

The "Pyramid Selling" That Should Not Be Punished - An Analysis of the Current Situation of Direct Selling Models on Social E-commerce Platforms Allegedly Involved in Pyramid Selling and Recommendations for Compliance

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Abstract: Social e-commerce is an emerging and booming industry, within which direct selling serves as a common marketing model. Owing to unclear legal definitions and standards, weak awareness of corporate compliance, and immature reforms of corporate compliance systems, the direct selling model is susceptible to being misused for pyramid selling activities and criminal behaviors. Compliance for direct selling social e-commerce platforms should therefore not be postponed. The most controversial form of direct selling is multi-level direct selling, which is deemed a typical manifestation of pyramid selling in Chinese law due to its hierarchical structure, the requirement to expanding the subordinates, and team-based remuneration. Multi-level direct selling is, however, essentially a legitimate marketing model, offering advantages such as reduced marketing costs and increased employment. The law needs to be refined to better identify pyramid selling, distinguishing between legitimate direct selling and pyramid selling, and providing guidance for platforms to ensure compliance both pre-incident and post-incident. Platforms themselves must enhance their awareness of compliance, establish compliance manuals that meets their own needs, forbid swindle, and effectively deliver quality products and operations.

Keywords: Social e-commerce platform companies; Marketing model compliance; Pyramid selling; Direct selling

1 The status of social e-commerce platforms involved in pyramid selling

Social e-commerce is a type of business activity that relies on interpersonal networks and utilizes Internet social tools for the trading of goods or provision of services. It encompasses the entire e-commerce process, including information display, payment and settlement, and express logistics. It is one of the significant manifestations of new e-commerce trends. A social e-commerce platform refers to a legally registered entity, whether a legal entity or an unincorporated organization, that provides one or more services directly related to transactions in social e-commerce activities, such as web space, virtual business venues, transaction rules, transaction matching, transaction information dissemination or sharing, commodity service information retrieval, transaction contract conclusion, after-sales rights protection, and complaint handling. These services enable parties involved in social e-commerce transactions to conduct their

business independently. the marketing model of a social e-commerce platform encompasses the diverse strategies and techniques employed by the platform to identify and explore consumer needs, ultimately facilitating consumers' purchase of platform products or services.

In recent years, the social e-commerce industry has been booming, significantly contributing to employment and tax revenue. Data indicate that the market size of China's social e-commerce industry grew from 683.58 billion yuan to 784.71 billion yuan from 2017 to 2022.^[1] Compared with traditional e-commerce, social e-commerce exhibits a high degree of socialization, with direct selling being its prevalent marketing model. However, in practice, the utilization of the direct selling model by social e-commerce platforms can easily veer towards pyramid selling. Pure direct selling is a legitimate marketing model. Since social e-commerce platform enterprises are primarily small and medium-sized, if social e-commerce platforms that adopt a direct selling model

are uniformly deemed as pyramid selling, the harm to the social e-commerce industry and the market economy will be even deeper. Nevertheless, social e-commerce platforms naturally excel in personnel development and information dissemination. As a result, compared to traditional e-commerce, once social e-commerce platforms engage in actual pyramid selling, the scope of harm will be broader, resulting in greater losses to people's property interests. According to the results of online searches using keywords such as "e-commerce" and "social e-commerce" in China Judgments Online, the crime of organizing and leading pyramid selling activities is the second most common criminal offense associated with social e-commerce platforms.

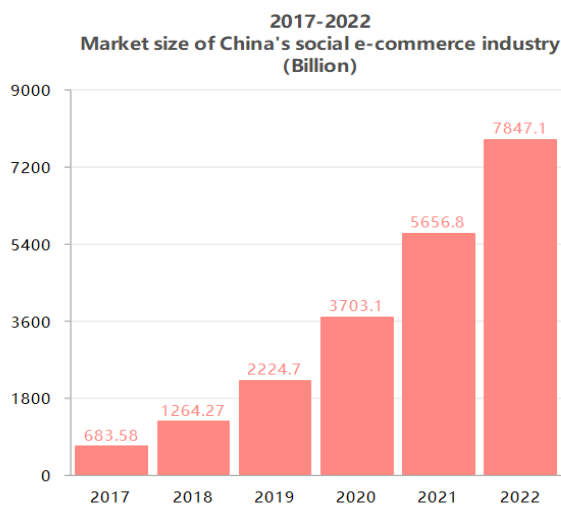


Figure 1 Market size of China's social e-commerce industry

On the one hand, according to the basic principles of criminology, excessively low cost of deviance can give rise to criminal activity. Therefore, the current situation of marketing model on social e-commerce platforms urgently requires corresponding measures to address this issue. Since 2020, the Supreme People's Procuratorate has been vigorously promoting the enterprise compliance system as an effective tool to prevent minor vices from developing into serious crimes and advance crime prevention. On the other hand, the blurring of the distinction between direct selling and pyramid selling has led to many ordinary

social e-commerce enterprises adopting the direct selling model being wrongly recognized as pyramid selling. As a result, it is necessary to clarify the specific contents of the Criminal Law of the People's Republic of China, the Regulation on the Prohibition of Pyramid Selling, and the Regulation on Direct Selling Administration. In summary, the compliance of the social e-commerce platform marketing model should prioritize pursuing exclusion of criminal liability for social e-commerce platform enterprises that use a pure direct selling model involved in pyramid selling, while simultaneously imposing stricter punishment on illegal organizations that disguise pyramid selling as direct selling.

