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REGULATORY FRAMEWORK FOR MULTI-LEVEL MARKETING/ DIRECT SELLING BUSINESS IN KERALA

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August 2018



An Autonomous Institution of Government of Kerala



P. THILOTHAMAN
Minister for Food & Civil Supplies



Government of Kerala

MESSAGE

I am happy to know that Gulati Institute is bringing out a book about the regulatory Framework of Direct Selling and MLM business in Kerala. I am confident that this book will be useful as a Reference guide for all the stakeholders of Direct Selling and Multi-Level Marketing businesses in Kerala.

I take this opportunity to congratulate the Gulati Institute of Finance and Taxation for taking the effort in publishing this book at the right time and I wish the publishers all success

3rd day of August, 2018

P. THILOTHAMAN



Mini Antony IAS
Secretary, Food & Civil
Supplies



Government of Kerala

FOREWORD

The recently introduced Direct Selling Guidelines 2016, formulated by the Government of India, are expected to change the dynamics of the Direct / MLM industry players — new as well as the existing ones. These Guidelines have been laid out for the recognition and protection of the Direct Selling industry. A clear definition of Direct Selling by the Government will help Government bodies, investigating agencies and the consumers to differentiate between legitimate businesses and ponzi schemes. Unauthorised sale of products by fake Direct Selling /MLM companies will be prevented through this mechanism. This will further boost investor confidence and attract investors and distributors to become part of this industry.

Direct Selling Guidelines 2016, formulated by the Government of India, are the guiding principles for the State Government for setting up a State level Monitoring Authority for regulating the business of “Direct Selling” and Multi-Level Marketing (MLM). It will also strengthen the existing regulatory mechanism on Direct Selling and MLM, prevent fraud and protect the legitimate rights and interests of consumers. The success of this mechanism largely depends upon the awareness about these guidelines among the various stakeholders of this Industry. At this point of time, the effort taken by the Gulati Institute of Finance and Taxation is really appreciable and the book they have published under the label of “Regulatory Framework of Direct Selling / MLM businesses in Kerala will be extremely useful to all. This book is a compendium of Central and State Guidelines along with the relevant Application forms for enrollment. More importantly the Malayalam version of important aspects of Central Guidelines is also appended.

Mini Antony

REGULATORY FRAMEWORK OF MULTI-LEVEL MARKETING/ DIRECT SELLING BUSINESSES IN KERALA

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AUGUST 2018



*An Autonomous Institution of Government of Kerala
Thiruvananthapuram - 17*

Gulathi Institute of Finance & Taxation

**മൾട്ടിലെവൽ മാർക്കറ്റിംഗ്/ ഡയറക്ട് സെല്ലിംഗ് ബിസിനസ്സുകളെ
നിയന്ത്രിക്കുവാൻ കേന്ദ്രസർക്കാർ പുറപ്പെടുവിച്ച
മാർഗ്ഗരേഖയുടെ പ്രസക്ത ഭാഗങ്ങൾ**

