

Awareness: Multilevel Marketing Schemes

Issued: 9th September 2020

Background

Given the increased level of MLM distributors in Gibraltar, the Office of Fair Trading (“OFT”), in cooperation with HM Customs, Public Health and the Environmental Agency, is issuing guidance to those who may be thinking of engaging in this type of business model or are already doing so.

What is Multilevel Marketing (“MLM”)

If you are considering getting involved in a direct selling business that involves selling products to family and friends and recruiting other people to do the same then that kind of business is called multi-level marketing, also known as network marketing.

This is a direct selling business strategy used by some international companies. The strategy aims to sell products via a network of “distributors”, “participants” or “contractors”, who will usually make money in two ways:

1. by selling the MLM’s products to customers who are not involved in the MLM; and
2. by recruiting new distributors and earning commissions based on what the new distributors buy and their sales to customers.

Examples of some established international businesses that are popular locally and that use MLM marketing for some of their sales include Younique, Avon, Forever Living, Young Living, and Valentusⁱ.

Why we are issuing this awareness

The OFT, HM Customs, Public Health and the Environmental Agency have recently cooperated in an investigation relating to a particular MLM scheme with numerous local representatives where:

1. the MLM had features that were very similar to an illegal pyramid scheme;
2. the goods have been seized upon importation for failure to meet local legal requirements (see ‘Other things to consider’ section below);
3. questionable advertising has been carried out on social media to promote the scheme and the goods being sold; and
4. there were concerns about the safety of the goods themselves.

Inform yourself before signing up

Before signing up to an MLM business, we strongly urge you to consider the following:

1. Research the MLM scheme

Read independent reviews about the MLM business. Do you understand how the scheme works and what you will have to do to make money? Have third parties raised concerns about the scheme online? Is the scheme criticised by previous representatives?

2. Research the goods you are going to sell.

Do you know what the goods are, how they work and what they contain? Are they illegal in Gibraltar? Look at independent reviews of the goods you are intending to sell. Understand the nature of the product and, if the product is a consumable, consider whether there are any potential health implications for consumers. Can you get similar goods cheaper if you are not part of the scheme?

Could this be a pyramid scheme in disguise?

Bear in mind that some MLM schemes have very similar features to Pyramid Schemes. Pyramid schemes are illegalⁱⁱ. In such MLM schemes only the people at the very top of the scheme make money while others either:

1. lose money or make very little money;
2. fall into debt to keep up their status in the scheme;
3. recruit family and friends and cause them to lose money; and/or
4. put a strain on relationships as a result of the above.

If the MLM is not a pyramid scheme, it will pay you based on your sales to customers, without having to recruit new distributors. Most people who join legitimate MLMs make little or no money. Some of them lose money and end up in debt.

Those who join fraudulent pyramid schemes will always lose money. The addition of products to a pyramid scheme may serve to disguise the reality.

The following are some indicative signs of a pyramid scheme:

1. Rags-to-riches stories or portrayals of lavish lifestyles made possible by participating in the scheme. These stories may not represent the experiences of most members.
2. Schemes that suggest miracle cures.
3. Products are bought but are not always sold, but instead are stock piled.
4. Money is made primarily based on the number of distributors recruited and sales made to them, rather than on sales of the product to customers outside the plan who intend to use the product.
5. Unethical MLM schemes will encourage that you target:
 - a) Single mothers;
 - b) Low income earners;
 - c) Students; and
 - d) Persons who want to feel part of a social network.

Useful videos for further information:

BBC - <https://www.bbc.com/news/av/stories-43049230/hun-this-could-be-your-opportunity-to-get-rich>

Ted Ed - https://www.ted.com/talks/stacie_bosley_how_to_spot_a_pyramid_scheme

Other things to consider

Local legal requirements may make the successful operation of a legitimate MLM unfeasible in Gibraltar:

1. OFT and Business Licences

To be able to sell goods in Gibraltar you are required to have a Business Licence. The licence is also required by HM Customs to allow you to import goods for resale. In order to get a licence to trade you will require appropriate commercial premises. You can check your licensing requirements and applicable fees on the OFT's website. For assistance e-mail business.licensing@oft.gov.gi

2. HM Customs and importations

HM Customs may withhold your goods upon importation if you do not hold a valid Business Licence. Furthermore, it will **ONLY** release commercial goods on submission/approval of proper digital customs clearance via its online IT system at the Entry Processing Unit. This operation may incur charges if the services of a customs clearance agent is required; and

Additionally HM Customs may detain goods where their importation and exportation is restricted or prohibited. Individuals concerned with this activity may be prosecuted.

3. Environmental Agency and food standards

The Environmental Agency will need to certify products being imported for human consumption.

This document is issued for general guidance only and should not be used or relied upon as legal advice.

ⁱ The direct selling businesses mentioned are only provided as examples of business operating MLM schemes locally. References to these businesses should not be regarded as examples of pyramid schemes or of unethical business models.

ⁱⁱ Schedule 1.14 of the Consumer Protection (Unfair Trading) Act 2008 sets out that "Establishing, operating or promoting a pyramid scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of services" is an unfair commercial practice. The OFT may take enforcement action against such schemes.