In summary, it is necessary to analyze the characteristics of the marketing model of social e-commerce platforms involved in pyramid selling, and to make suggestions for their compliance and the adjustment of relevant laws.

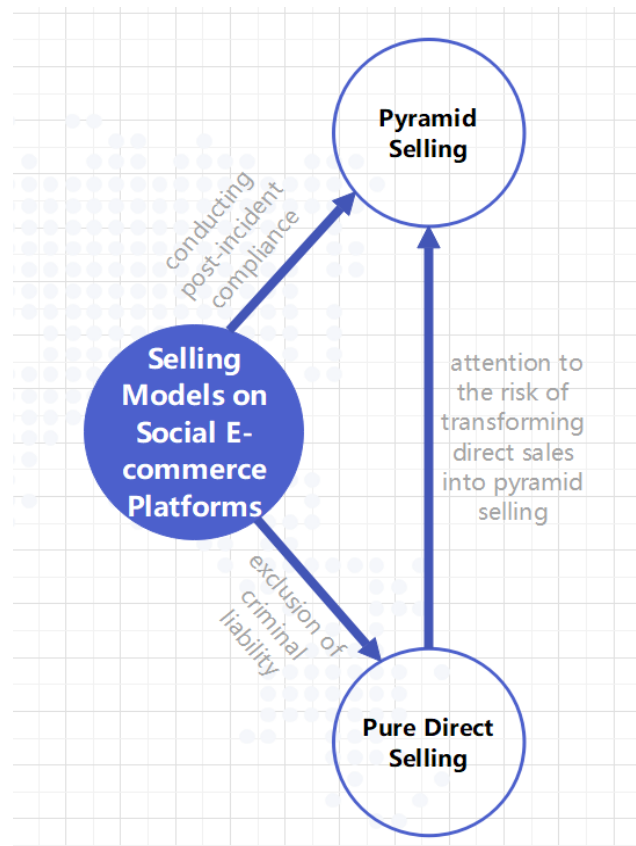


Figure 2 The key compliance points of marketing models on social e-commerce platforms

2 The causes of social e-commerce platforms involved in pyramid selling

Social e-commerce platform enterprises involved in pyramid selling are divided into passive and active categories. The former is unaware or unclear whether their marketing model is recognized by the law as a pyramid selling, while the latter, influenced by a profit-seeking mentality and a sense of gambling, exploits ambiguous legal provisions. They employ the direct selling model as a guise for their pyramid selling activities. Ultimately, the reason for both types of enterprises involved in pyramid selling is the lack of compliance awareness resulting from the blur boundaries between multi-level direct selling and pyramid selling.

2.1 Blur lines between multilevel direct selling and pyramid selling

As a marketing model, direct selling is categorized into single-level direct selling and multi-level direct selling. In single-level direct selling, producers directly transfer goods or services to consumers without the involvement of a third party. Conversely, multi-level direct selling involves a business entity developing two or more layers of direct sellers, thus forming a distribution network. The primary difference between the two lies in the hierarchical structure of direct selling, where single-level focuses on direct transactions between producer and consumer, while multi-level involves multiple layers of sellers.

Through the tracking and retrieval of real cases, we found that certain social e-commerce platforms, represented by Company Y, often become embroiled in pyramid selling disputes due to their multi-level direct marketing model. Company Y employs the following marketing model: utilizing the 'Y Premium' small program for sales, with products outsourced by Company A and other firms, encompassing healthcare products and food. Company Y has eight levels of team: VIP, one-star, two-star, three-star, four-star, five-star, six-star, and seven-star. Members can upgrade from tourists to VIP

status, and VIP can directly upgrade to one-star or two-star agent status through self-purchase. Starting from the three-star level, grade upgrading necessitates the assistance of teams and the formed beneficial market. The company's revenue is divided into static and dynamic components. Members investing in a group of products exceeding 400 yuan can obtain specific points and enjoy a weighted profit sharing of 10% of the total nationwide performance, constituting static income. Dynamic income includes extreme difference award, monthly award, and management award. In the extreme difference award, except for VIP who does not receive rebates, all other levels receive rebates. Higher-level members enjoy cumulative rebates based on the number of products purchased or directly recommended by lower-level members. When a member reaches the five-star agent status, they can obtain the profits of all members within their team. The company offers monthly awards to five-star and above members based on 2%-6% of the monthly new purchase amount of their team's one-star to four-star members, and management awards equivalent to 100% of the monthly rewards of all five-star members within their team. the marketing model of Y Company has the following characteristics: Firstly, the main bonuses for high-level sellers come from group purchase rebates and team commissions. Whether selling a product to a repeat customer or recommending a new customer, sellers can earn profits, thus reducing their obsession with unlimited recruitment of new members. Secondly, the company focuses on the tangibility of its products and services, ensuring that product quality meets national standards and controlling price inflation, while providing corresponding after-sales services. Therefore, although Y Company has some suspicions of pyramid selling activities such as "recruiting new members" and indirectly charging disguised entry fees, it still sells genuine products, and profits are tied to sales behavior rather than the number of recruits.

