Regulations on Direct Selling Administration of the PRC

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Chapter I — General Provisions

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

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

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

Article 3 — For the purposes of these Regulations, "direct selling" means the distribution method by which a direct selling enterprise recruits direct sellers, who promote products directly to end consumers (hereinafter referred to as "consumers") outside fixed business premises.

For the purposes of these Regulations, "direct selling enterprise" means an enterprise that sells products by the direct selling method upon approval in accordance with these Regulations.

For the purposes of these Regulations, "direct seller" means a person who promotes products directly to consumers outside 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 the direct selling method products produced by itself and by its parent company or controlling companies.

A direct selling enterprise may lawfully obtain trading rights and distribution rights.

Article 5 — Direct selling enterprises and their direct sellers shall not engage in deceptive, misleading, or otherwise improper publicity and promotion activities when conducting direct selling activities.

Article 6 — The commerce administrative department and the administration for industry and commerce of the State Council shall, in accordance with the division of their duties and the provisions of these Regulations, be responsible for supervising and administering direct selling enterprises and 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 enjoy good commercial reputation and have no record of major illegal business operations for five consecutive years prior to the filing of the application; foreign investors shall additionally have more than three years of experience in 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 into the designated bank in accordance with these Regulations; and

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

Article 8 — To apply to become a direct selling enterprise, an applicant shall fill in an application form and submit the following application documents and materials:

(1) documentary evidence of compliance with the conditions set out in Article 7 of these Regulations;

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

(3) a market plan report, including the service outlet plan for the regions where direct selling activities are to be conducted as 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 national standards;

(5) a sample of the promotion contract to be concluded with direct sellers;

(6) a capital verification report issued by a certified public accountants firm; and

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

Article 9 — An applicant shall file its application with the commerce administrative department of the State Council through the commerce administrative department of the province, autonomous region, or municipality directly under the Central Government where it is located. The commerce administrative department of the province, autonomous region, or municipality directly under the Central Government shall, within seven days of receiving the application documents and materials, submit them to the commerce administrative department of the State Council. The commerce administrative department of the State Council shall, within 90 days of receiving all the application documents and materials, and after soliciting the opinions of the administration for industry and commerce of the State Council, make a decision on approval or disapproval. Where approval is granted, the direct selling business license shall be issued by the commerce administrative department of the State Council.

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

In examining and issuing the direct selling business license, the commerce administrative department of the State Council shall take into account factors such as national security, the public interest, and the development of the direct selling industry.

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

A direct selling enterprise shall establish, in the regions where it conducts direct selling activities, service outlets that facilitate and satisfy consumers and direct sellers in learning about product prices, returns and exchanges, 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 to establish a branch, a direct selling enterprise shall provide the documentary evidence and materials demonstrating compliance with the conditions in the preceding paragraph and shall file the application in accordance with the procedure set out in paragraph 1 of Article 9 of these Regulations. Upon approval, it shall register with the administration for industry and commerce in accordance with the law.

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

Article 12 — The commerce administrative department of the State Council shall publish on the government website the list of direct selling enterprises and their branches, 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 entity or individual other than a direct selling enterprise or its branches may recruit direct sellers.

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The lawful promotion 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 18 years of age;

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

(3) full-time students;

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

(5) regular employees of the direct selling enterprise;

(6) persons from outside China; and

(7) persons who, in accordance with laws and administrative regulations, are not allowed to take up part-time work.

Article 16 — When recruiting direct sellers, a direct selling enterprise and its branches shall conclude promotion contracts with them and ensure that direct sellers conduct direct selling activities only in the regions where service outlets have been established within the administrative region of the province, autonomous region, or municipality directly under the Central Government where one of its branches is located. Persons who have not concluded a promotion contract with a direct selling enterprise or its branches shall not conduct direct selling activities in any manner.

Article 17 — A direct seller may terminate the promotion contract at any time within 60 days of the conclusion of the contract; after 60 days, a direct seller shall give the direct selling enterprise 15 days' advance notice before terminating the promotion contract.

Article 18 — A direct selling enterprise shall provide business training to and conduct examinations for direct sellers it intends to recruit, and shall issue a direct seller certificate to those who pass the examination. No person may conduct direct selling activities without obtaining a direct seller certificate.

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

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

Article 19 — The persons giving business training to direct sellers shall be regular employees of the direct selling enterprise and shall meet the following conditions:

(1) have worked in the enterprise for one year or more;

(2) have a bachelor's degree or higher in higher education and relevant professional knowledge of law and marketing;

(3) have no record of criminal punishment for intentional crimes; and

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

A direct selling enterprise shall issue direct selling trainer certificates to trainers who meet the conditions in the preceding paragraph, and report the list of persons who have obtained direct selling trainer certificates to the commerce administrative department of the State Council for the record. The commerce administrative

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department of the State Council shall publish on the government website the list of persons who have obtained direct selling trainer certificates.

