

LCQ1: Pyramid selling activities

Following is a question by the Hon Wong Kwok-hing and a reply by the Secretary for Commerce and Economic Development, Mrs Rita Lau, in the Legislative Council today (November 18):

Question:

Recently, I have received a large number of complaints about the malpractices used by a multi-level marketing company to recruit "members" and trick them into participating in pyramid selling scams. Some victims suspected that the company had, by inducement and harassment, misled them into borrowing huge amounts of loan at one go from a number of finance companies and then handing over the entire borrowed amounts to the person-in-charge of the company for "custody", in order to become "member" distributors of the company's sales network. These complainants have pointed out that the real intention of the marketing company was to induce more people to join the company as "members", so that "members" of the upper tiers would be able to pocket part of the funds invested by "members" of the lower tiers as commission, and such rip-offs would be repeated in a similar manner down the different tiers, thereby forming a pyramid of trickery and extortion. Many law enforcement officers have indicated to me that as there are loopholes in the existing legislation, it is difficult to institute prosecutions and these multi-level marketing companies are thus able to continue to operate and expand. Besides, it has been reported that as the Macao Special Administrative Region (SAR) Government adopts a tough stance against such fraudulent activities and amended the Pyramid Selling Prohibition Ordinance in 2008, it has been successful in eliminating such kind of fraudulent multi-level marketing activities. In this connection, will the Government inform this Council:

(a) of the number of such complaints or reports received by the authorities since 2007; the total number of people and amount of money involved; how the authorities handled these cases and the outcome thereof; and why some companies which had been the subjects of complaint can continue to operate in Hong Kong using the aforesaid practises;

(b) whether it knows and if it has studied the content of the amendments made by the Macao SAR Government to the aforesaid Pyramid Selling Prohibition Ordinance, and from which parts of the amendments Hong Kong may make reference; and

(c) whether the Hong Kong SAR Government will review or amend the related existing legislation; if so, of the timetable for introducing such legislative amendments; if not, the reasons for that?

Reply:

President,

The Government encourages and supports free and open trade, and is committed to fostering a favourable environment for business. The premise, however, is that businesses should operate within legal bounds. Pyramid selling schemes are different from ordinary business models in that profits under the former are mainly derived from recruiting participants who pay to join the schemes. Economic benefits that could be generated from such sale of goods or services are limited. Furthermore,

pyramid schemes are unsustainable as they rely solely on the recruitment of new members, participants may suffer from financial loss. Legislation is therefore in place to regulate such schemes.

According to the definition of pyramid selling schemes in section 2 of the Pyramid Selling Prohibition Ordinance (Chapter 355) (the Ordinance), one of the defining characteristics is that the reward a participant may receive through the introduction of another participant to join the scheme is not based on the fair market value of goods or services that are actually sold by him or by that other participant. Under the Ordinance, any person who knowingly promotes a pyramid selling scheme commits an offence and is liable to a fine of \$100,000 and to imprisonment for three years upon conviction. Besides, it is a criminal offence to adopt deceptive tactics to obtain loans from money lenders, or to conspire to defraud others to join the schemes. The Police will conduct investigation into any suspected contravention of relevant criminal legislation.

My reply to the three parts of the Honourable Member's question is as follows:

(1) During the period from 2007 to November this year, the Police received seven complaint cases relating to suspected pyramid selling schemes. After investigation, the Police has arrested 21 persons in respect of four cases (involving 157 affected persons and \$8.78 million). Investigation for the remaining three cases has been suspended as there is no evidence of contravention of any legislation.

Separately, during the same period, the Police received 148 complaint cases relating to undesirable marketing tactics adopted by multi-level marketing companies or their agents. After investigation, eight cases are found to be related to objectionable marketing tactics which might involve offending acts of criminal nature, e.g. withholding other people's goods, supplying other persons with or abetting others to use false documents for borrowing. A total of 14 persons were affected and \$2.28 million was involved in these eight complaint cases. To date, the Police has arrested 11 persons, and one of them was convicted on October 6 this year by the Court of "using a false instrument" and was sentenced to four months in prison. Investigation for the remaining 140 cases has been suspended either due to no evidence of non-compliance with the law or complainants refusing to provide further information. The Police will continue to conduct detailed investigation into every complaint case it receives. Apart from paying attention to whether there is contravention of the Ordinance, the Police will also consider whether any other offence has been committed. If there is sufficient evidence, the Police will institute prosecution.

(2) We are aware of and have taken note of the legislative amendments in relation to pyramid selling schemes in Macao. We understand that under the relevant legislative provisions in Macao, pyramid selling means activities of sale of goods or services organised in the form of chains or similar forms. Whether participants of pyramid schemes can receive any reward depends mainly on whether they can recruit new participants. Nevertheless, we note that the mode of operation of undesirable pyramid selling schemes in the market keeps changing, some of which may not even involve the sale of goods or services. Accordingly, we have also drawn reference from the approach and legislative models in other countries or places. For instance, in Australia, the definition of pyramid selling schemes has been expanded and covers schemes not involving any sale of goods or services. We will continue to examine meticulously whether useful reference can be drawn from other places or countries, with a view to devising regulatory proposals which suit the circumstances and needs of Hong Kong.

(3) The Ordinance has been in operation for a considerable period of time. In the light of changes in the mode of operation of pyramid selling schemes and overseas experience, we will examine if there are inadequacies in the existing Ordinance, such as its coverage, definitions and penalties. If the result of our examination indicates that there is a need to amend the Ordinance, we will submit our proposals to relevant Panels of this Council and seek Members' views.

Ends/Wednesday, November 18, 2009