Through the analysis of a series of cases such as

Company Y, the research group believes that multi-level direct marketing and pyramid selling exhibit distinct differences. First, MLM relies on recruiting individuals and expanding downstream members as a means of generating income, often charging entry fees directly or indirectly to new members. The essence of pyramid selling lies in its similarity to a Ponzi scheme, involving no legitimate trade in goods or services. Secondly, MLM is not solely based on a simple team compensation model, where the upper levels require the lower levels to continuously recruit new members, with compensation determined by the level of recruitment. In contrast, multi-level direct marketing employs a compensation model that is primarily team-based, with the focus on selling goods and compensating based on sales performance. Thirdly, MLM typically lacks tangible products and comprehensive after-sales service mechanisms, whereas multi-level direct marketing offers real products and comprehensive after-sales service mechanisms.^[2]

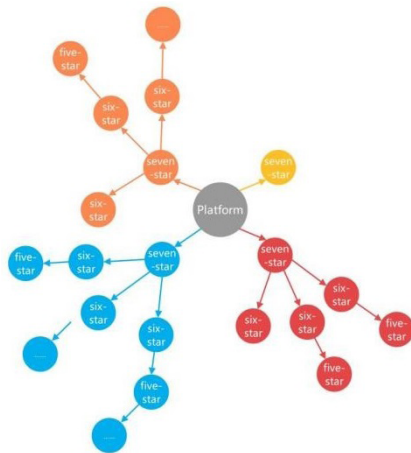


Figure 3 Schematic Diagram of Marketing Model of Company Y

Direct selling, as an "imported product", is a legal, common, and effective marketing model in the United States, where it originated. However, it shares similar characteristics with pyramid selling, such as the utilization of a hierarchical model and direct contact between suppliers and consumers. From the end of 1997 to the beginning of 1998, due to the absence of criteria precise to distinguish between pyramid selling and direct marketing,

numerous pyramid selling capitalized significantly under the guise of direct marketing. This chaotic situation only came to an end in April 1998, when the Notice on the Prohibition of Pyramid Selling and Other Illegal Marketing Activities was issued.^[3] To date, the Criminal Law of the People's Republic of China and the Regulation on the Prohibition of Pyramid Selling have not clearly distinguished between multilevel direct selling and pyramid selling, resulting in the perception that multilevel direct selling is still widely considered a pyramid selling in China's legal practice.

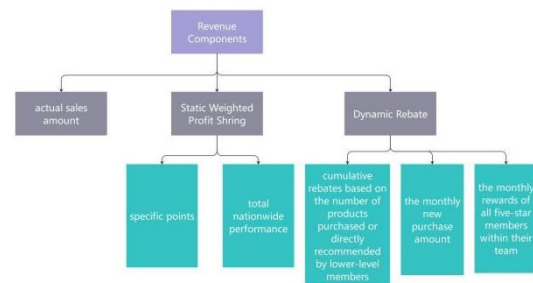


Figure Revenue Components of Company Y's Marketing Model

2.2 Insufficient legal awareness on the part of the platform

Unlike traditional e-commerce, social e-commerce enjoys a natural advantage in developing marketing models due to its strong social nature. Because of its low development cost and ease of establishing a hierarchical structure, the multi-level direct marketing model can rapidly expand in a short time, and the platform can quickly reap the benefits of profitability.^[4] However, due to the lack of legal provisions and the strong similarity between multi-level direct marketing and pyramid selling, in practice, there are often cases where illegal platform enterprises wrongly perceive the legitimacy of their own marketing model, fail to perform compliance beforehand, and thus face criminal liability. If the platform operator lacks legal awareness, fails to understand the difference between multi-level direct selling and pyramid selling, and cannot steer the platform towards a positive direction of 'selling goods', but instead relies on 'recruiting new

members' to make profits, then the platform's direct selling model will develop abnormally. The platform's direct selling model will be distorted into a pyramid selling. Therefore, from the perspective of social e-commerce platforms themselves, if they fail to perform effective compliance management, they will also increase the risk of transforming into a pyramid selling.

3 The difficulties of compliance with social e-commerce platforms

For social e-commerce platform enterprises truly involved in pyramid selling, compliance cannot be delayed. However, the compliance of social e-commerce platforms has yet to be standardized, and there are numerous difficulties in achieving compliance.



