin when all information is ready.
5. If the goods, services or business conducted in a case where a MLM business filing report for record involve the regulatory capacity of another competent authority in charge of a different industry, the Commission may attach all the relevant information of the filing and transfer the case to that competent authority for their discretionary review, and if necessary, the Commission may join the review process of the case.

## **Chapter III Business Inspection**

6. When the Commission conducts a business inspection at the primary business establishment of the MLM business, the following items will be checked and recorded, one by one, into the list of inspection record:
  - (1) the organizational system of the overall business and its individual levels;
  - (2) the total number of the MLM agents, and the number of agents joining and leaving each month;
  - (3) the name or trade name, national ID number or Business Uniform ID Number, address, contact phone number, and main business region of each MLM agent;
  - (4) written participation agreement for MLM agent;
  - (5) the categories, quantities, dollar amounts and other related information of the goods or services for sale;
  - (6) the payment terms of commissions, bonuses or other financial benefits;
  - (7) the handling process of the return goods from the MLM agents and the total dollar amounts of payments;
  - (8) the Balance Sheet and Income Statement of the previous year of the MLM operation. The financial statements mentioned above shall also be examined

by a certified accountant if Paragraph 2, Article 17 of the Act applies to the case;

(9) any other situations that may be related to the MLM business operation.

The inspection record referred to in the preceding paragraph shall contain a confirmation signature of the on-site representative of the business being inspected.

7. If any one of the following conditions applies to a MLM business, the business will be deemed as the priority target for a business inspection:

(1) there are more reports or complaint cases against the business;

(2) there are abnormalities shown in the financial or tax data of the business;

(3) the bonus system of the business is peculiar;

(4) the goods of the business for sale are unusual;

(5) the submission was rejected because the business failed to complete a report-filing submission in accordance with the prescribed deadline;

(6) the business has not been inspected in the last three years;

(7) there are a great number of records, involving the business or its agents, that are deemed by the health regulatory authority as in violation of health regulations;

(8) the business fails to attend a mediation meeting organized by the Multi-level Marketing Protection Foundation without any justification, which leads to a failed mediation.

8. When the Commission conducts a business inspection at the primary business establishment of the MLM business, in addition to the inspection as prescribed in Point 6 of this Guidelines, the Commission shall answer or explain, on the spot, questions raised by the business being inspected relating to relevant regulations and policies.

9. The inspection record and its relevant documents, after being reviewed, shall be converted into digital files and uploaded to the MLM management system.

#### **Chapter IV Case Handling**

10. For cases that are submitted for interpretation, the supervisor of the department undertaking the case is authorized to process and respond in accordance with existing interpretations made by the Commission in archived examples, or find answers in clearly defined legal provisions if they pose no controversy and require no further interpretation. These cases will be submitted to the monthly Commissioners' Meeting for ratification.

11. When filing a complaint against a MLM business or its agents for MLM violations with the Commission, the complainant shall supply in detail specific content, the complainant's real name and address in writing, as well as the name (or

the person's name) and address of the business being reported. If the complaint is made verbally, the Commission shall make a written record that includes the complainant's signature or seal.

When accepting cases as described in the preceding Paragraph, the Commission shall, with the purpose of collecting facts and evidence for the investigation, require the complainant to provide evidences relating to the complained illegal act. If a representative is acting on behalf of the complainant, a Power of Attorney is required.

12. When accepting a complaint in writing or by email, the Commission shall first verify the following facts in accordance with the complaint procedures:

- (1) its compliance with Paragraph 1, Point 11 of the Guidelines. If the statement does not contain a real name and address, the complaint shall be rejected;
- (2) its compliance with Paragraph 2, Point 11 of the Guidelines. If the case in lack of sufficient evidences, as required by the investigation, the case shall be rejected and a letter requiring the complainant to present relevant evidences and an instruction for a separate submission shall be sent as a response to the complainant;
- (3) if the jurisdiction of the complaint belongs to a civil or criminal court, or other regulatory authorities, the department undertaking the case may reply with a letter explaining that the case does not fall within the jurisdiction of the Commission, or transfer the case directly to the relevant regulatory authority.

For cases that are not in conformance with the complaint procedures as described in the preceding Subparagraphs, the supervisor of the department undertaking the processing of the complaint is authorized to process and respond, and these cases are to be submitted to the Commissioners' Meeting for ratification on a monthly basis.

Subparagraphs 1 and 2 of Paragraph 1 do not apply to complaint cases involving major public interests.

13. If any one of the following conditions applies to the complaint case, the department undertaking the case may write comments and submit the case to the commissioner on rotation duty for review without investigation. Once the review result of the case is approved by the Chairperson or the Vice Chairperson of the Commission, a reply will be sent to the complainant, and the case will be submitted collectively to the monthly Commissioners' Meeting for ratification:

- (1) the facts and reasons detailed in the complaint are clearly incompatible with the criteria of the Act;

- (2) the facts raised in the complaint are already covered by the Commission's disposition;
  - (3) the entity of the complaint is out of business, dissolved (deceased), or relocated to an unknown location, making it impossible for any further investigation;
  - (4) the complainant submits the same case again without any new evidences after the complaint is withdrawn.
14. If any one of the following conditions applies to the case being investigated, the department undertaking the case may stop the investigation, write comments and submit the case to the commissioner on rotation duty for review. Once the review result of the case is approved by the Chairperson or the Vice Chairperson of the Commission, the case will be closed with a filing or a reply, and it will be submitted collectively to the Commissioners' Meeting for ratification on a monthly basis:
- (1) the case under investigation has been issued with a notification to make corrections, and they are not made within the prescribed deadline;
  - (2) the facts raised in the complaint are already covered by the Commission's disposition;
  - (3) the entity of the complaint is out of business, dissolved (deceased), or relocated to an unknown location, making it impossible to investigate further.
15. When the circumstances of a case make it necessary for the Commission to dispatch its personnel to conduct investigations a MLM organization's place of business, at least two personnel shall be dispatched at the same time. If necessary, local law enforcement agencies and other governmental agencies with relevant jurisdictions may be asked to offer their help and cooperation in the investigation.

