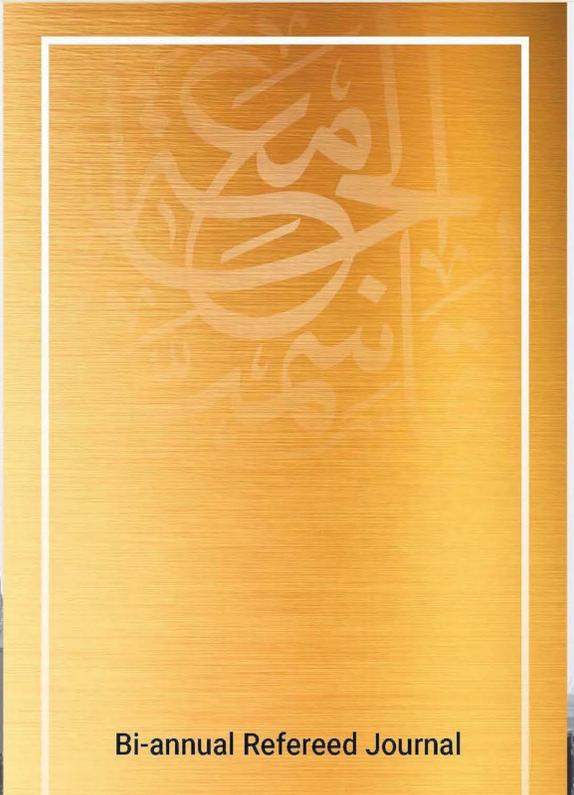


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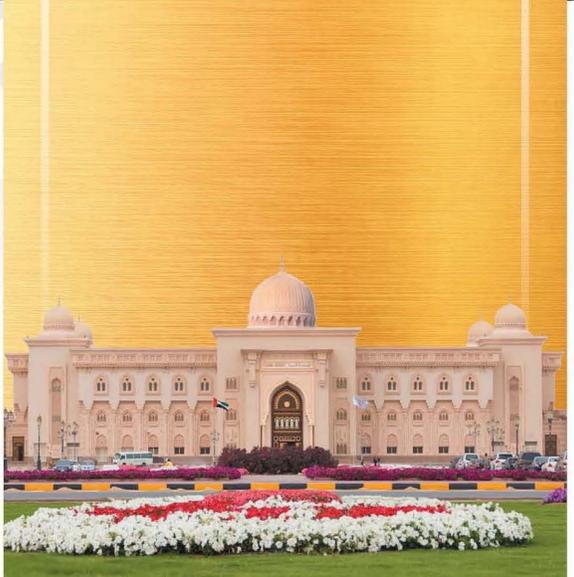


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التسوق المتعدد المستويات: إجراءاته وآثاره الاجتماعية والاقتصادية من
المنظور الإسلامي

MULTILEVEL MARKETING: INNER WORKINGS,
SOCIOECONOMIC EFFECTS AND THE ISLAMIC
JURIDICAL VIEW¹

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الملخص

تعنى هذه الورقة ببيان مفهوم التسوق المتعدد المستويات، وذكر أصله وتطوره وما يكتنفه من أعمال وإجراءات مع بيان وجهة النظر الشرعية في أنشطته، وأقوال الفقهاء المعاصرين فيه، فمنهم فريق يرى جوازه استنادا لتخريجه على جملة من المعاملات والعقود الجائزة كالإجارة والجمالة والوكالة، وعلى أن الأصل في الأشياء الإباحة ما لم يكن دليلًا لمنع، وفريق آخر يرى منعه وتحريمه لما يتضمنه من غرر وميسر ومجموعة من الأنشطة المحرمة. ويرى الباحث إباحته بضوابط وشروط شرعية تنفي عنه الجهالة والغرر وتقوم معاملته على النحو الشرعي الصحيح. وعلى الرغم من أن القول بجوازه أقوى دليلًا وأقوم قيلًا إلا أن الورقة المقدمة تهدف لتقديم نسخة معدلة من التسوق المتعدد المستويات متوافقة من الأصول العامة والأحكام التفصيلية للشرعية الإسلامية، بغية التوسط في الحكم عليه وتوجيهه للصورة المقبولة.

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Abstract

The intent of this article is to highlight the origins and development of multilevel marketing, its inner workings, and Islamic juridical views on its activities. One group of Muslim scholars permits it while others forbid it. The view forbidding it is the majority opinion. The juridical viewpoint forbidding multilevel marketing is more convincing than the view permitting it because of research-based evidence highlighting the reality of its inner workings, its socioeconomic harms and stronger juristic arguments opposing it. The inner workings of multilevel market reveal why the majority opinion forbids this so-called business model. This article aims to introduce a sharia-compliant version of the multilevel marketing model which may align with the Islamic perspective.