Figure 5 Difficulties in compliance with social e-commerce platforms

3.1 High profits in multi-level direct sales, yet challenges in obtaining licenses

Until now, only single-level direct sellers with licenses can operate legally in China. In practice, when multi-level direct selling enterprises apply for direct selling licenses, the administrative authorities often do not approve them, and fewer enterprises have the qualifications to apply for them. According to Articles 7 to 11 of the Regulation on Direct Selling Administration, the application to become a direct selling enterprise is extremely demanding in terms of substantive conditions and complicated in terms of

procedures. Most of the social e-commerce platforms in China are small in scale, and it is difficult for them to meet the requirement of "not less than 80 million yuan" of paid-up registered capital for direct selling enterprises, so it is difficult for them to obtain a direct selling license.

However, compared to single-level direct selling, multi-level direct selling usually operates without physical stores, which reduces the cost of the circulation chain, thus enabling customers to "save money". At the same time, the multi-level direct selling model offers dealers more intuitive "earnings" through rebates, providing them with greater incentives to sell. Social business platform enterprises that utilize the multi-level direct selling model tend to have a closer internal structure. Additionally, the overlap between direct sellers and consumers, as well as the direct selling model's profit path through the subordinate's selling performance, further encourages direct sellers to grow and maintain their teams. This is particularly evident on social e-commerce platforms, where the inherent "social" aspect closely links multi-level direct selling with acquaintances and communities, facilitating easier expansion. In summary, compared to single-level direct selling, multi-level direct selling obviously offers greater income, larger scale, faster profits, and lower costs. Therefore, many social e-commerce platform enterprises, when weighing the benefits and risks of the two models, are often driven by profits to adopt the multi-level model. They do this by affiliating with direct selling license companies, creating a facade of a simple "team compensation" system, and other methods to establish themselves as "social" enterprises. By affiliating with enterprises holding direct selling licenses, and adopting strategies such as creating a facade of a simple "team compensation" system, these platforms attempt to package themselves as "legitimate" businesses.

3.2 Lack of prior compliance awareness among social e-commerce platform companies

Most of the social e-commerce platform enterprises are small and medium-sized private enterprises. Unlike state-owned enterprises (SOEs) whose compliance management

is supervised and promoted by the State-owned Assets Supervision and Administration Commission (SASAC) of the State Council (SASAC), private enterprises tend to emphasize after-the-fact remediation rather than before-the-fact prevention and control.^[5] In addition, because the compliance work of social e-commerce platform enterprises is not common in practice, those who have the conditions and willingness to carry out compliance nowadays are mostly large enterprises. Most of the small and medium-sized private social e-commerce platform enterprises do not have enough understanding of the process and cost of compliance, and tend to think that the cost of compliance is high, the battlefield is long and the return is small. In addition, due to the objective limitations of scale and capital flow, social e-commerce platform enterprises are often inclined to avoid compliance, even if in fact they have already found that the behavior may be quite risky, they still hold a lucky break, which makes the risk escalate. In summary, based on the above reasons, social e-commerce enterprises often do not have a strong will to comply beforehand, do not have a clear understanding of compliance, and do not have enough awareness of compliance.

3.4 Failure of internal regulation within social e-commerce platform companies

Essentially, in addition to the external regulatory push, corporate compliance mainly relies on the internal drive of the enterprise, which puts forward high requirements for the ability of the internal management of the enterprise. However, after experiencing the early stage of wild growth, social e-commerce platform enterprises will establish a set of rules and regulations, but in the process of development and growth, the enterprise's rules and regulations often can not keep up with the scale of the enterprise and the needs of the enterprise. For a long time, due to the imperfection of the internal governance structure, the lack of communication and coordination between the various departments, the supervision mechanism is virtually non-existent and other issues, the enterprise's internal regulatory function is mostly ineffective, it is difficult to realize the basic

corporate autonomy, social e-commerce platform enterprise compliance has lost its foundation.

3.3 The compliance process is not yet clearly defined by law

Although the Supreme People's Procuratorate has launched a pilot enterprise compliance program throughout the country, and has achieved some results, there is no complete legislation to confirm its legitimacy. In order to realize universal compliance of platform enterprises in the social e-commerce industry, it is necessary to make corresponding amendments to the Criminal Law of the People's Republic of China, the Criminal Procedure Law of the People's Republic of China, the Administrative Penalty Law of the People's Republic of China, and other laws, so as to give confidence to social e-commerce platform enterprises in the system, and to stimulate their self-motivation to comply with the system. Similarly, it is precisely for this reason that the national procuratorial authorities tend to be more hesitant in the implementation of the system, taking a wait-and-see attitude towards this emerging system, coupled with the fact that the system is still immature, the specific process lacks a high level of guiding provisions, the local procuratorial authorities are not able to grasp the yardstick, and so the compliance work of the enterprises is currently stuck in a bottleneck period.

4 The boundaries of the social e-commerce platform pyramid selling determination

In recent years, due to the expansion of the "Internet + multi-level direct marketing" model, social e-commerce platforms have been developing rapidly because of their social stickiness, low marketing costs, and traffic for growth. And the direct selling industry has unique advantages for China's economic and social development, especially in promoting consumption, increasing employment, stabilizing foreign investment, protecting the main body and building a "healthy China" and "beautiful China". However, there are many similarities between "multi-level direct selling" and "pyramid selling" in practice, and they can easily be recognized as pyramid selling.