#### **Chapter V Simplified Procedures**

16. The Simplified Procedures may apply to cases that are in violation of Paragraph 1 of Article 6, Paragraph 1 of Article 7, Article 9, Paragraph 1 of Article 13, Article 14 through Article 17, Paragraph 1 of Article 25, and Article 26 of the Act, and in which a penalty fine of less than three hundred thousand New Taiwan Dollars will be imposed. However, this does not apply to cases where the second half of Paragraph 1 in Article 32, the second half of Article 33, and the second half of Article 34 of the Act, are applicable.

The Simplified Procedures are applicable to cases that are deemed as not in violation of the law as a result of an investigation, or to cases that only have minor impacts on public interests in spite of the violation, and where no punishment shall be imposed.

17. For cases in which penalty decisions are made using the simplified procedures, the department undertaking these cases shall write the simplified disposition order, draft reply letters, and submit these cases to the commissioner on rotation duty for review. Once review result of the case is approved by the Chairperson or the Vice Chairperson of the Commission, the decision is to be distributed first, and then the case will be submitted to the Commissioners' Meeting held in the following week for ratification.

For cases in which non-penalty decisions are made using the simplified procedures, the department undertaking these cases shall write the disposition comments, draft reply letters, and submit these cases to the commissioner on rotation duty for review. Once the review result of the case is approved by the Chairperson or the Vice Chairperson of the Commission, the decision is to be distributed first, and then the cases will be submitted to the Commissioners' Meeting held in the following week for ratification.

18. The format and content of a disposition order using the simplified procedures are shown as follows:

- (1) wording of " Fair Trade Commission Disposition Order", and a reference number;
- (2) the name and residence information of the offender and the offender's representative (responsible person), or agent;
- (3) main content;
- (4) facts: Use line items in simple and concise terms to describe the facts that are deemed as violations by the Commission;
- (5) reason: Use simple and concise terms to describe the reasons for the determinations on key facts. The reasons shall be stated item by item, if the investigation application submitted by the offender is denied, or facts or evidence provided by the offender are rejected.
- (6) evidences: Record all relevant evidences obtained in the investigation. Information such as the complaint letter, and MLM system, the statement of the offender, the information supplied by the offender, and information obtained from other investigations by the Commission shall be all included.
- (7) applicable: regulations. List all the contents of the applied Articles and their legal effects;
- (8) notes: Sequentially state the appeal process and other necessary items.

19. If there are differences in opinion during the review process of cases as mentioned in Point 17, and it is instructed to submitted the cases to the Commissioners' Meeting for review, they should be submitted to the Commissioners' Meeting for review in accordance with the contents of the instructions.

## **Chapter VI Other Matters**

20. If any one of the following conditions applies to a MLM business, the Commission may implement supervisory control after a Commissioners' Meeting:

- (1) the goods of the MLM business may be at the risk of disappearing;
- (2) the circumstances of violations of Paragraph 2 of Article 20, Paragraph 2 of Article 21, and Article 22 through Article 24 of the Act are significant in their nature;
- (3) the circumstances of violations of Article 16 and Article 19 of the Act are significant in their nature;
- (4) the level of damage done to MLM agents' rights and interest is significant in its nature.

For a business under supervisory control, as referred to in the preceding paragraph, the Commission shall, in accordance with Article 26 of the Act, order the business to do regular reporting of required information, or dispatch personnel to inspect for, at the business premises, the required business operation information.

21. If the need for the supervisory control of the MLM business no longer exists, and the conditions as described in Paragraph 1 of the preceding Point are not present during the period of supervisory control, the Commission may remove the supervisory control after the Commissioners' Meeting has reached such a decision.

The department undertaking these cases should discuss, in January each year, the continuation issues of the supervisory control over the MLM businesses that are under their supervisory control, and submit the cases to the Commissioners' Meeting for review. However, the cases that are under supervisory control for less than a year will not be included in the review process.

The MLM businesses that have been under the Commission's supervisory control for more than two years may apply for the removal of the supervisory controls. However, if such an application is rejected by the Commission, the business shall not be permitted to re-apply for the removal of the supervisory control within a year from the date of rejection.

22. If during the process of report filing, business inspections or case investigations, the Commission finds that a MLM business or its agents have violated the Act or any other regulations, the handling process shall be conducted in the following way:

- (1) cases that involve the violation of Article 18 of the Act, or that pose criminal responsibility in other regulations, shall be transferred to the prosecuting and/or investigating authorities;
- (2) cases that involve the violation of the administrative responsibilities of the Act shall be put under the Commission's initiated investigation;
- (3) cases that involve the violation of the administrative responsibilities of other laws shall be transferred to the competent authorities.

For the transferred cases, as referred to in the subparagraphs (1) and (3) of the preceding paragraph, if relevant information is subsequently obtained, such information should voluntarily be supplied to the competent authorities receiving the cases for their reference.

23. Cases that involve MLM businesses that are found to have no sales data or signs of business operations should be transferred to the Ministry of Economic Affairs to be processed in accordance with the Company Act or the Business Registration Act.