Direct Selling Management Regulations of the PRC

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Adopted on August 23, 2005, by Decree No. 443 of the State Council of the People's Republic of China; revised in accordance with the Decision of the State Council on Amending and Repealing Certain Administrative Regulations on March 1, 2017

Effective: December 1, 2005

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Chapter I — General Provisions

Article 1 — These Regulations are formulated for the purpose of regulating direct selling activities, strengthening supervision over direct selling activities, preventing fraud, and protecting the lawful rights and interests of consumers and public interests.

Article 2 — Direct selling activities conducted within the territory of the People's Republic of China shall be governed by these Regulations.

The scope of direct selling products shall be determined and published by the commerce administration department of the State Council in conjunction with the industry and commerce administration department of the State Council in light of the development of the direct selling industry and the needs of consumers.

Article 3 — "Direct selling" as used in these Regulations means a distribution method under which a direct selling enterprise recruits direct sellers, who promote and sell products directly to final consumers (hereinafter referred to as "consumers") outside a fixed business premises.

"Direct selling enterprise" as used in these Regulations means an enterprise that has been approved, in accordance with these Regulations, to sell products by means of direct selling.

"Direct seller" as used in these Regulations means a person who promotes and sells products directly to consumers outside a fixed business premises.

Article 4 — An enterprise established within the territory of the People's Republic of China (hereinafter referred to as an "enterprise") may, in accordance with these Regulations, apply to become a direct selling enterprise that sells, by means of direct selling, the products produced by the enterprise itself as well as the products produced by its parent company or controlling companies.

A direct selling enterprise may obtain trading rights and distribution rights in accordance with the law.

Article 5 — Direct selling enterprises and their direct sellers shall not engage in deceptive or misleading publicity and promotion activities when carrying out direct selling activities.

Article 6 — The commerce administration department and the industry and commerce administration department of the State Council shall, according to the division of their respective duties and the provisions of these Regulations, be responsible for exercising supervision and administration over direct selling enterprises, direct sellers and their direct selling activities.

Chapter II — Establishment and Change of Direct Selling Enterprises and Their Branches

Article 7 — To apply to become a direct selling enterprise, an applicant shall meet the following conditions:

(1) the investors have good commercial reputation and have had no record of major illegal business operations for five consecutive years prior to the application; a foreign investor shall also have at least three years of experience in conducting direct selling activities outside China;

(2) the paid-in registered capital is not less than RMB 80 million;

(3) the security deposit has been paid in full to the designated bank in accordance with these Regulations;

(4) an information reporting and disclosure system has been established in accordance with the provisions.

Article 8 — To apply to become a direct selling enterprise, an application form shall be completed and the following application documents and materials shall be submitted:

(1) certification materials proving compliance with the conditions prescribed in Article 7 of these Regulations;

(2) the articles of association of the enterprise; where the enterprise is a Sino-foreign equity joint venture or a Sino-foreign contractual joint venture, the joint venture contract or cooperative enterprise contract shall also be provided;

(3) a market plan report, including the service outlet plan for the areas where direct selling activities are to be carried out, formulated in accordance with Article 10 of these Regulations and recognized by the local people's government at or above the county level;

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(4) product descriptions conforming to the national standards;

(5) a sample of the marketing contract to be signed with direct sellers;

(6) a capital verification report issued by an accounting firm;

(7) an agreement reached with the designated bank consenting to the use of the security deposit in accordance with these Regulations.

Article 9 — An applicant shall file the application with the commerce administration department of the State Council through the commerce administration department of the province, autonomous region or municipality directly under the Central Government where it is located. The commerce administration department of the province, autonomous region or municipality directly under the Central Government shall, within seven days from the date of receipt of the application documents and materials, submit the application documents and materials to the commerce administration department of the State Council. The commerce administration department of the State Council shall, within 90 days from the date of receipt of all the application documents and materials and after soliciting the opinions of the industry and commerce administration department of the State Council, make a decision on whether or not to grant approval. Where approval is granted, the commerce administration department of the State Council shall issue a direct selling business license.