In 2017, the revised "the Regulation on Direct Selling Administration." defined "direct selling" as "direct selling enterprises to recruit direct sellers, direct sellers outside the fixed place of business directly to the final consumer (hereinafter referred to as the consumer) to promote products of the distribution method." In the specific provisions of the law, you can see that it is clearly stipulated that "there shall be no deceptive, misleading and other publicity and sales practices," "shall not be the payment of fees or the purchase of goods as a condition for becoming a member of the direct selling," "should be in the direct selling product the price of the products should be indicated on the direct selling products" "Direct selling enterprises should at least pay the direct sellers on a monthly basis. Direct selling enterprises to pay direct salesman compensation can only be calculated in accordance with the direct salesman's own direct-to-consumer sales revenue, the total amount of compensation (including commissions, bonuses, various forms of incentives and other economic benefits, etc.) shall not be more than 30% of the direct salesman's own direct-to-consumer sales revenue. Exchange and return system should be established and implemented" and so on. The regulations for the definition of direct selling adopted by the method that is to avoid the possible risks involved in pyramid sellings. However, it is not difficult to find that in reality, some enterprises with the above characteristics of direct selling are still labeled as "involved in pyramid sellings". The difference among these enterprises and the strict direct selling enterprises may only lie in whether they have been recognized as direct selling enterprises. Therefore, in order to pursue the appearance of legitimacy and the actual income brought by multi-level direct selling, some private enterprises often choose to take the risk of seeking to rely on affiliate unites with direct selling license by all means. Despite many efforts, due to the lack of a direct selling license, once the market supervision department notices the problems in its marketing model, it is difficult for the enterprise to find a strong defense for itself.

In contrast, the Regulation on the Prohibition of Pyramid Selling, which came into force in 2005, defines the term "distributing" as follows: "Distributing refers to the act of an organizer or operator who develops people, and seeks

illegal benefits by calculating and paying compensation to the developed people on the basis of the number of people they have directly or indirectly developed, or on the basis of their sales performance, or by requiring the developed people to pay a certain fee to obtain the qualification for membership, which disturbs the economic order and affects social stability". Payment of compensation to the developed persons on the basis of the number of persons they have directly or indirectly developed or sales performance, or requiring the developed persons to pay a certain amount of money as a condition to obtain the qualification of joining the company, etc. to make illegal profits, disturbing the economic order and affecting the behavior of social stability." In the specific law, the regulation further emphasizes that the core features of "pyramid selling" are "charging an entrance fee", "setting a threshold", "developing a subordinate to make illegal profits"to develop subordinates for illegal benefits". It is not difficult to see that the provisions of the Regulation on the Prohibition of Pyramid Selling have not been sufficiently adapted to the rapid development of the socialist market economy in China's economic environment due to the early introduction of the Regulations. In recent years, the prosperous development of the Internet economy has given rise to many new marketing models and legal issues, typically the "multi-level direct selling" under the Internet economy, which is the main topic of this article.

Therefore, according to the provisions of the current laws of China, the main differences between direct selling and pyramid selling can be briefly summarized as follows.

Characterization induction	Direct Marketing	Marketing
Deceptive, misleading and other advertising and marketing practices	×	√
To pay fees or purchase goods As a condition of membership	×	√
Whether the rebate model relies primarily on direct sales by the person	√	×
With a well-established return and exchange mechanism	√	×
frequency of payment	At least on a monthly basis	Not specified

From the above table, we can roughly see some basic differences between direct selling and pyramid selling. By searching the cases of social e-commerce platforms involved in incoming punishment in the past two years, we can find that these enterprises identified as pyramid selling often have the characteristics of "huge amount involved", "a large number of people developing offline", "hollowing out goods", "setting performance requirements far higher than the market level as the basis for rebate" and "the price of goods in the platform is far higher than the market price". However, these scattered summaries can only be regarded as the possible basis for identifying pyramid sellings in practice, and it is difficult to judge the role of each element in case identification. The boundary between direct selling and pyramid selling is still unclear.

To sum up, the boundary between direct marketing and pyramid selling is still ambiguous, which has a great resistance to the development of the social e-commerce industry. If a social e-commerce platform enterprise still does not know whether its marketing model has communication risk after studying the laws and consulting lawyers, perhaps we need to reflect on whether the current relevant legal system gives citizens reasonable prediction possibilities. Worries about communication risks will undoubtedly restrict the hands and feet of an industry and limit its development space. At present, this uncertainty may lead to the innocent litigation of small enterprises on the social e-commerce platform. For example, Enterprise Y mentioned above has actual goods, a perfect return and exchange mechanism, and a marketing model that relies solely on offline profits many social e-commerce platform enterprises like Enterprise Y have made many efforts to "legalize", but they are still sued because they adopt a more efficient hierarchical marketing model and lack direct marketing licenses. If this phenomenon continues, the impact on the private economy and even the entire socialist market economy will be incalculable.