ഡോ.തോമസ് ജോസഫ് തുങ്കുഴി

Part - A

മാർഗ്ഗരേഖ അനുസരിച്ച് MLM കമ്പനികൾ പാലിക്കേണ്ട കാര്യങ്ങൾ

- ❖ കേന്ദ്രസർക്കാർ പുറപ്പെടുവിച്ചിരിക്കുന്ന ഡയറക്ട് സെല്ലിംഗ് മാർഗ്ഗരേഖയും അവ നിരീക്ഷിക്കുവാൻ കേരളസംസ്ഥാന സർക്കാർ തയ്യാറാക്കിയിരിക്കുന്ന നിയന്ത്രണ മാർഗ്ഗരേഖയും പൂർണ്ണമായും പാലിക്കേണ്ടതാണ്.
- ❖ കേരളത്തിൽ ഈ രംഗത്ത് വ്യാപാരം ചെയ്യുന്നതെങ്കിൽ കേന്ദ്രത്തിലും കേരളത്തിലും നിർദ്ദിഷ്ട അപേക്ഷകൾ ഉപഭോക്താക്കൾക്കു വകുപ്പിൽ സമർപ്പിച്ച് രജിസ്റ്റർ ചെയ്തിരിക്കേണ്ടതാണ്.
- ❖ ഇന്ത്യയിലെ നിയമപ്രകാരം രജിസ്റ്റർ ചെയ്ത ഒരു സ്ഥാപനത്തിനു മാത്രമേ ഈ രംഗത്ത് വ്യാപാരം ചെയ്യുവാൻ സാധിക്കുകയുള്ളൂ. (Proprietorship Business അനുവദനീയമല്ല).
- ❖ പ്രധാനമായും സ്വന്തം ഉൽപ്പന്നങ്ങളും സേവനങ്ങളും ആണ് ഈ മേഖലയിലൂടെ വ്യാപാരം ചെയ്യുന്നതെങ്കിലും മറ്റു ഉൽപ്പന്നങ്ങളും സേവനങ്ങളും ചില മാനദണ്ഡങ്ങൾക്ക് വിധേയമായി വ്യാപാരം ചെയ്യാവുന്നതാണ്. അതായത് മറ്റു ഉൽപ്പന്നങ്ങളാണ് വ്യാപാരം ചെയ്യുന്നതെങ്കിൽ അവ ക്രയവിക്രയം ചെയ്യുവാനുള്ള ബന്ധപ്പെട്ട കമ്പനിയുടെ അനുമതിയും പ്രസ്തുത ഉൽപ്പന്നങ്ങൾ വേർതിരിച്ച് അറിയുവാൻ തക്കവിധം വ്യാപാരത്തിൽ ഏർപ്പെട്ടിരിക്കുന്ന MLM കമ്പനിയുടെ Trade Mark അല്ലെങ്കിൽ മറ്റെന്തെങ്കിലും പ്രത്യേക തിരിച്ചറിയൽ അടയാളവും ഉണ്ടായിരിക്കേണ്ടതാണ്.
- ❖ കമ്പോളങ്ങളിൽ സുഗമമായി ക്രയവിക്രയം ചെയ്യുവാൻ സാധിക്കുന്നതും കമ്പോളവിലയുമായും പൊരുത്തമുള്ളതുമായ വില മാത്രമേ ഡയറക്ട് സെല്ലിംഗ് വ്യാപാരത്തിലൂടെ വിറ്റഴിക്കപ്പെടുന്ന ഉൽപ്പന്നങ്ങളുടെ മേലും സേവനങ്ങളുടെ മേലും ചുമത്താവൂ. (Fair Market Value ഉറപ്പാക്കണം).
- ❖ കേരളത്തിനു പുറമെയുള്ള അന്തർദേശീയ, ദേശീയ കമ്പനികൾക്ക് - കേരളത്തിനുള്ളിൽ ഒരു ഓഫീസ് പ്രവർത്തിച്ചിരിക്കണം. ഉപഭോക്താക്കൾക്കും കമ്പനി ഡീലർമാർക്കും പ്രയാസംകൂടാതെ വന്നെത്താവുന്ന സ്ഥലത്താകണം ഓഫീസ് പ്രവർത്തിക്കേണ്ടത്.