الكلمات المفتاحية: تسويق متعدد المستويات ، اقتصاد إسلامي ، تمويل إسلامي

Keywords: Multilevel Marketing, Islamic Economics, Islamic Finance.

1.0 Introduction

The origins of multilevel marketing go back to the 1930s. Businessman Carl Rehnborg read voraciously the nutritional literature of his times. After seven years of experimentation, he developed a dietary supplement which he called Nutrilite (F.D.C., 1951). His son Sam, who would go on to become Nutrilite’s president and chief operating officer, said of his efforts: “After a certain length of time, dad would visit his friends to see what results had been obtained. More often than not, he would find the products sitting on the back shelves, unused and forgotten. It had cost them nothing and was, therefore, to them, worth nothing. It was at this point that he rediscovered a basic principle—that the answer was merely to charge something for the product. When he did, the friends, having paid for the product, ate it, liked it, and further, wanted their friends to have it also. When they asked my dad to sell the product to their friends, he said, ‘You sell it to them, and I will pay you a commission.’” (Rehnborg, 2015).

His business succeeded with monthly sales of 500,000 dollars, although its promoters consistently broke the law. In 1947, the FDA began a four-year struggle to hold Rehnborg, his associates, and their respective companies accountable for the wild claims they made to sell their products (Rehnborg, 2015). In 1951, the supreme court issued a permanent injunction forbidding Nutrilite's distributors from referring to their collection of publications to sell their product (Associated Press, 1950). The publications contained misleading claims about Nutrilite's healing properties. Amway's founders, Rich De Vos and Jay Van Andel, were friends who became Nutrilite distributors after high school graduation. They built a network of 2,000 distributors. Fearing that Nutrilite Products might collapse, they re-pyramided and formed a new company, American Way Association, later renamed Amway (Xardel, Dominique (1993)). Today, Amway is the oldest and largest multilevel marketing company in existence in the United States. Amway's success as a multilevel marketing company was temporarily threatened when in 1975, the FTC filed a complaint against Amway for violating section 5 of the Federal Trade Commission. In 1979, the Supreme Court ruled that Amway was not a pyramid scheme, which in all fifty states is illegal. However, critics begged to differ. They equated multilevel companies with pyramid schemes, claiming that the former launders its earnings through the sale of products, which is merely a guise to escape legal consequences (Federal Trade Commission, 1998).

2.0 Multilevel Marketing and Pyramid Schemes

Various definitions for multilevel marketing abound. According to the Federal Trade Commission's Bureau of Consumer Protection, multilevel marketing is a strategy for the sales of products or services where the company earns its revenue from non-salaried workers selling the company's products and services. Their earnings are derived from a pyramid-shaped (FTC, 2021). It is further defined as "A direct sales system, which is marketed by consumer goods direct from producers. The bonus is taken from the profit of each buyer introduced by the first buyer under the conditions set (Tarmizi, Erwandi, 2012)." Pyramid schemes differ from multilevel marketing as the former involves a "transfer scheme that uses certain marketing

tools that illegally achieve financial success for some by imposing a direct loss on others and that are inconsistent with establishing a viable retail base, (Nat and Keep, 2002)” while multilevel marketing is a business based on actual products/services sold, pyramid schemes are endless chain distributor schemes in which the “products” are the opportunity to recruit new participants (Koehn, 2001). While the former is legitimate, the latter is illegal because of its unethical aspects (Duriat, 2014).

One feature all MLMs have in common is the two possible sources of revenue that compensation plans pay participants from. The first of these is the commission of sales obtained directly from their own customers. The second revenue stream is from commissions taken from wholesale purchases made by distributors below the participant who have recruited other distributors into the MLM. These distributors who are below the participant at every level of the pyramidal MLM are known as one’s downline distributors. MLM salespeople sell products to end user retail customers through relationship referrals and word-of-mouth advertising but most importantly, they are paid incentives to recruit other distributors into the pyramidal chain so that these new recruits can become downline distributors. Those who are above Participant X in the pyramidal chain are known as upline distributors and those who are below him in this hierarchy are known as downline distributors.