Persons from outside China shall not conduct business training for direct sellers.

Article 20 — The direct seller certificates and direct selling trainer certificates issued by a direct selling enterprise shall be printed in accordance with the format prescribed by the commerce administrative department of the State Council.

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

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

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

Chapter IV — Direct Selling Activities

Article 22 — When promoting products to consumers, direct sellers shall comply with the following provisions:

(1) present the direct seller certificate and the promotion contract;

(2) without the consumer's consent, not enter the consumer's residence to forcefully promote products; where the consumer requests the cessation of promotion, immediately cease and leave the consumer's residence;

(3) before concluding a transaction, explain in detail to the consumer the enterprise's return policy; and

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

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

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

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

Where a consumer, within 30 days of purchasing a direct selling product, and the product has not been unsealed, the consumer may, upon presentation of the invoice or sales voucher issued by the direct selling enterprise, exchange or return the product with the direct selling enterprise and its branches, the local service outlet, or the direct seller who promoted the product; the direct selling enterprise and its branches, the local service outlet, and the direct seller shall complete the exchange or return within seven days of the consumer's request, at the price indicated on the invoice or sales voucher.

Where a direct seller, within 30 days of purchasing a direct selling product, and the product has not been unsealed, the direct seller may, upon presentation of the invoice or sales voucher issued by the direct selling enterprise, exchange or return 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 complete the exchange or return within seven days of the direct seller's request, at the price indicated on the invoice or sales voucher.

Where consumers or direct sellers request exchange or return in circumstances other than those set out in the preceding two paragraphs, the direct selling enterprise and its branches, the local service outlet, and the direct sellers shall complete the exchange or return in accordance with the provisions of relevant laws and regulations or the agreement of the contract.

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

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

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

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

Chapter V — Security Deposit

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

The amount of the security deposit shall be RMB 20 million at the time of establishment of the direct selling enterprise; after the direct selling enterprise commences operations, the security deposit shall be adjusted monthly and maintained at 15% of the enterprise's sales revenue from direct selling products in the preceding month, provided that the maximum amount shall not exceed RMB 100 million and the minimum amount shall not be less than RMB 20 million. The interest on the security deposit shall belong to the direct selling enterprise.

Article 30 — The security deposit may be used upon the joint decision of the commerce administrative department of the State Council and the administration for industry and commerce of the State Council in any of the following circumstances:

(1) the direct selling enterprise fails to pay remuneration to direct sellers, or fails to pay refunds to direct sellers or consumers, without justifiable reason;

(2) the direct selling enterprise is unable to pay remuneration to direct sellers or refunds to direct sellers and consumers due to suspension of business, merger, dissolution, transfer, bankruptcy, or other circumstances; or

(3) losses are caused to consumers due to problems with direct selling products and compensation should be made in accordance with the law, but the direct selling enterprise refuses to compensate without justifiable reason or is unable to compensate.

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 security deposit to the level set out in paragraph 2 of Article 29 of these Regulations.

Article 32 — A direct selling enterprise shall not use the security deposit as external guarantee or use it to settle debts in violation of these Regulations.

Article 33 — Where a direct selling enterprise ceases to conduct direct selling activities, it may, upon presentation of the voucher issued by the commerce administrative department of the State Council and the administration for industry and commerce of the State Council, withdraw the security deposit from the bank.

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

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

Chapter VI — Supervision and Administration

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

(1) enter relevant enterprises for inspection;

(2) require relevant enterprises to provide relevant documents, materials, and documentary evidence;

(3) interview the parties, interested persons, and other relevant persons, and require them to provide relevant materials;

(4) inspect, copy, seal, or seize materials and illegal property relating to the direct selling activities of relevant enterprises; and

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

When conducting on-site inspections in accordance with the preceding paragraph, the administration for industry and commerce shall have no fewer than two inspectors, who shall present their lawful credentials; sealing and seizure shall be subject to the approval of the principal person in charge of the administration for industry and commerce at or above the county level.

Article 36 — Where, in the course of routine supervision and administration, the administration for industry and commerce discovers that a relevant enterprise is suspected of violating these Regulations, it may, upon the approval of the principal person in charge of the administration for industry and commerce at or above the county level, order the enterprise to temporarily suspend the relevant business activities.

Article 37 — The administration for industry and commerce shall set up and publish a reporting telephone number, accept reports and complaints of violations of these Regulations, and promptly investigate and handle them.