Therefore, the demarcation between direct selling and pyramid selling still needs to be discussed under the current legal provisions and judicial practice. The reasons are as follows: 1. Hierarchical structure is one of the structures of marketing model, which does not necessarily mean

pyramid selling, and the possible harmfulness of different hierarchical structures should be distinguished; 2. Whether the total remuneration (including commissions, bonuses, various forms of rewards and other economic benefits, etc.) stipulated in the Regulation on Direct Selling Administration should not exceed 30% of the income of direct sellers selling products directly to consumers needs further discussion; 3. The direct selling license is not exempt. Conversely, the absence of a direct selling license does not mean that it must be an enterprise involved in communication. The key is to see whether the enterprise has the core characteristics of "MLM" in essence.

5 Compliance Suggestions for Social E-commerce Platform

Based on the reasons and compliance difficulties faced by social e-commerce platform enterprises, the first priority for social e-commerce platform enterprises is to distinguish multi-level direct selling with pure team compensation from pyramid selling through legal means, grasp the essential characteristics of pyramid selling, establish a comprehensive pyramid selling review mechanism, and thereby protect social e-commerce platform enterprises. Secondly, it is crucial to codify the compliance process and roles into the law, in order to enhance the compliance awareness and willingness of social e-commerce platform enterprises involved in pyramid selling. Thirdly, by publishing a template of a Compliance Manual, we urge social e-commerce platform enterprises to self-evaluate any illegal elements in their marketing models and take proactive compliance measures.



Figure 6 Compliance Suggestions for Social E-commerce Platform

5.1 Specify the legal boundary of multi-level direct selling

Through the analysis of laws, enterprise regulations and typical cases, we can find that the sociality of social e-commerce platform enterprises makes the team compensation model an important marketing model of social e-commerce, which makes the legal risk of social e-commerce platform mainly lies in the risk of communication. Although "People's Republic of China (PRC) Criminal Law" no longer regards team compensation as the crime of organizing and leading pyramid selling activities, the Opinions on Several Issues Concerning the Application of Laws in Handling Criminal Cases of Organizing and Leading MLM Activities also show that the marketing model of team compensation is not directly equal to pyramid selling, and the social e-commerce platform enterprises adopting this marketing model may not necessarily have a greater negative impact on consumers and market economic order, the judiciary still tends to regard the model of team compensation as an important basis for illegal business or even pyramid selling. Once small enterprises are identified as pyramid sellings, they are basically sentenced to death.

That is to say, the severity of the legal status quo on the identification of pyramid sellings for social e-commerce enterprises has done great harm to small and micro enterprises. After three years of epidemic, the national economy went down seriously, and many small and medium-sized enterprises closed down one after another, resulting in a large number of people losing their jobs. As the marketing model of many small and medium-sized enterprises in China, multi-level direct selling has created a lot of employment opportunities. Faced with the current social background of "difficult employment", it is necessary to "untie" these enterprises and let them play their real value.

In legislation, we should distinguish between "multi-level direct selling" and "pyramid selling". In 1997, the Measures for the Administration of MLM promulgated by the State Administration for Industry and Commerce stipulated the concept of "multi-level MLM", which is now referred to as "multi-level direct selling". At that time, the regulations of this department did not prohibit all multi-level direct selling, but stipulated the conditions

for implementation. Later, because of the rampant illegal pyramid selling activities, the concepts of "multi-level direct selling" and "pyramid selling" were not distinguished in the Regulation on the Prohibition of Pyramid Selling, and they were mixed together and prohibited.^[6]

Team compensation model is a common compensation method for multi-level direct selling enterprises, and it is also a tool used by many MLM organizations to "recruiting new members" to collect money. The simple team compensation model with the purpose of selling goods and based on sales performance has not been guilty in China, but the team compensation model is still the object of administrative punishment. Simple team compensation itself is a normal business model, which is beneficial to the development of society and should be legalized in both criminal law and administrative law. The Anti-Pyramid Promotion Act of the United States has tried to distinguish between "multi-level direct selling" and "pyramid selling". There is no concept of "pyramid selling" in American law, but only "pyramid selling" similar to the concept of "pyramid selling". When defining pyramid sales, the bill points out that the boundary between multi-level direct sales and pyramid sales lies in whether the remuneration obtained by developing offline exceeds 50% of the total income, and the remuneration obtained within this range belongs to legal direct sales income, otherwise, it is illegal pyramid sales if it exceeds this ratio.^[7] Whether it is the law governing pyramid selling in China or the Anti-Pyramid Promotion Act in the United States, the determining factor in assessing whether a business model constitutes pyramid selling lies in whether its profit-making mode relies on recruitment. This criterion requires clarification, which can be explicitly spelled out through judicial interpretation and other related documents. Specifically, the following aspects should be taken into account: whether the enterprise has substantial sales of actual goods, whether the sale of goods is the primary means of profit generation for the enterprise, whether the goods sold ultimately reach consumers, whether the enterprise collects 'entry fees' directly or in disguised forms, whether the enterprise provides after-sales service, and whether the prices of the goods sold increase at different levels.