An applicant holding the direct selling business license issued by the commerce administration department of the State Council shall apply to the industry and commerce administration department for registration of the change in accordance with the law.

When examining and issuing a direct selling business license, the commerce administration department of the State Council shall take into account such factors as national security, public interests and the development of the direct selling industry.

Article 10 — To carry out direct selling activities, a direct selling enterprise shall establish a branch (hereinafter referred to as a "branch") in each province, autonomous region or municipality directly under the Central Government where it intends to carry out direct selling activities, to be responsible for the direct selling business within that administrative region.

A direct selling enterprise shall establish service outlets in the areas where it carries out direct selling activities, which shall be convenient for and meet the needs of consumers and direct sellers in learning about product prices, exchange and return of goods and other services lawfully provided by the enterprise. The establishment of service outlets shall comply with the requirements of the local people's government at or above the county level.

To apply for the establishment of a branch, a direct selling enterprise shall provide the certification documents and materials proving compliance with the conditions prescribed in the preceding paragraph, and shall file the application in accordance with the procedures prescribed in paragraph 1 of Article 9 of these Regulations. After obtaining approval, it shall complete registration with the industry and commerce administration department in accordance with the law.

Article 11 — Where there is a major change in any of the matters listed in items (1), (2), (3), (5), (6) and (7) of Article 8 of these Regulations, the direct selling enterprise shall report the change to the commerce administration department of the State Council for approval in accordance with the procedures prescribed in paragraph 1 of Article 9 of these Regulations.

Article 12 — The commerce administration department of the State Council shall publish the list of direct selling enterprises and their branches on the government website and update it in a timely manner.

Chapter III — Recruitment and Training of Direct Sellers

Article 13 — A direct selling enterprise and its branches may recruit direct sellers. No unit or individual other than a direct selling enterprise and its branches may recruit direct sellers.

The lawful marketing activities of direct sellers shall not be investigated and punished as unlicensed business operations.

Article 14 — A direct selling enterprise and its branches shall not publish advertisements publicizing the sales remuneration of direct sellers, and shall not make the payment of fees or the purchase of goods a condition for becoming a direct seller.

Article 15 — A direct selling enterprise and its branches shall not recruit the following persons as direct sellers:

(1) persons under the age of 18;

(2) persons without capacity for civil conduct or with limited capacity for civil conduct;

(3) full-time students at school;

(4) teachers, medical personnel, civil servants and active-duty military personnel;

(5) regular employees of the direct selling enterprise;

(6) overseas personnel;

(7) persons who are prohibited by laws and administrative regulations from holding a concurrent post.

Article 16 — When recruiting direct sellers, a direct selling enterprise and its branches shall sign a marketing contract with them and ensure that direct sellers carry out direct selling activities only in the areas within the administrative region of the province, autonomous region or municipality directly under the Central Government where one of its branches is located, in which service outlets have been established. A person who has not signed a marketing contract with a direct selling enterprise or its branch shall not engage in direct selling activities in any manner.

Article 17 — A direct seller may terminate the marketing contract at any time within 60 days from the date of signing the marketing contract; after the expiration of 60 days, a direct seller shall notify the direct selling enterprise 15 days in advance before terminating the marketing contract.

Article 18 — A direct selling enterprise shall provide business training and examinations to the direct sellers to be recruited, and shall issue a direct seller certificate to those who pass the examination. No person may engage in direct selling activities without obtaining a direct seller certificate.

A direct selling enterprise shall not charge any fees for business training and examinations of direct sellers.

No unit or individual other than a direct selling enterprise may organize business training of direct sellers under any name.

Article 19 — Persons who give lectures in business training of direct sellers shall be regular employees of the direct selling enterprise and shall meet the following conditions:

(1) having worked in the enterprise for at least one year;

(2) having a bachelor's degree or above from an institution of higher education and relevant professional knowledge of law and marketing;

(3) having no record of criminal punishment for an intentional crime;

(4) having no record of major illegal business operations.