- ❖ കമ്പനിക്ക് സ്വന്തമായി ഒരു വെബ് സൈറ്റ് ഉണ്ടായിരിക്കേണ്ടതും പ്രസ്തുത സൈറ്റിൽ വ്യാപാരം ചെയ്യുന്ന ഉൽപ്പന്നങ്ങളുടെയും, സേവനങ്ങളുടെയും പൂർണ്ണ വിവരങ്ങളും അവ വില്പന നടത്തുമ്പോൾ ലഭിക്കുന്ന ലാഭവിഹിതങ്ങളും മറ്റു അനുകൂലങ്ങളും, അതിനാവശ്യമായ കരാർ വ്യവസ്ഥകളും കൂടാതെ പരാതി പരിഹാര സംവിധാനവും ഉണ്ടായിരിക്കേണ്ടതാണ്.
- ❖ പരാതികൾ ലഭിച്ചാൽ അവ 45 ദിവസത്തിനകം പരിഹരിക്കേണ്ടതും തീർപ്പാക്കൽ സംബന്ധിച്ചുള്ള രേഖകൾ സൂക്ഷിക്കേണ്ടതുമാണ്.
- ❖ വ്യാപാരം സംബന്ധിച്ചുള്ള വ്യക്തമായ കണക്കു പുസ്തകവും മാർഗ്ഗരേഖ പ്രകാരം ആവശ്യമായ മറ്റു രജിസ്ട്രറുകളും സൂക്ഷിക്കേണ്ടതാണ്.
- ❖ കമ്പനിയുടെ ഡീലർമാർക്ക്/ ഡയറക്ട് സെല്ലർക്ക് കമ്പനിയുടെ ഔദ്യോഗിക തിരച്ചറിയൽ കാർഡ് നൽകേണ്ടതും അവരുമായി മാർഗ്ഗരേഖയിൽ നിർദ്ദേശിക്കുന്ന മാനദണ്ഡങ്ങൾ ഉൾക്കൊള്ളിച്ചുകൊണ്ടുള്ള ഒരു കരാറിൽ ഏർപ്പെടേണ്ടതുമാണ്.
- ❖ ക്രയവിക്രയം ചെയ്യുന്ന ഉൽപ്പന്നങ്ങളുടെയും സേവനങ്ങളുടെയും MRP, ഗ്യാരണ്ടി, ഗുണനിലവാരം, തിരിച്ചെടുക്കൽ വ്യവസ്ഥകൾ, വിൽപ്പനയ്ക്ക് ശേഷമുള്ള പരാതികൾ കൈകാര്യം ചെയ്യുന്ന രീതി (Post sale Redressal of Grievances) എന്നിവ പരസ്യപ്പെടുത്തേണ്ടതാണ്.
- ❖ കരാർ പ്രകാരം ഡീലർമാർക്ക്/ ഉപഭോക്താവിന് കൊടുക്കാനുള്ള ലാഭവിഹിതം/കമ്മീഷനുകൾപ്പെടെയുള്ള എല്ലാവിധ ആനുകൂല്യങ്ങളും കൃത്യമായും വ്യവസ്ഥചെയ്ത സമയപരിധിക്കുള്ളിൽ കൊടുത്തു തീർക്കേണ്ടതാണ്.
- ❖ GST- ഉൾപ്പെടെ ബാധകമായ എല്ലാ നികുതികളും വീഴ്ച കൂടാതെ സർക്കാരിൽ ഒടുക്കേണ്ടതും നികുതി നിയമ പ്രകാരമുള്ള റിട്ടേണുകൾ യഥാസമയം സമർപ്പിക്കേണ്ടതുമാണ്.
- ❖ നിയമപ്രകാരമുള്ള ബില്ലുകളും ഇൻവോയ്സുകളും നിർബന്ധമായും ഉപഭോക്താവിന് നൽകേണ്ടതാണ്. കൂടാതെ പണം കൈപ്പറ്റുമ്പോൾ കമ്പനിയുടെ ഔദ്യോഗിക രസീതുകൾ ഉപഭോക്താവിന് നൽകേണ്ടതാണ്.
- ❖ മാർഗ്ഗരേഖയിൽ പ്രതിപാദിച്ചിരിക്കുന്ന 30 ദിവസത്തിനുള്ളിൽ വിറ്റുസാധനം, Saleable Condition ആണെങ്കിൽ ഉചിതമായ വ്യവസ്ഥയിൽ, തിരികെവാങ്ങിക്കുവാനുള്ള Buy-Back/Repurchase Policy ഉണ്ടായിരിക്കണം.
- ❖ കരാറിൽ ഏർപ്പെട്ടിരിക്കുന്ന ഡീലർമാർക്ക് വ്യവസ്ഥ പ്രകാരമുള്ള വ്യാപാരം ചെയ്യുവാൻ സാധിക്കാതെവന്നാൽ അവരെ കരാറിൽ നിന്നും പിഴക്കൂടാതെ നീക്കംചെയ്യുവാൻ അനുവദിക്കേണ്ടതാണ് (2 വർഷത്തിനുള്ളിൽ).