Figure 7 the criterion for judging whether the profit-making mode relies on recruiting new members

As mentioned above, in addition to legalizing the simple team compensation, based on the advantages of the "multi-level direct selling" marketing model in Internet plus, in the latest revision of the Regulation on Direct Selling Administration., we can consider appropriately relaxing the identification criteria of "direct selling enterprises" so that small and medium-sized micro-social e-commerce platform enterprises that are legal and compliant can also apply for direct selling licenses. This is also in line with the principle of the General Administration of Market Supervision in soliciting opinions on the revision of the regulations, that is, it will adhere to the principle of paying equal attention to standardization and development, strive to protect the balance between innovation and development and improve governance rules, return to the direct selling mechanism and simplify the coordination of direct selling supervision, and give full play to the advantages of direct selling while controlling operational risks. On the one hand, support the innovation and development of direct selling enterprises, change the unreasonable system that does not conform to the laws of market economy under the current conditions, further stimulate the innovation vitality and development momentum of direct selling enterprises, and cultivate world-class direct selling enterprises; On the other hand, establish a supervision system and mechanism that adapts to the characteristics of the direct selling industry, strengthen the whole chain supervision measures before and after the event, prevent fraud, and safeguard consumer rights and social stability.^[8]

In addition, the revision of the Regulation on the

Prohibition of Pyramid Selling should also take into account the diversified characteristics of current pyramid sellings and grasp the core essence of pyramid sellings to revise the law. The legal principle of incrimination of this crime is the judgment basis of social harmfulness, that is, the actor creates a high-risk and fraudulent business model, which leads to a high risk of property interests of a large number of participants and even direct losses, which seriously harms economic order and even social order. At present, the crime of organizing and leading pyramid sellings requires the objective characteristics of "entry fee", "hierarchy" and "attracting people". However, in recent years, pyramid sellings have become more and more concealed and deceptive, and there is no obvious hierarchy to the outside world. On the surface, profits are not directly linked to increasing the number of people. MLM activities are not sustainable, and the collapse is only a matter of time. In this process, the organizers and leaders of MLM activities use this to carve up the funds invested offline and seek benefits. Therefore, in the latest revision of the regulations, it should be emphasized that the constitutive elements of the crime of organizing and leading pyramid selling activities should be judged by penetrating examination.^[9]

5.2 Clarify the compliance process and role

At present, the concept of "compliance" is not unfamiliar to all walks of life. However, how should we comply? What is the use of compliance? These problems are still not clear enough. Most social e-commerce platform companies have not yet realized the importance of compliance. Therefore, enterprise compliance should be clearly written into the Criminal Procedure Law of People's Republic of China (PRC), as one of the reasons for committing crimes, so that the compliance treatment can be truly legal, so that local procuratorial organs can not only let go of their fists and boldly practice, but also enterprises can trust compliance and improve their willingness to comply; At the same time, corresponding judicial interpretations and departmental rules should be issued, so that the compliance processes and standards of various industries can be guided accordingly. Through the research on the guiding case of enterprise compliance in the Supreme People's Procuratorate and the

search on the 12309 National Procuratorate Network and the local procuratorate official website, it is concluded that the following factors are considered for the expost compliance of social e-commerce platform enterprises:



Figure 8 Suggestions on post-event compliance considerations of social e-commerce platform enterprises

There is a big gap in the scale of social e-commerce platform enterprises, so enterprises of different scales should be allowed to adopt different compliance means and apply different compliance standards to form a "step-by-step compliance" model, so as to avoid the development of bad phenomena such as "paper compliance" and "form compliance". According to the enterprise scale, enterprise type and other standards, in order to improve the compliance effect. The compliance process of small and medium-sized enterprises in social e-commerce platform should be appropriately simplified, so as to reduce their compliance costs and pay more attention to the risk points of their own marketing models; For leading enterprises of social e-commerce platforms such as JD.COM and Alibaba, they can be given a relatively long compliance period, and all aspects can be rectified. In addition to the compliance of their own marketing models, they should also assume the supervision responsibility for the marketing models of

settled businesses to achieve systematic compliance.

In addition, as far as external incentives are concerned, for social e-commerce platform enterprises, relevant departments should issue documents to guide compliance work within the industry and formulate incentive policies, encourage leading enterprises to take the lead and support small and medium-sized micro-social e-commerce platform enterprises to carry out compliance work, thus overcoming the inertia of enterprise autonomy and forming self-management of social e-commerce platform industry.