A direct selling enterprise shall issue direct selling trainer certificates to the lecturers who meet the conditions prescribed in the preceding paragraph, and shall report the list of persons who have obtained direct selling

trainer certificates to the commerce administration department of the State Council for the record. The commerce administration department of the State Council shall publish the list of persons who have obtained direct selling trainer certificates on the government website.

Overseas personnel shall not engage in business training of direct sellers.

Article 20 — The direct seller certificates and direct selling trainer certificates issued by direct selling enterprises shall be printed in the format prescribed by the commerce administration department of the State Council.

Article 21 — A direct selling enterprise shall be responsible for the legality of the business training of direct sellers, the training order and the safety of the training venues.

A direct selling enterprise and its direct selling trainers shall be responsible for the legality of the content of the business training of direct sellers.

The specific administrative measures for the business training of direct sellers shall be separately formulated by the commerce administration department and the industry and commerce administration department of the State Council in conjunction with the relevant departments.

Chapter IV — Direct Selling Activities

Article 22 — When promoting and selling products to consumers, a direct seller shall comply with the following provisions:

(1) presenting the direct seller certificate and the marketing contract;

(2) not entering the residence of a consumer to forcibly promote products without the consent of the consumer; and where the consumer requests the direct seller to stop the promotion activities, immediately stopping and leaving the residence of the consumer;

(3) before concluding a transaction, introducing in detail to the consumer the goods-return system of the enterprise;

(4) after concluding a transaction, providing the consumer with an invoice and a sales voucher issued by the direct selling enterprise containing the goods-return system, the address and telephone number of the local service outlet of the direct selling enterprise, and other content.

Article 23 — A direct selling enterprise shall mark the price on the direct selling products, and the price shall be consistent with the price displayed at the service outlets. Direct sellers shall promote and sell products to consumers at the marked price.

Article 24 — A direct selling enterprise shall pay remuneration to direct sellers at least on a monthly basis. The remuneration paid by a direct selling enterprise to a direct seller shall only be calculated on the basis of the income from the products sold by the direct seller directly to consumers, and the total amount of remuneration (including commissions, bonuses, various forms of rewards and other economic benefits) shall not exceed 30 percent of the income from the products sold by the direct seller directly to consumers.

Article 25 — A direct selling enterprise shall establish and implement a sound system for the exchange and return of goods.

Within 30 days from the date of purchase of a direct selling product, where the product is unopened, a consumer may, on the strength of the invoice or sales voucher issued by the direct selling enterprise, handle the exchange or return of the product with the direct selling enterprise and its branches, the local service outlet or the direct seller who sold the product; the direct selling enterprise and its branches, the local service outlet and the direct seller shall handle the exchange or return within seven days from the date the consumer makes the request, at the price indicated on the invoice or sales voucher.

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Within 30 days from the date of purchase of a direct selling product, where the product is unopened, a direct seller may, on the strength of the invoice or sales voucher issued by the direct selling enterprise, handle the exchange or return of the product with the direct selling enterprise and its branches or the local service outlet; the direct selling enterprise and its branches and the local service outlet shall handle the exchange or return within seven days from the date the direct seller makes the request, at the price indicated on the invoice or sales voucher.

Where the exchange or return of goods does not fall under the circumstances prescribed in the preceding two paragraphs, and a consumer or direct seller requests the exchange or return, the direct selling enterprise and its branches, the local service outlet and the direct seller shall handle the exchange or return in accordance with the provisions of the relevant laws and regulations or the agreement in the contract.

Article 26 — Where a dispute arises over the exchange or return of goods between a direct selling enterprise and a direct seller, or between a direct selling enterprise, its direct sellers and consumers, the former shall bear the burden of proof.

Article 27 — A direct selling enterprise shall bear joint and several liability for the direct selling activities of its direct sellers, unless it can prove that the direct selling activities of the direct sellers are unrelated to the enterprise.

Article 28 — A direct selling enterprise shall, in accordance with the provisions of the commerce administration department and the industry and commerce administration department of the State Council, establish and implement a sound information reporting and disclosure system.