Regulatory Framework of MLM/DSC

- ❖ കേന്ദ്രമാർഗ്ഗരേഖയും അവ നിരീക്ഷിക്കുവാൻ സംസ്ഥാന സർക്കാർ തയ്യാറാക്കിയ നിയന്ത്രണ മാർഗ്ഗരേഖയും സംബന്ധിച്ചുള്ള ബോധവൽക്കരണം MLM വ്യാപാര ശൃംഖലയിൽ പ്രവർത്തിക്കുന്ന എല്ലാവർക്കും നിർബന്ധമായും നൽകിയിരിക്കണം.
- ❖ നിയോഗിക്കപ്പെട്ട ഡീലർമാർ ബന്ധപ്പെട്ട മാർഗ്ഗരേഖകൾ അനുസരിച്ച് പ്രവർത്തിക്കുന്നുണ്ടോ എന്ന് ഉറപ്പ് വരുത്തുവാൻ എല്ലാ MLM കമ്പനികളും ബാധ്യസ്ഥരാണ്.

Part - B

മാർഗ്ഗരേഖ അനുസരിച്ച് MLM കമ്പനികൾ ചെയ്യുവാൻ പാടില്ലാത്ത കാര്യങ്ങൾ

Part-A-യിൽ പ്രതിപാദിച്ചിരിക്കുന്ന എല്ലാ കാര്യങ്ങളും മൾട്ടി ലെവൽ മാർക്കറ്റിംഗ്/ ഡയറക്ട് സെല്ലിംഗ് മേഖലയിൽ പ്രവർത്തിക്കുന്ന കമ്പനികളും അവരുടെ ഡീലർമാരും കൃത്യമായും പാലിക്കേണ്ടതും അവ ലംഘിക്കുന്ന കമ്പനികൾക്ക് ഈ രംഗത്തു പ്രവർത്തിക്കുവാൻ അനുവദിക്കുന്നതല്ല. കൂടാതെ താഴെവിവരിക്കുന്ന കാര്യങ്ങൾ ചെയ്യുന്നതിൽ നിന്നും ഈ രംഗത്തു പ്രവർത്തിക്കുന്ന കമ്പനികളെ പ്രത്യേകം വിലക്കിയിരിക്കുന്നു:

- ❖ വ്യാപാരത്തിന്റെ മറവിൽ ഉൽപ്പന്നങ്ങളുടെയോ സേവനങ്ങളുടെയോ തുക അല്ലാതെ ഉപഭോക്താക്കളുടെ/ ഡീലർമാരുടെ പക്കൽ നിന്നും മറ്റേതെങ്കിലും പണം സ്വീകരിക്കുകയോ പ്രസ്തുത പണം അവരുടെ നന്മയ്ക്കു വേണ്ടി ഉപയോഗിക്കാതെ അവരെ വഞ്ചിക്കുന്ന രീതിയിലുള്ള 'Pyramid Scheme'/ Money Chain മാതൃകയിൽ ആൾക്കാരെ ചേർത്ത് അതിലൂടെ സാമ്പത്തിക നേട്ടങ്ങൾ ലഭിക്കത്തക്ക വിധത്തിലുള്ള ഒരു സ്കീമുകളും അനുവദിനീയമല്ല.
- ❖ Prize Chits and Money Circulation (Banning) Act. 1978 - നിയമപ്രകാരം നിരോധിക്കപ്പെട്ട Money Chain, Prize Chits എന്നീ രീതിയിലുള്ള ഒരു പ്രവർത്തനത്തിലും MLM കമ്പനികൾ ഏർപ്പെടുവാൻ പാടുള്ളതല്ല.
- ❖ ഉപഭോക്താവിന്/ഡീലർമാർക്ക് വിൽക്കാൻ സാധിക്കുന്ന അളവിൽ മാത്രമേ സാധനങ്ങൾ നൽകാവൂള്ളൂ. നിർബന്ധിച്ച് സാധനങ്ങൾ എടുപ്പിക്കാൻ പാടില്ല.
- ❖ വ്യാപാരം നടന്നുകിട്ടുവാൻ ഡീലർമാരെയും ഉപഭോക്താവിനെയും ഏതെങ്കിലും രീതിയിൽ തെറ്റിദ്ധരിപ്പിക്കുകയോ തെറ്റിദ്ധരിക്കാൻ സാധ്യതയുള്ളതുമായ കാര്യങ്ങൾ പ്രചരിപ്പിക്കുകയോ ചെയ്യുവാൻ പാടില്ല.