In multi-level marketing, the compensation plan theoretically pays out to participants only from two potential revenue streams. The first is paid out from commissions of sales made by the participants directly to their own retail customers. The second is paid out from commissions based upon the wholesale purchases made by other distributors below the participant who have recruited those other participants into the MLM; in the organizational hierarchy of MLM companies, these participants are referred to as one's downline distributors (DuBoff, 2004). According to the FTC commission’s report, almost 99 percent of people who join MLM companies lose their investments (Ashbrook, 2017). In most cases, multi-level marketing companies achieve high gains due to downline participants who are usually motivated to hold onto the belief that they can achieve huge returns, though statistical evidence proves otherwise (O'Regan,

2015, July 16). Moreover, MLM companies were declared illegal in certain countries or otherwise strictly regulated in some jurisdictions due to that fact that they are merely structural variations of the traditional pyramid scheme (Jiabao, 2005, September 3).

Since the term ‘multi-level marketing’ evoked comparisons to pyramid schemes, MLM promoters coined the term ‘network marketing.’ To further themselves even more from comparisons to pyramid schemes, they sought to be called ‘direct selling’ companies. Thus, one after the other, MLMs joined the Direct Selling Association and now boldly declare that as its members, they are ‘direct selling companies.’ The DSA now divides its membership into ‘single level’ and ‘multi-level’ pay plans.

3.0 Juristic Views of Contemporary Muslim Scholars and Fiqh Assemblies

Muslim jurists are divided in their juristic opinions on multilevel marketing companies. Those who forbid multilevel marketing focus on the reality of its inner workings, socioeconomic harms, and its involvement in unlawful forms of transactions. They include the Permanent Committee in Saudi Arabia for Research and Fatwa, Dar al-Iftaa’ of Egypt [after the reversal of their original fatwa], Fiqh Academy of Sudan (Qurani, 2011), Dar al-Iftaa’ of Jordan and that of Halab (Qurani, 2011), Al-Hajji Al-Kurdi, Dr Ali Mohiuddin Al Qaradaghi (Sweillam, n.d.), Dr Muhammad Salih Al-Munajjid (2007) and others.

The Permanent Committee in Saudi Arabia for Research and Fatwa issued an opinion based on Fatwa no. 22935, dated 3rd May 2004, that states that pyramid schemes are haram because “the purpose of this dealing is to earn commission, not to buy the product.” The fatwa covers both pyramid schemes and MLMs. Opponents of multilevel marketing base their view on five reasons as follows:

1. Those transactions involve *riba al-faql*, an exchange of money for money with a different quantity. The member pays an exorbitant membership fee in cash, hoping to get more cash in return without any real business transaction taking place.

2. Such transactions mostly include *gharar* (uncertainty). Members achieve success depending on where they are in the hierarchy of MLMs and not on actual product sales.
3. The transactions are rooted in injustice. Members who joined the MLM earlier are more entitled to earn the biggest shares of rewards, while those at the bottom of the pyramidal hierarchy tend to lose their investments. Furthermore, MLMs may end up collapsing in the long run, causing participants who joined the structure later to lose their upfront payments. The most vulnerable to losses are downline participants since it becomes nearly impossible to recruit the new members required to pay off the upline recruiters. Scholars say that purchase and sale are not based on the free and mutual choice of both parties. There is an element of compulsion in the purchase of goods and services, or the required investment whether in the form of a joining fee or buying inventory. This is mandatory before one is entitled to the bonuses and benefits offered in the scheme. Such requirements lead to manipulation, exploitation, injustice, unfairness, and deceit—elements that contradict what has been underscored in the shari'a with respect to just commercial transactions.
4. The multilevel marketing model disguises elements of deception. Though the real reward is attributed only to recruitment, some deceptive pyramid schemes use a tangible product as an alibi or stratagem to earn more. Multilevel marketing companies spin misleading and deceitful advertising and claims. Exaggerated misrepresentations of financial gains and benefits to their potential markets starkly contrast with the reality of serious financial losses plaguing its participants—a deep-rooted problem in the multilevel marketing structure. One oft-propagated lie is that MLMs are the most powerful form of marketing and a quick way of striking it rich when it is a highly deceptive scam. Its most powerful feature—chain recruitment—is its most inherent flaw. A few at the top get wealthy off the backs of most of the distributors who end up losing money. In fact, according to the Federal Trade Commission's website, 99.7 percent of those who join MLMs

end up losing money. If they were informed of these dismal statistics from the beginning, potential distributors would turn on their heels and run away from all MLMs.