The content, methods and relevant requirements of information reporting and disclosure by direct selling enterprises shall be separately prescribed by the commerce administration department and the industry and commerce administration department of the State Council.

Chapter V — Security Deposit

Article 29 — A direct selling enterprise shall open a special account with a bank jointly designated by the commerce administration department and the industry and commerce administration department of the State Council and deposit the security deposit therein.

The amount of the security deposit shall be RMB 20 million at the time of the establishment of the direct selling enterprise; after the direct selling enterprise commences operations, the security deposit shall be adjusted on a monthly basis, and its amount shall be maintained at 15 percent of the sales income from direct selling products of the direct selling enterprise in the previous month, but shall not exceed RMB 100 million at the maximum nor be less than RMB 20 million at the minimum. The interest on the security deposit shall belong to the direct selling enterprise.

Article 30 — Under any of the following circumstances, the commerce administration department and the industry and commerce administration department of the State Council may, by joint decision, use the security deposit:

(1) where a direct selling enterprise fails, without justified reasons, to pay remuneration to direct sellers, or fails to pay the returned goods payments to direct sellers or consumers;

(2) where a direct selling enterprise suspends operations, merges, dissolves, is transferred, or goes bankrupt, and is unable to pay remuneration to direct sellers or unable to pay the returned goods payments to direct sellers and consumers;

(3) where losses are caused to consumers as a result of problems with direct selling products and compensation shall be made in accordance with the law, but the direct selling enterprise refuses to make compensation or is unable to make compensation without justified reasons.

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Article 31 — After the security deposit is used in accordance with Article 30 of these Regulations, the direct selling enterprise shall, within one month, replenish the amount of the security deposit to the level prescribed in paragraph 2 of Article 29 of these Regulations.

Article 32 — A direct selling enterprise shall not use the security deposit to provide external guarantees or to repay debts in violation of the provisions of these Regulations.

Article 33 — Where a direct selling enterprise no longer carries out direct selling activities, it may, on the strength of the vouchers issued by the commerce administration department and the industry and commerce administration department of the State Council, withdraw the security deposit from the bank.

Article 34 — The commerce administration department and the industry and commerce administration department of the State Council shall be jointly responsible for the day-to-day supervision and administration of the security deposit.

The specific administrative measures for the deposit and use of the security deposit shall be separately formulated by the commerce administration department and the industry and commerce administration department of the State Council in conjunction with the relevant departments.

Chapter VI — Supervision and Administration

Article 35 — The industry and commerce administration department shall be responsible for exercising day-to-day supervision and administration over direct selling enterprises, direct sellers and their direct selling activities. The industry and commerce administration department may take the following measures to conduct on-site inspections:

(1) entering the relevant enterprises for inspection;

(2) requiring the relevant enterprises to provide the relevant documents, materials and certification materials;

(3) questioning the parties concerned, interested persons and other relevant persons, and requiring them to provide the relevant materials;

(4) consulting, duplicating, sealing up and seizing materials and illegal property related to the direct selling activities of the relevant enterprises;

(5) inspecting the direct selling trainer certificates, direct seller certificates and other certificates of the relevant persons.

When conducting on-site inspections in accordance with the provisions of the preceding paragraph, the inspection personnel of the industry and commerce administration department shall be no fewer than two persons and shall present their lawful certificates; the sealing up and seizure shall be subject to the approval of the principal person in charge of the industry and commerce administration department at or above the county level.

Article 36 — In the course of exercising day-to-day supervision and administration, where the industry and commerce administration department discovers that a relevant enterprise is suspected of violating the provisions of these Regulations, it may, with the approval of the principal person in charge of the industry and commerce administration department at or above the county level, order the enterprise to temporarily suspend the relevant business operations.

Article 37 — The industry and commerce administration department shall set up and publish a reporting hotline, accept reports and complaints of violations of these Regulations, and conduct investigation and handling in a timely manner.