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- ❖ സഹലീകരിച്ചെടുക്കാൻ സാധിക്കാത്ത കാര്യങ്ങൾ വസ്തു നിഷ്ഠമാണെങ്കിലും അവ ഉപഭോക്താവിന്റെ/ഡീലർമാരുടെമേൽ ഏതെങ്കിലും രീതിയിൽ അടിച്ചേൽപ്പിക്കുവാൻ പാടില്ല.
- ❖ മോഹിപ്പിക്കുന്ന രീതിയിലുള്ള പ്രസ്താവനകളോ ലഘുലേഖകളോ ഇറക്കിയുള്ള വ്യാപാരതന്ത്രങ്ങൾ മെനയുവാൻ പാടുള്ളതല്ല. സത്യമായതും നിലവിലുള്ളതുമായ കാര്യങ്ങൾ മാത്രമേ പ്രസ്താവിക്കാവൂള്ളൂ. ഭാവിയിൽ കൈവരിക്കാൻ പോകുന്ന നേട്ടങ്ങൾ പറഞ്ഞ് ഉപഭോക്താവിനെയും ഡീലർമാരെയും മോഹിപ്പിക്കുവാൻ പാടുള്ളതല്ല.
- ❖ ക്രയവിക്രയം ചെയ്യുന്ന സാധനങ്ങളുടെയോ സേവനങ്ങളുടെയോ തുകയല്ലാതെ മറ്റ് ഒരു രീതിയിലും ഉപഭോക്താവിന്റെ/ഡീലർമാരുടെ പക്കൽ നിന്നും പണം വസൂലാക്കാൻ അനുവദിക്കുന്നതല്ല.
- ❖ വില്പന നടത്തുവാൻ സാധിക്കാത്ത രീതിയുള്ള Target -കൾ സ്ഥാപിച്ചു കൊടുക്കുവാനോ നിർബന്ധിച്ച് സാധനങ്ങൾ അടിച്ചേൽപ്പിക്കുവാനോ അനുവദിക്കുന്നതല്ല.
- ❖ കമ്പിനിയുടെ തിരിച്ചറിയൽ കാർഡ് കൂടാതെ ആരെയും വില്പന നടത്തുവാൻ അനുവദിക്കുന്നതല്ല.

ചുരുക്കത്തിൽ ഒരു രീതിയിലും ഉപഭോക്താവിനെയോ ഡീലർമാരെയോ കബളിപ്പിക്കാൻ ഈ രംഗത്തുപ്രവർത്തിക്കുന്ന കമ്പനികളെ മാർഗ്ഗരേഖയുടെ നിബന്ധനകൾ പ്രകാരം അനുവദിക്കുന്നതല്ല.

NB:

- (1) മാർഗ്ഗരേഖയുടെ പൂർണ്ണമായ ഇംഗ്ലീഷ് പതിപ്പ് താഴെപ്പറയുന്ന വെബ്സൈറ്റിൽ ലഭ്യമാണ്.

www.consumeraffairs.kerala.gov.in

www.civilsupplieskerala.gov.in

- (2) മാർഗ്ഗരേഖ സംബന്ധിച്ച് കൂടുതൽ കാര്യങ്ങൾ മനസ്സിലാക്കുവാൻ 'ട്രെയിനിംഗ്' ആവശ്യമുള്ളവർ ഗുലാത്തി ഇൻസ്റ്റിറ്റ്യൂട്ടുമായി ബന്ധപ്പെടാവുന്നതാണ്.

