

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
Second Regular Session

House Bill No. **9377**



Introduced by REPRESENTATIVE MANUEL ANTONIO F. ZUBIRI

EXPLANATORY NOTE

Various forms of businesses engaged in deceptive and fraudulent sales acts and practices particularly "pyramid sales schemes" or "chain distribution plans" continue to proliferate despite government efforts to restrict such activities. Numerous individual investors and participants still fall victim to these companies and are unable to recover their hard-earned savings and borrowed money once these companies collapse.

RA 7394 or The Consumer Act of the Philippines does not have adequate provisions to identify, monitor and penalize companies or businesses engaged in pyramiding. The law does not provide a clear definition and distinction between "multi-level marketing" or "networking" as a legitimate way of marketing products, services and credit as against "pyramid schemes" or "chain distribution plans." Multinational and local companies are getting more sophisticated in their business models in masquerading and passing their company off as legitimate multi-level marketing companies.

Therefore, this measure seeks to enable the Department of Trade and Industry in curtailing the growing number of business companies engaged in "Pyramid Schemes" or "Chain Distribution Plans" by expanding its regulatory powers. This proposed measure enumerates indicators and/or conditions of "Pyramid Schemes" or "Chain Distribution Plans" so that the public will be on guard against these companies. To curtail the use of pyramiding sales devices, stiffer penalties are provided for in this proposed Act.

In view of the foregoing, the passage of this bill is earnestly sought.

MANUEL ANTONIO F. ZUBIRI

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a few strokes, positioned above the printed name.

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AN ACT
PROHIBITING THE USE OF PYRAMID SCHEMES OR CHAIN DISTRIBUTION PLANS IN
DOING BUSINESS AND PROVIDING PENALTIES THEREFORE AND FOR OTHER
PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Short Title. – This Act shall be known as the “Anti-Pyramiding Act of 2021”.

SEC. 2. Declaration of Policy. – It is the policy of the state to promote and support fair and honest business transactions and prevent the employment of pyramid schemes or chain distribution plans which continue to wreck the economic lives of countless Filipinos who aspire to have a thriving business of their own. To this end, the state shall implement measures to achieve the following objectives:

- a) To define pyramid schemes or chain distribution plans and differentiate such illegal activities from multi-level marketing or networking as a legitimate way of doing business;
- b) To provide indicators and parameters to identify pyramid schemes or chain distribution plans;
- c) To establish a mechanism to monitor and prevent pyramid schemes or chain distribution plans; and
- d) To impose stiffer penalties for violations of the provisions of this Act.**

SEC. 3. Definition of Terms. – For purposes of this Act, the following term shall be defined as:

- a) “Binary MLM Plan” refers to a binary plan or a multi-level marketing compensation plan which allows independent distributors to have only two front line distributors in the binary tree. If a distributor sponsors more than two distributors, the excess are placed at levels below the front line of the sponsoring distributors in a binary tree. To be legitimate, distributors can earn by balancing sales volume and not balancing number of recruits which is not allowed as the latter is construed as

"headhunting" wherein commissions are paid by the mere act of recruitment under the two legs.

- b) "Consideration" refers to payment of money or its equivalent, or purchase of goods, services, credits or intangible property but excluding purchase of goods or services furnished at cost to be used in making sales, and time and effort spent in pursuit of sales or recruiting activities;
- c) "Drawback Policy" refers to definitive guidelines for the return of marketable products within a reasonable time;
- d) "Fair Market Value" refers to the amount a willing and reasonable buyer would pay for goods in a competitive marketplace;
- e) "Front Inventory Loading" refers to purchase of more products than what can reasonably be used or sold to retail customers in a month;
- f) "Headhunting Fee" refers to amount paid to the direct sponsor of each successful recruit to a network marketing company;
- g) "Investment" refers to any acquisition, for consideration other than personal services, of property, tangible or intangible, and includes without limitation, franchises, business opportunities and services, and any other means, medium, form or channel for the transfer of funds, whether or not related to production or distribution of goods or services;
- h) "Joining, Registration, or Entry Fee" refers to a required amount to be paid by a person to become a member of an independent sales force of a multi-level marketing company, regardless of whether such person receives products or not;
- i) "Match or pair recruits" refers to pairing of recruits on the left and right legs of a binary tree to qualify for a commission;
- j) "MLM Company's Plan" refers to a company's Compensation Plan outlining earning opportunities available to members;
- k) "Multi-level Marketing" (MLM) " or "Network Marketing" refers to a legitimate sales device whereby any person, firm, corporation, association or other business entity, who sells, distributes, manufactures or supplies, for valuable consideration, goods or services through independent agents, contractors or distributors, at different rank levels, wherein such participants may recruit other participants without requiring payment charges, fees, or contributions, as a pre-requisite for acceptance, and wherein commissions, bonuses, refunds, discounts, dividends or other considerations in the program are or may be paid as a result of the sale of such goods or services by the independent agents, contractors or distributors or other people they bring into the business. Multi-level Marketing shall also refer to