The industry and commerce administration department shall keep the identities of the reporters confidential; persons who have made meritorious contributions in reporting shall be rewarded in accordance with the

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relevant provisions of the State.

Chapter VII — Legal Liability

Article 38 — Where the relevant departments and their staff members responsible for exercising supervision and administration over direct selling enterprises, direct sellers and their direct selling activities grant a license to an application that does not meet the conditions prescribed in these Regulations, or fail to perform their supervision and administration duties in accordance with these Regulations, the directly responsible persons in charge and other directly responsible persons shall be given administrative sanctions in accordance with the law; where a crime is constituted, criminal liability shall be pursued in accordance with the law. A license granted to an application that does not meet the conditions prescribed in these Regulations shall be revoked by the relevant department that made the licensing decision.

Article 39 — Where a person engages in direct selling activities without approval in violation of Articles 9 and 10 of these Regulations, the industry and commerce administration department shall order the person to make corrections, confiscate the direct selling products and the illegal sales income, and impose a fine of not less than RMB 50,000 but not more than RMB 300,000; where the circumstances are serious, a fine of not less than RMB 300,000 but not more than RMB 500,000 shall be imposed, and the activities shall be banned in accordance with the law; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 40 — Where an applicant obtains the license prescribed in Articles 9 and 10 of these Regulations by fraud, bribery or other means, the industry and commerce administration department shall confiscate the direct selling products and the illegal sales income and impose a fine of not less than RMB 50,000 but not more than RMB 300,000; the commerce administration department of the State Council shall revoke the corresponding license, and the applicant shall not file another application; where the circumstances are serious, a fine of not less than RMB 300,000 but not more than RMB 500,000 shall be imposed, and the activities shall be banned in accordance with the law; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 41 — Where a direct selling enterprise violates Article 11 of these Regulations, the industry and commerce administration department shall order it to make corrections and impose a fine of not less than RMB 30,000 but not more than RMB 300,000; where the enterprise no longer meets the conditions for the direct selling business license, the commerce administration department of the State Council shall revoke its direct selling business license.

Article 42 — Where a direct selling enterprise, in violation of the provisions, carries out direct selling business operations beyond the scope of direct selling products, the industry and commerce administration department shall order it to make corrections, confiscate the direct selling products and the illegal sales income, and impose a fine of not less than RMB 50,000 but not more than RMB 300,000; where the circumstances are serious, a fine of not less than RMB 300,000 but not more than RMB 500,000 shall be imposed, and the industry and commerce administration department shall revoke the business license of the branch of the direct selling enterprise with illegal business operations, up to the revocation of the direct selling business license of the direct selling enterprise by the commerce administration department of the State Council.

Article 43 — Where a direct selling enterprise or its direct sellers engage in deceptive or misleading publicity or promotion activities in violation of the provisions of these Regulations, the industry and commerce administration department shall impose a fine of not less than RMB 30,000 but not more than RMB 100,000 on the direct selling enterprise; where the circumstances are serious, a fine of not less than RMB 100,000 but not more than RMB 300,000 shall be imposed, and the industry and commerce administration department shall revoke the business license of the branch of the direct selling enterprise with illegal business operations, up to the revocation of the direct selling business license of the direct selling enterprise

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by the commerce administration department of the State Council. For the direct seller, the industry and commerce administration department shall impose a fine of not more than RMB 50,000; where the circumstances are serious, it shall order the direct selling enterprise to revoke the direct seller's qualification.

Article 44 — Where a direct selling enterprise or its branches recruit direct sellers in violation of the provisions of these Regulations, the industry and commerce administration department shall order them to make corrections and impose a fine of not less than RMB 30,000 but not more than RMB 100,000; where the circumstances are serious, a fine of not less than RMB 100,000 but not more than RMB 300,000 shall be imposed, and the industry and commerce administration department shall revoke the business license of the branch of the direct selling enterprise with illegal business operations, up to the revocation of the direct selling business license of the direct selling enterprise by the commerce administration department of the State Council.