5. MLMs lure its members with payment or services without supplying real investment, sale, or services. This is akin to selling commodities which do not exist. According to the consensus of the scholars, the subject matter *mabī'* must exist at the time of concluding the agreement or in the future and must be legal to be recognized by Islamic law (Al-Zuhaili, 2017)). It is not possible to sell an unborn animal fetus or fish that has not yet been caught (Obeid, 1996).

However, scholars discern seven unethical consequences for MLM transactions as follows:

1. The claims of fast money earned through recruitment that the company lures potential distributors with.
2. The product sold is pricy yet of little value, something which people may not be looking for.
3. Participants are initially required to invest a considerable amount either by paying a registration fee or buying inventory in large quantities.
4. Selling to family members and friends. MLM members who want to earn quick legitimate commissions may start off by asking their own friends and family members to buy MLM products. This may destroy relationships.
5. Exploiting the host-guest relationship. Most MLM activities start from homes. Someone you know always comes to your house unexpectedly to introduce their products and attempt to recruit you into the MLM business model. This is unethical because a guest is not supposed to sell something.
6. Exploiting the professional-client relationship. MLMs can be a potential issue for professionals, especially doctors or lawyers. For example, a medical general practitioner, while prescribing medicines based on fiduciary relationship with the client, may also suggest that the same client buy herbal supplements from their MLM.
7. Appealing to greed. Some legitimate yet unethical MLMs and most pyramid schemes lure members through promises of fast-

earned wealth by using success stories. This appeal to greed encourages the mentality that the ends justify the means. An ethical MLM company should not be rooted in materialism.

From an economic perspective, the main reason for the inevitable failure of this structure has been explained clearly by Jon Taylor: “As endless entrepreneurial chains, or ‘opportunity’ recruitment schemes, MLMs assume infinite markets and virgin markets, neither of which exists in the real world. They would be doomed to eventual market saturation and collapse, except that some avoid this by expanding to other countries and/or re-pyramiding through the same markets with new product offerings and divisions (Taylor, 2011).”

However, another group of contemporary Muslim jurists and fiqh assemblies upheld the lawfulness of multilevel marketing. They include the Fatwa Committee in Al-Azhar, the Egyptian (Ḥijāzi, 2018), Libyan, Algerian, and Tunisian Ifta departments. They further include the Ifta committee at the Jordanian University, Shaykh ‘Abdullah bin Jibrin and Salman Al-‘Oudah (Balfaqīh, n.d.), who agreed that this transaction is a kind of lawful brokerage (Al-Ashqar, 2006). Dr. Abdul Karim Khalil al-Kahlout (Qurani, 2011), the grand mufti of the Gaza Strip, and Dr Ahmed Muhammad Al-S‘ad said it is a lawful transaction on the condition that the company activity is not limited to circulating money among participants and that this transaction is *riba*-free (Al-Ashqar, 2006). Dr. Hossam Al-Din Effana is among those who hold MLMs as lawful (Al-Ashqar, 2006). Among others reported as belonging to this group is Dr Wahba Al-Zuhaili, Dr. Ṣāliḥ Al-Sadlān, Aḥmad Al-Ḥaddād, Ḥāmid Al-‘Alī and Sa‘d Al-Burayk (Al-Juhanī, 2015).

Those who ruled on the permissibility of MLMs based their view on several legal proofs which may be discussed as follows:

1. They reasoned that the activities of MLM companies can be considered a ramification of *Ja‘āla* (reward on labor) and the gains acquired by those companies is a return for the service or product in the form of brokerage (Al-Ashqar, 2006). According to Shāfi‘ī scholars, it is permissible that the particulars of such a job be unknown, though not the amount of the wage (Al-Misri, 1982).