a form of Direct Selling whereby goods or services are sold on a person-to-person basis;

- l) "Multiple registration fees" refers to an amount paid for the acquisition of multiple slots or positions;
- m) "Multiple slots or positions" refers to enrollment of the same person in several positions in the same binary and enrollment trees;
- n) "Participants" refers to members of an independent sales force of the network marketing company;
- o) "Pyramid Scheme" or "Chain Distribution Plan" refers to a sales device whereby a person, upon condition that such person makes an investment, is granted by a business entity, distributor, supplier, manufacturer or a representative, a right to recruit for profit one or more additional persons who will also be granted such right to recruit upon condition of making similar investments: *Provided*, That the profits of a person employing such a plan are derived primarily from the recruitment and investment of other persons into the plan rather than from the sale of consumer products, services, and credit; *Provided further*, That a limitation as to the number of persons who may participate or the presence of additional conditions affecting the eligibility for the right to recruit or receive profits therefrom, does not change the nature of the plan;
- p) "Recruitment Bonus" refers to bonus or commission paid for each successful personal recruit made; and
- q) "Sponsorship" refers to direct recruitment of members to join a network marketing company.

SEC. 4. *Prohibiting Pyramid Sales Schemes.* – No person, natural or juridical, shall establish, operate, advertise or promote pyramid sales schemes or chain distribution plans in its business operations.

SEC. 5. *Other forms of Pyramid Sales Schemes.* – Without limiting the coverage of pyramid schemes as defined in Section 3(a) of this Act, companies, sales or marketing plans or schemes shall be considered Pyramid Schemes or Chain Distribution Plans if:

- A) A promoter persuades recruits to purchase products, services, credit, title or rank whereby such recruits receive income primarily from the mere introduction, recruitment or sponsorship of other participants into a pyramid scheme or chain distribution plan rather than from marketing and sale of products; or
- B) The profits of a person are derived primarily from recruitment of other persons into a pyramid scheme or chain distribution plan rather than from sale of consumer

products, services and credit. Such plan or scheme shall include but not be limited to one or more of the following attributes:

- a) Revenue or income is derived mainly from the entry fees of the participants of such companies;
- b) Participants must sponsor a fixed number of other participants in order to earn, each of whom must in turn sponsor a fixed number of participants, as in a pyramid scheme compensating participants by balancing number of recruits rather than number of sales volumes;
- c) Income of participant is dependent primarily upon a slot or position within the company as determined by the time, date and order of participation;
- d) Participants are not allowed to return marketable and unused products for refund within a period of six (6) months from the time of purchase;
- e) There is no fair market value for the goods received;
- f) Participants are allowed to purchase multiple slots or positions by paying multiple registration fees;
- g) MLM company operates without valid licenses, permits or authorizations from concerned national government agencies or local government units; and
- h) MLM company fails to submit its marketing plan to DTI.

SEC. 6. *Monitoring and Regulation of MLM companies.* –

- A) Corporations or partnerships using multi-level marketing or networking in carrying out the purposes of their business shall disclose such information in their Articles of Incorporation or Partnership. Sole proprietorships shall likewise disclose in their registration with DTI if they use multi-level marketing or networking in the conduct of their business. Failure to comply herewith shall be a ground for the cancellation of SEC or DTI registration.
- B) Registered multi-level marketing companies shall register and file their MLM plans with the DTI within sixty (60) days prior to start of business operations: *Provided*, That all existing companies engaged in multi-level marketing or networking shall submit their MLM plans with the DTI within ninety (90) days from the effectivity of this Act; *Provided further*, That in case there are revisions, amendments or modifications in the MLM plans, companies shall submit a report to DTI within sixty(60) days prior to the implementation thereof; *Provided finally*, That failure to comply herewith shall be a ground for cancellation of registration with the DTI and the SEC.