The administration for industry and commerce shall keep reporters confidential and shall reward, in accordance with relevant state regulations, persons who make meritorious reports.

Chapter VII — Legal Liability

Article 38 — Where the relevant departments and their staff responsible for supervising and administering direct selling enterprises and direct sellers and their direct selling activities grant licenses to applications that do not meet the conditions prescribed by 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

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a crime is constituted, criminal liability shall be pursued in accordance with the law. Licenses granted to applications that do not meet the conditions prescribed by these Regulations shall be revoked by the relevant department that made the licensing decision.

Article 39 — Where any person conducts direct selling activities without approval in violation of Articles 9 and 10 of these Regulations, the administration for industry and commerce shall order correction, confiscate the direct selling products and illegal sales revenue, 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 a license set out in Articles 9 and 10 of these Regulations through deception, bribery, or other means, the administration for industry and commerce shall confiscate the direct selling products and illegal sales revenue and impose a fine of not less than RMB 50,000 but not more than RMB 300,000; the commerce administrative 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 administration for industry and commerce shall order correction 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 administrative department of the State Council shall revoke its direct selling business license.

Article 42 — Where a direct selling enterprise, in violation of regulations, conducts direct selling business activities beyond the scope of direct selling products, the administration for industry and commerce shall order correction, confiscate the direct selling products and illegal sales revenue, 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 administration for industry and commerce shall revoke the business license of the branch of the direct selling enterprise with illegal business conduct, up to the revocation of the direct selling business license of the direct selling enterprise by the commerce administrative department of the State Council.

Article 43 — Where a direct selling enterprise or its direct sellers, in violation of these Regulations, engage in deceptive, misleading, or otherwise improper publicity and promotion activities, the administration for industry and commerce 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 administration for industry and commerce shall revoke the business license of the branch of the direct selling enterprise with illegal business conduct, up to the revocation of the direct selling business license of the direct selling enterprise by the commerce administrative department of the State Council. With respect to direct sellers, the administration for industry and commerce shall impose a fine of not more than RMB 50,000; where the circumstances are serious, the direct selling enterprise shall be ordered to revoke the direct seller's qualification.

Article 44 — Where a direct selling enterprise or its branches recruit direct sellers in violation of these Regulations, the administration for industry and commerce shall order correction 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 administration for industry and commerce shall revoke the business license of the branch of the direct selling enterprise with illegal business conduct, up to the revocation of the direct selling business license of the direct selling enterprise by the commerce administrative department of the State Council.

Article 45 — Where any person conducts direct selling activities without obtaining a direct seller certificate in violation of these Regulations, the administration for industry and commerce shall order correction, confiscate the direct selling products and illegal sales revenue, 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 for direct sellers in violation of these Regulations, the administration for industry and commerce shall order correction, 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 administration for industry and commerce shall revoke the business license of the branch of the direct selling enterprise with illegal business conduct, up to the revocation of the direct selling business license of the direct selling enterprise by the commerce administrative department of the State Council; with respect to trainers, the administration for industry and commerce shall impose a fine of not more than RMB 50,000, and where the person is a direct selling trainer, the direct selling enterprise shall be ordered to revoke the person's direct selling trainer qualification.

Where an entity or individual other than a direct selling enterprise organizes business training for direct sellers, the administration for industry and commerce shall order correction, 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 administration for industry and commerce shall confiscate the illegal sales revenue and may impose a fine of not more than RMB 50,000; where the circumstances are serious, the direct selling enterprise shall be ordered to revoke the direct seller's qualification, and a fine of not less than RMB 10,000 but not more than RMB 100,000 shall be imposed on the direct selling enterprise.

Article 48 — Where a direct selling enterprise violates Article 23 of these Regulations, it shall be handled 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 administration for industry and commerce shall order correction 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 administration for industry and commerce shall revoke the business license of the branch of the direct selling enterprise with illegal business conduct, up to the revocation of the direct selling business license of the direct selling enterprise by the commerce administrative department of the State Council.

Article 50 — Where a direct selling enterprise fails to conduct information reporting and disclosure in accordance with relevant regulations, the administration for industry and commerce shall order correction within a prescribed time limit and impose a fine of 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; where the enterprise refuses to make corrections, the commerce administrative 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 administration for industry and commerce shall order correction within a prescribed 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 administrative 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.

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Chapter VIII — Supplementary Provisions

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

Article 54 — Where investors from the Hong Kong Special Administrative Region, the Macao Special Administrative Region, or the Taiwan region invest to establish direct selling enterprises within the territory and conduct direct selling activities, the relevant provisions of these Regulations on foreign investors shall apply by reference.

Article 55 — These Regulations shall take effect on December 1, 2005.

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