

A Study of the Multi-level Marketing Regulations and Administration in Important Countries in the Asia Pacific Region

1. Background of study

Multi-level marketing is an approach to promote and sell a large number of products. The approach was jointly created by Mr. Lee Mytinger and Mr. William Casselberry in the US. Afterwards, it spread rapidly both in the US and in different parts of the world. As a result, many companies surfaced and started to apply illegal measures to make big profits in the name of multi-level sales. Eventually, after the US government began to crack down on multi-level sales in the 1970s and declared the head-hunting “pyramid schemes” illegal, multi-level sales gradually went on the right track.

The first multi-level marketing practices in the country were brought in by Japanese businesspeople. Later, the “Taijia Incident” took place in 1981. The “pyramid scheme” marketing approach brought property damage to private citizens and, as a consequence, many people started to consider multi-level marketing an illegal business activity. After 1982, American multi-level marketing companies entered the domestic market and tried hard to restore the positive image of multi-level marketing. Finally, as a result of the appeals from various sectors, the Fair Trade Law was promulgated and entered into force. Through legislation, the government was able to intervene and clearly define multi-level marketing. Administrative regulations were also enacted and the legal status of multi-level marketing was finally confirmed.

When the Fair Trade Law was first enacted, the government adopted the system of “registration for reference” to regulate multi-level marketing. Businesses intending to engage in multi-level marketing were required to present documents specified in related regulations to file with the FTC before starting operation. According to the system, which was also referred to as the filing system or registration system, businesses had the liberty to file their registration applications which would not be disapproved. Registration was made mandatory mainly to assure the competent authority would be notified before multi-level marketing operations were launched. If the competent authority found the contents of filed information did not comply with related regulations, it could prohibit the operation or could order to make corrections. As for the reason why the FTC adopted the “registration system” instead of the “approval system,” the main consideration was that multi-level marketing businesses would certainly use the official approval document from the FTC as a propaganda to attract consumers. Since a multi-level marketing business could recruit up to ten thousand participants with dissimilar educational backgrounds, even if all the information presented to the FTC complied with related regulations, it by no means suggested the practices of the business or its participants would definitely be legal. Once any violation occurred, the FTC could be accused of “approving” the business. Therefore, the FTC decided to adopt the “registration system.”

According to the domestic Company Act or the Business Registration Act, companies set up to engage in operations that require permission from the government or the competent authority of the industry must acquire the permits before they can apply for company or business registration. Meanwhile, businesses to which the permission system and special approval system apply are subject to corresponding regulations. For example, funeral services, insurance companies, hotels and banks are required to obtain the permission of the competent authority and the regulations are specified in the Mortuary Service Administration Act, the Insurance Act, the Act for the Development of Tourism, and the Banking Act. In the meantime, according to the Telecommunications Act and the Securities and Exchange Act,

Type I telecommunications enterprises and securities firms need the special approval of the competent authority before they can get the license and begin operation. In the US, the UK, Canada or Japan, there are no regulations regarding whether multi-level marketing businesses have to register or acquire permission first. The main regulations are intended to prohibit unlawful multi-level marketing practices. Currently, countries in which multi-level marketing businesses are required to obtain permission in advance include Korea, Vietnam, Malaysia, Thailand, Indonesia and China. Apparently, the levels of regulatory density in different countries to control multi-level marketing are dissimilar.

The domestic multi-level marketing industry has developed for over two decades and the sales channels are quite mature. As the industry continues to grow, however, it is necessary to keep an eye on the influence of related laws and regulations on the development of the multi-level marketing industry in the future. In this paper, current regulations in the Multi-level Marketing Supervision Act and the law enforcement practices are evaluated to see if it is necessary to adjust the regulatory density and the results will be offered to the FTC for reference in its administration of the multi-level marketing industry in the future.

2. Methods and scope of study

Literature analysis is adopted as the principal method in this study. Laws and regulations, related cases, research reports, government publications as well as magazine and newspaper articles associated with the subject of this paper are collected from Korea, China, Singapore, Malaysia, Vietnam and Australia for comparative analysis to learn about related issues and the results to understand the law enforcement experiences and practices in other countries and offer concrete suggestions to help the FTC with its administration of the multi-level marketing industry.

This paper is divided into five chapters. Chapter 1 is the introduction. In Chapters 2 and 3, the regulatory measures adopted in different countries, including whether the registration or permission system is applied, limitation of percentages of bonuses issued and participant qualifications, are sorted out and presented; cases processed in different countries are also analyzed to understand the law enforcement standards in each country. Chapter 4 deals with the domestic laws and regulations and related cases. In Chapter 5, differences between domestic regulatory measures and those adopted in other countries are compared and analyzed, and conclusions and suggestions are presented to serve as references for the FTC to reckon if it is necessary to adjust regulatory measures and density.

3. Main suggestions

As mentioned above, the levels of regulatory density adopted in six aforesaid Asia-Pacific countries to control multi-level marketing vary. However, the laws and regulations and related cases in these countries definitely have their reference value. Countries with higher levels of regulatory density clearly specify the requirements, starting from entry thresholds, such as the amount of capital and security bond, etc., for companies intending to engage in multi-level marketing, to restrictions on types of products to be marketed, upper limits of bonuses to be issued and participant qualifications, and finally to handling of participant withdrawal and products returned upon contract termination. In countries with lower levels of regulatory density like Singapore, the regulations merely specify promotion of and participation in multi-level marketing or pyramid schemes are prohibited. Australia also has not established a separate law to govern multi-level marketing. Regulations associated with pyramid schemes are specified in the Australian Consumer Law. The current measures adopted by the FTC regulate that businesses have to present all statutorily required

documents to file with the FTC before they can begin multi-level marketing. The threshold for businesses to start multi-level marketing is not too high. Nonetheless, once businesses begin operation, they have to abide by the regulations set forth in the Multi-level Marketing Supervisions Act and will be subject to the administrative supervision and control of the FTC. At present, there are no obstacles to the FTC's multi-level marketing administration. However, multi-level marketing is growing prosperously and a large variety of products are being sold (including intangible products like courses). At the same time, marketing language adopted also hits human weakness directly and new bonus systems come out one after another. Whether the current regulations suffice, reference can be made to the condition and regulatory density in different countries. Take China and Vietnam for example. Being Communist countries, the governments will not give the green light to such economic activities without deliberation. Instead, they are more likely to adopt rigorous control measures. As for Singapore and Australia, being economically developed countries, they tend to apply more liberal and open approaches to manage multi-level marketing. Government agencies will intervene only when it is necessary. As a result, the intensity and density of control of multi-level marketing activities are different. In Korea, when multi-level marketing activities first appeared, the government cracked down on them. Anyone engaging in multi-level marketing was regarded violating the law and handled accordingly. Multi-level marketing was not accepted gradually until it went through a development process and the government changed its attitude after studying how such activities had been approved in countries in the West. In conclusion, the laws and regulations in the aforementioned countries may serve as references for the FTC, but the differences in economic and social development in different countries ought to be taken into consideration. The case the FTC processed in the past can also be classified into different categories according to type of violation. Multi-level practices leading to damage to the rights and interests of participants and triggering social problems can be the direction in consideration of which regulations need reinforcement and whether the Multi-level Marketing Supervision Act requires amendment.