C) The DTI shall monitor and regulate multi-level marketing plans and set indicators and parameters in order to determine whether there is *prima facie* evidence that a company is engaged in pyramid schemes or chain distribution plans, such as but not limited to the following:

- a. Prohibitive entry requirements or head hunting fees and/or joining fees.
The entire joining fee that is paid to participate in a plan is considered as entry or registration fee, notwithstanding the inclusion of products as part of the registration fee;
- b. Undisclosed drawback policy;
- c. Front inventory loading;
- d. Profits of a company or independent sales force primarily derived from recruitment;
- e. Unjust claims of unusually large returns on investments;
- f. Absence of real market for a product;
- g. Payment of recruitment bonus such as in a scheme compensating independent distributors who are able to “match/pair” recruits;
- h. Absence, undisclosed or unreasonable product return policy;
- i. Sale of multiple slots or positions through the payment of multiple registration fees by one independent distributor; and
- j. Such other activities which the DTI may deem pyramid schemes or chain distribution plans.

SEC. 7. *DTI's Jurisdiction Over Prosecution.* – The DTI shall have original jurisdiction over complaints on pyramid sales schemes and shall conduct investigations on companies engaging in, any, some or all of the foregoing prohibited practices that may come to its knowledge, with or without a formal complaint filed.

The jurisdiction of DTI on complaints about pyramid activities, however, shall not exclude other government institutions of jurisdiction granted to them by existing laws on matters related to pyramid activities.

SEC. 8. *Creation of a Task Force.* – There shall be created a Task Force to be spearhead and organized by the DTI to identify emerging pyramid schemes or chain distribution plans and formulate rules and regulations to facilitate the investigation and prosecution of companies employing pyramiding sales schemes and chain distribution plans. The DTI may designate private sector representatives as members of the Task Force.

SEC. 9. *Cease and Desist Order.* – Pending investigation of a company suspected of employing a pyramiding scheme or chain distribution plan, a cease and desist order shall be issued against the company from continuing its business operations.

SEC. 10. *Penalties.* –

- A) Any person, natural or juridical, engaged in pyramiding schemes or chain distribution plans shall, upon conviction, be imposed with a penalty of imprisonment of twelve (12) years to twenty (20) years and/or a fine of not less than One Million Pesos (P1,000,000.00) but not more than Five Million Pesos (P5,000,000.00): *Provided*, That in case the violation is committed by a corporation, association or partnership, the penalty of imprisonment shall be imposed on the members of the board, partners, officers and individuals personally responsible, notwithstanding other remedies available to the victims and other penalties imposed by existing laws; *Provided further*, That such violation shall be non-bailable offenses;
- B) All business licenses, permits and authorizations issued by government agencies shall be revoked;
- C) All persons found guilty for pyramiding shall be ordered to return any and all considerations given by the victims, with interest computed from the time payments were made. The victims shall be deemed preferred creditors as provided for in the New Civil Code of the Philippines.

SEC. 11. *Prescription Period.* – All claims or actions against pyramiding schemes shall prescribe within five (5) years from the time the pyramiding acts and practices have been employed or upon discovery thereof.

SEC. 12. *Appropriations.* – The amount of Twenty Million Pesos (P20,000,000.00) as additional funding for DTI to be charged against the unexpended Contingency Fund of the Office of the President is hereby appropriated for the initial implementation of this Act. Thereafter, the amount needed for the implementation of this Act shall be included in the annual General Appropriations Act.

SEC. 13. *Implementing Rules and Regulations.* - The Department of Trade and Industry shall, in consultation with concerned government agencies, issue the Implementing Rules and Regulations within ninety (90) days from the effectivity of this Act.

SEC. 14. *Separability Clause.* – If any provision of this Act is subsequently declared unconstitutional, the validity of the remaining provisions hereof shall remain in full force and effect.

SEC. 15. *Repealing Clause.* – All laws, decrees, orders, and issuances, or portions thereof, which are inconsistent with the provisions of this Act, are hereby repealed, amended or modified accordingly.

SEC. 16. *Effectivity Clause.*– This Act shall take effect immediately after its complete publication either in the Official Gazette or in a newspaper of general circulation in the Philippines.

Approved,