2. Islamic legal maxims lend credence to the permissibility of MLMs. The fundamental principle is that things are permissible for use until proof of prohibition becomes evident or permissibility is the original state of things unless they become explicitly prohibited (*al-aṣl fī l-ashyā' al-ibāḥa* “*ḥattā yadull ad-dalīl 'alā tahrīmiḥā*) (Al-Suyūṭī, 1992). Matters are to be considered in view of their objectives (intentions). Multilevel marketing is a new form of sale contract which is permissible by default, and there is no text preventing it. Many scholars who permitted multilevel marketing base their view on this legal maxim, including the secretariat of Fatwa at the Iftā' department of Egypt.
3. Some scholars compared the MLM contract to *ijāra* (lease or hiring for service) where a participant could be considered a laborer or a hired person to sell the products of the company for a sum of money (Qurani, 2011). However, one of the conditions of a valid *ijāra* contract is that both labor and service must be identified and present at the time of contract. It is argued that MLM contracts can hardly fulfill these conditions.
4. Some scholars referred to MLM as a form of *wakāla* (commissioning someone to do something). A participant may work as an agent for a fixed return. He is further empowered to recruit others as sub-agents. However, it is argued that *wakāla* is a contract which may be revoked by any or both parties. In the specific case of MLMs, they do not have the right to cancel the contract if the participant abides by conditions. In addition, an agent in a multilevel marketing company is obliged to purchase a commodity for a higher price.
5. It may be regarded a brokerage contract where a participant is viewed as a broker who receives return for reconciling sale. The Fatwa Committee at Al-Azhar provided this explanation. Ibn Taymiyya was asked about a group of brokers who reconciled the sale of certain items. He ruled that in case a merchant agrees to a broker's sharing of some work by other brokers, there is no problem in such a case as the agent represents the merchant and he has the right to appoint others as agents (Ibn Taymiyah, 1987).

Sabrī argues against its adaptation as a brokerage contract by maintaining that "selling is a contract entitling the broker to receive a certain return for his role in facilitating the selling or buying, while in MLM, a broker is obliged to buy the product or pay membership fees to become a representative or a marketer. (Sabri, 2012)" Moreover, a broker is entitled to compensation for each deal while multilevel marketing sets up conditions for commission. Hussein al-Shahrānī explains that whereas a broker receives a commission for the sale of a real product, a multilevel marketing transaction does not have real products for sale. The product is not the intended target in multilevel marketing; rather it is a mere disguise or a legal pretext to validate such a transaction (Al-Shahrānī, 2010).

6. Proponents of the *fatwa* given by the Permanent Committee in Saudi Arabia for Research and Iftaa argue that it is based on a generalized concept of MLM which does not distinguish it from pyramid schemes. Qurani mentioned two points to distinguish MLMs from pyramid schemes. First, MLMs have products to sell whereas pyramid schemes do not sell any (Qurani, 2011). In cases where pyramid schemes like Biznas offer a product for sale, it is merely a disguise to avoid violation of trade laws (Bafaqih, 1993). Moreover, multilevel marketing constitutes a geometric network under every subscriber, while in a pyramid scheme, we have one person at the top level (upline) and all other members under him are ordered in a hierarchy. Sabri argues that it does not make a difference (Sabri, 2012).
7. In response to multilevel marketing's prohibition due to its inclusion of *gharar*, its proponents among the scholars argue that most of the financial derivatives in financial markets—including MLMs—are declared impermissible by contemporary Muslim jurists mainly because of *gharar* in these transactions, but according to Badawi (1998), the precise meaning of *gharar* is uncertain, and jurists have been unable to define the exact scope of *gharar* according to Vogel (Vogel, F. and Hayes, 1998).

According to Shāṭibī, the Prophet's prohibition of *gharar* does not encompass all types of uncertainties since jurists permit some

transactions which involve *gharar*, such as selling what is hidden in the ground or selling a house, though its foundation is not visible. The Hadith prohibits intolerable *gharar*, which ultimately causes dispute among purchasing parties. According to him, this is the rationale behind the prohibition (Al-Shāṭibī, 1997). Jurists give examples of prohibited sales which include intolerable *gharar*, such as two sales being present in one (Ibn Rush 2014), where a contract refers to one of two undetermined agreements. A second such example is the option sale (*bay' u al-'urbūn*), where a purchaser pays a down payment. In case he fulfils the contract, the amount is counted as part of the price and if he withdraws from the contract, he forfeits it. A third example is conditional sale (Al-Shawkāni, 1953). Sharia further prohibits *gharar* related to the kind or type of contract, *gharar* in the species of the object, *gharar* as it relates to the attributes, quantity, identity, and delivery time of the sold item as well as its nonexistence.

However, Ibn Taymiyya confirmed the lack of evidence in the texts of Shariah for an absolute prohibition on all types of risk. Allah and his messenger do not prohibit every risk (*gharar*). In every contract, each party is keen on profit and cautious about risk. It is permitted by the Quran, Sunnah, and consensus of the scholars (Ibn Taymiya, 1987). To conclude, when endogenous or exogenous uncertainties are the main sources of *gharar* in a contract, it is tolerable. The degree of uncertainties and risks involved in MLM is tolerable.