Article 45 — Where a person engages in direct selling activities without obtaining a direct seller certificate in violation of the provisions of these Regulations, the industry and commerce administration department shall order the person to make corrections, confiscate the direct selling products and the illegal sales income, and may impose a fine of not more than RMB 20,000; where the circumstances are serious, a fine of not less than RMB 20,000 but not more than RMB 200,000 shall be imposed.

Article 46 — Where a direct selling enterprise conducts business training of direct sellers in violation of the provisions of these Regulations, the industry and commerce administration department shall order it to make corrections, confiscate the illegal gains, and impose a fine of not less than RMB 30,000 but not more than RMB 100,000; where the circumstances are serious, a fine of not less than RMB 100,000 but not more than RMB 300,000 shall be imposed, and the industry and commerce administration department shall revoke the business license of the branch of the direct selling enterprise with illegal business operations, up to the revocation of the direct selling business license of the direct selling enterprise by the commerce administration department of the State Council; for the lecturers, the industry and commerce administration department shall impose a fine of not more than RMB 50,000, and where the lecturer is a direct selling trainer, it shall order the direct selling enterprise to revoke the lecturer's direct selling trainer qualification.

Where a unit or individual other than a direct selling enterprise organizes business training of direct sellers, the industry and commerce administration department shall order it to make corrections, confiscate the illegal gains, and impose a fine of not less than RMB 20,000 but not more than RMB 200,000.

Article 47 — Where a direct seller violates Article 22 of these Regulations, the industry and commerce administration department shall confiscate the illegal sales income and may impose a fine of not more than RMB 50,000; where the circumstances are serious, it shall order the direct selling enterprise to revoke the direct seller's qualification, and impose a fine of not less than RMB 10,000 but not more than RMB 100,000 on the direct selling enterprise.

Article 48 — Where a direct selling enterprise violates Article 23 of these Regulations, it shall be dealt with in accordance with the relevant provisions of the Price Law.

Article 49 — Where a direct selling enterprise violates Articles 24 and 25 of these Regulations, the industry and commerce administration department shall order it to make corrections and impose a fine of not less than RMB 50,000 but not more than RMB 300,000; where the circumstances are serious, a fine of not less than RMB 300,000 but not more than RMB 500,000 shall be imposed, and the industry and commerce administration department shall revoke the business license of the branch of the direct selling enterprise with illegal business operations, up to the revocation of the direct selling business license of the direct selling enterprise by the commerce administration department of the State Council.

Article 50 — Where a direct selling enterprise fails to carry out information reporting and disclosure in accordance with the relevant provisions, the industry and commerce administration department shall order it to make corrections within a time limit and impose a fine of not more than RMB 100,000; where the

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circumstances are serious, a fine of not less than RMB 100,000 but not more than RMB 300,000 shall be imposed; where the enterprise refuses to make corrections, the commerce administration department of the State Council shall revoke its direct selling business license.

Article 51 — Where a direct selling enterprise violates the relevant provisions of Chapter V of these Regulations, the industry and commerce administration department shall order it to make corrections within a time limit and impose a fine of not more than RMB 100,000; where the enterprise refuses to make corrections, a fine of not less than RMB 100,000 but not more than RMB 300,000 shall be imposed, and the commerce administration department of the State Council shall revoke its direct selling business license.

Article 52 — Where an illegal act in violation of these Regulations also violates the Regulations on Prohibition of Pyramid Selling, it shall be punished in accordance with the relevant provisions of the Regulations on Prohibition of Pyramid Selling.

Chapter VIII — Supplementary Provisions

Article 53 — Where a direct selling enterprise intends to establish a social organization such as an association of direct selling enterprises, it shall obtain the approval of the commerce administration department of the State Council and apply for registration in accordance with the law on the strength of the approval document.

Article 54 — Investors from the Hong Kong Special Administrative Region, the Macao Special Administrative Region and the Taiwan region that invest in the establishment of direct selling enterprises within the territory to carry out direct selling activities shall be handled with reference to the provisions of these Regulations concerning foreign investors.

Article 55 — These Regulations shall be effective as of December 1, 2005.

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