5.3 Publishing the template for the Compliance Manual

In addition to the lead of laws and regulations, for social e-commerce such a rapid development, the scale of the industry, should be extracted from its current social e-commerce platform of common risk points, open "Compliance Manual" template to guide the social e-commerce platform enterprises to do a good job of the internal regulations of the construction of the enterprise, from the front of the compliance to reduce the risk of social e-commerce platform enterprises involved in the spread of the pyramid selling. For example, traditional social e-commerce enterprises are often set up with a hierarchical structure, which is suspected of "recruiting new members". Based on the current legal provisions and the current practice, the social e-commerce platform enterprises involved in pyramid selling in order to achieve compliance, should at least do to reduce the dependence on the subordinate and repeat consumption dependence, and the merchants should be independent of each other; and then, the social e-commerce platform enterprises often set the structure of the remuneration to participate in the activities of the threshold of the pulling of people to make profits, in this regard, the platform should focus on monitoring the first transaction of the new users appear large orders, divesting the multi-tier profit commissioning relationship, the platform should focus on the first transaction of the new users, and the first time the new user's first transaction of large orders. In this regard, platforms should focus on monitoring the first transaction of new users in the case of large orders, stripping

away the multi-level benefit calculation relationship, and optimizing the rebate and sharing mechanism.

6 Conclusion

Once a social e-commerce platform enterprise is involved in pyramid selling, its reputation and business situation will be hit. Many social e-commerce platform enterprises are small and medium-sized enterprises, and the risk of administrative penalties or even criminal penalties for involvement in pyramid selling is difficult for them to bear. At present, China's social e-commerce enterprises are involved in pyramid selling mainly because of the blurring of legal boundaries, and the difficulty of compliance is due to the objective problems of the difficulty of obtaining photos of direct selling, the lack of guidelines for compliance process, and the subjective factors of insufficient awareness of compliance and internal supervision failure. In view of the existing difficulties, the boundaries between pyramid sellings and direct selling should be standardized, the compliance process and role should be clarified, and the template of Compliance Manual should be published, so that the enterprises will have the will, ability and confidence to do a good job in compliance work, so as to promote the enterprises to move towards high-quality development in the new era, and to promote the creation of a market-oriented, rule of law-oriented and internationalized business environment.

Obviously, enterprise compliance system in China's social and cultural soil under the implementation of the landing still need time and system design. The road to compliance is destined to be long, but it is the perfect path for social e-commerce platforms to prevent risks, especially those related to pyramid selling.

Reference

- [1] Data Source: Collated by Guanyan Tianxia Data Center.
- [2] Yin Bo, Tan Chenghao.: "With a "direct marketing license", pyramid selling will not be involved? ", published in Fangyuan, 2019.
- [3] Xu Qiantong: Research on Legal Regulation of Social E-commerce, published by Yunnan Normal University, 2021.
- [4] Zhao Yunfeng, Tang Qiao: It is of great significance to discuss the compliance management of private enterprises, published in Procuratorial Affairs, 2024.
- [5] Yin Bo: The multi-level administrative supervision model of direct selling in the United States and its enlightenment to China, published in Journal of East China University of Political Science and Law, 2022.
- [6] Li Zhengyang: Re discussion on the legalization of multi-level direct selling -- from the perspective of the revision of the Regulations on Direct Selling Management, published in Journal of Henan College of Finance and Taxation, 2020.
- [7] The General Administration of Market Supervision conducted a legislative investigation on the revision of the Regulations on Direct Selling Management, which was published in the State Administration of Market Supervision on August 15, 2023.
- [8] Shi Yan'an, Zou Liwei: Guidelines for Handling Cases: Consumption Mode Innovation or New Online Pyramid Marketing, published on Procuratorial Daily, 2021.
- [9] Xi Jinping: Holding High the Great Banner of Socialism with Chinese Characteristics and Uniting for the Comprehensive Construction of a Socialist Modernized Country, published on People's Daily, 2022.
- [10] Zhan Qing: Research on Legal Regulation of Direct Selling, published by Southwest University of Political Science and Law, 2006.
- [11] Yin Bo, Liu Haiyuan: Legal regulation and compliance framework construction of multi-level direct sales in the perspective of market competition, published in China Circulation Economy, 2024.
- [12] Wan Jing: Research on Judicial Determination of Online Pyramid Selling Crime, published by Chongqing Technology and Business University, 2023.
- [13] Li Zhengyang: Re discussion on the legalization of multi-level direct selling -- from the perspective of the revision of the Regulations on Direct Selling Management, published in Journal of Henan College of Finance and Taxation, 2020.
- [14] Hou Bochao: Analysis of Problems and Countermeasures in Direct Selling Industry, published in China's Military to Civilian Transition, 2020.
- [15] Ye Wenqing: Review of China's Direct Selling Legislation

and Prospects, published in Entrepreneur's World, 2017, Issue 10.

[16] Lin Tiancai, Chief Editor: Direct Selling Law, Wunan Book Publishing Press, 2015 edition.

[17] Yin Bo: Impact and Countermeasures of Performance

Appraisal Indicators on the Rule of Law in Criminal Procedure, published in Law Forum, 2021.

[18] Yin Bo: Research on the decriminalization of team based remuneration pyramid selling, published in Law Forum, 2023.