8. A financial contact is deemed permissible and sharia-compatible if it is devoid of *zulm* (exploitative, unjust practices), *ghish* (deception), and *ghabn* (deception by concealment of vital information). This includes Shariah-compliant exchange contracts such as sale, labor, lease, etc.; donation contracts such as gift-giving, grants, charity, loans, etc.; ownership-of-income generated properties such as shareholding, partnership, joint venture contracts, etc.; acquisition of free wealth through fishing, hunting, etc.; compensation of civil tort and inheritance or other estate-planning tools. Therefore, MLMs fall within the objectives of sharia and is included in the original state of permissibility. Its earning status, however, should be observed based on how the earning arrangement unfolds to filter out any

deceitful, exploitative, unjust, and fraudulent practices, and to ensure that the earnings are safe and legitimate under Shariah (Islamic Religious Council of Singapore, 2014).

4.0 Conclusion

With regard to Islamic Legal Conditions for the Validity of Multilevel Marketing, the Islamic *Sharia* presumably equips scholars to conduct *Ijtihad* with multiple *fiqh* tools to help them create and endorse products which comply with the higher objectives of *Sharia*. To conclude, neither the proponents nor the opponents of multilevel marketing could provide decisive legal proof on the permissibility or impermissibility of multilevel marketing contract forms. This study strongly supports the view that Muslim jurists should introduce a platform to make multilevel marketing *Sharia*-compliant. It should provide clear answers to inquiries posed by opponents and proponents of multilevel marketing and empower those contracts to fully comply with Islamic economic, financing and accounting principles.

However, some Malaysian and Indonesian Islamic financial institutions contributed compelling proposals. Among those who allowed multilevel marketing include Chairman of the Indonesian Ulema Council (MUI) KH. Ma'ruf Amin, who provided a halal certificate for this platform from a review of Islamic laws on a system run by a selection process (Budiandru, 2018). He based his view on a thorough study of PayTren, an Indonesian financial institution which provides payment gateway services and facilitates monetary transactions for users. Similarly, among those who permitted multilevel marketing is the National Council for Islamic Religious Affairs in Malaysia, which issued a fatwa on 23 January 2006 stating, "The Committee has decided that the concept, structure, and regulations of multilevel marketing (MLM) approved by the Government are permissible and not in contradiction to the Islamic business concept." However, this fatwa does not provide unrestricted permissibility. The JAKIM (*Jabatan Kemajuan Islam Malaysia* or Department of Islamic Development Malaysia) concluded that although MLM is permissible, unrestricted public interests, equity among the transacting parties as well as fifteen parameters must be met. Meanwhile, on 10 April 2014, the Office of the Mufti from the

Islamic Religious Council of Singapore (MUIS) issued a fatwa stating that MLM can be practiced by Muslims after meeting certain conditions.

To conclude, MLM may be considered a legitimate contract after meeting the following prerequisites:

1. Mutual consent of both contracting parties. Members must not be coerced or under duress to participate in such business.
2. Sold items must be lawful, beneficial to people and exist. The price must also be reasonable. Products sold must be of tangible or inherent value.
3. Any bonuses and commissions must be disclosed and agreed upfront by both contracting parties.
4. Compensation paid for downlines and participants should be the result of a real process of selling a product. Moreover, the commission given to the members should be directly proportional to the volume of sales made. Reward schemes should be clear and transparent to all members and their uplines.
5. The commission for indirect uplines (i.e., passive income) should be capped and not on a regular basis as there is usually minimal/insignificant effort being done by those uplines for those sales to take effect. The commission should be reasonable based on the economic situation of the country. Where the commission quantum is too high, it may delude the members to adopt a gold rush mentality, promoting extravagant spending and unhealthy levels of consumerism.
6. Members are free to buy any quantity of products.
7. Commission, bonuses, incentives, etc. should be explicitly stated and agreed upon by the members.
8. The cooling-off period must be clearly stipulated in the contract.
9. Nominal membership fees with welcome packs to orientate members should be included.
10. A contract legally effected between the MLM company and the members. The contract is usually based on spirit of either *jaa'lah*, *wakala* or *hibah*.
11. There may be unique benefits of being a member/distributor. These include entitlements to special discounts, free gifts,

- exclusive training sessions on products, ownership of independent business, etc.
12. Return and buy-back policy.²² Many legitimate MLM companies do not encourage members to make unnecessary product purchases that could result in a large stagnant inventory (i.e., "front-end loading" or "inventory loading"). Members must either consume their products or sell their products to people who will consume them. Otherwise, the MLM can prohibit members from further purchase as they may resort to hoarding.
 13. Clear termination policy with no penalty.
 14. It does not have any elements of a money game or pyramid scheme.

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