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(Course co-ordinator: Dr.Thomas Joseph Thoomkuzhy)

Disclaimer: The views/opinions expressed in this translation are those of the Author and do not reflect the official views of the Government or the Department or Gift

**“Do’s and Don’ts of Multi-Level marketing/ Direct Selling
Do’s-(Direct Selling Entity(DSE))**

Every Direct Selling Entity (DSE) :

- shall be guided by the provisions of the Consumer Protection Act 1986 and shall ensure the protection of interests of consumers in carrying out every direct selling activity;
- shall comply with the central guidelines and State guidelines on State level monitoring mechanism;
- Shall enroll with the Consumers Affairs Dept. , Govt. of India and the State level Monitoring Authority formed by Govt. of Kerala for carrying out their direct selling business ;
- shall be a registered legal entity under the laws of India and the promoter or key management personnel should not have been convicted of any criminal offence punishable with imprisonment in last 5 years by any Court of competent jurisdiction;
- shall be the owner, holder, licensee of a trademark, service mark or any other identification mark to identify their goods & Services ;
- shall have an office with identified jurisdiction for its operation in the State ensuring easy access to its consumers and direct sellers;
- shall maintain proper and updated website with all relevant details of the entity, contact information, products/ goods/ services information, complete income plan, terms of contract and complaint redressal mechanism with a space for registering consumer complaints;
- shall ensure that grievances would be addressed within 45 days of making such complaints;
- shall maintain proper records either manual or electronic of their business dealings, with complete details of their goods, services, terms of contract, price, income plan, details of direct sellers;

- shall execute a contract agreement with Direct sellers which provides for all the “material terms” of participation in direct selling and shall issue proper identity document(s) to its Direct Sellers;
- shall notify and provide a reasonable cooling-off period which entitles the direct seller to exit from the ambit of agreement without any consequences;
- shall maintain a “Register of Direct Sellers” with relevant details of each enrolled Direct Sellers with their periodic account/information regarding their sales, purchases, details of earnings, commissions, bonus and other relevant data;
- shall pay all dues(commission/bonus/incentives /earnings) to the Direct Sellers as per the terms of agreement;
- shall monitor the volume of business and shall comply with all taxes as applicable including GST ;
- shall provide a mandatory orientation session in Direct Selling Guidelines and the Monitoring Mechanism formulated by the Gov.t of Kerala.
- shall allow or provide and notify for a buy-back or repurchase policy or buy-back guarantee for the goods or services sold to the direct sellers which can be exercised within a cooling period of 30 days from the date of the distribution such goods or services.
- shall monitor and control the practices/methods adopted by the Direct Sellers and ensure their due compliance of Direct Selling Guidelines.

Do's (Direct Sellers/ Representatives)

Every Direct Seller:

- 1) shall carry their identity card and not visit the customer's premises without prior appointment/approval;
- 2) shall disclose their identity as well as their companies identity while demonstrating the goods or services to their prospective consumers;

Regulatory Framework of MLM/DSC

- 3) shall deliver the goods/ services with proper bill/ tax Invoices as per the provisions of GST Laws along with a description of product/ service guarantee, after sale service, return / buy back policy including proper receipts for the amount received from the consumers;
- 4) shall keep proper book of accounts stating the details of the products, price, tax and the quantity and such other details in respect of the goods sold by him
- 5) shall obtain prior written consent or authority from the respective Direct Selling Entity in order to undertake or solicit the sale of any product or services through e commerce platform;
- 6) shall protect the interest of consumers in all aspects;
- 7) shall comply with the Central and State guidelines.

Dont's (Direct Selling Entity(DSE)/Direct sellers

Every Direct Selling Entity (DSE)/Direct seller :

- shall not promote or participate in any Pyramid Scheme in any manner whatsoever under the garb of doing Direct Selling business;
- shall not promote or participate in any Money Circulation in any manner whatsoever under the garb of doing Direct Selling business;
- shall not use any misleading or likely to mislead any material particulars relating to its direct selling business;
- shall not make any factual representation to a prospective or existing direct sellers that cannot be verified or that cannot be fulfilled;
- shall not present any advantages or schemes of direct selling to any prospective or existing direct sellers in a false or deceptive manner;
- shall not provide any benefit to any person for the introduction or recruitment of one or more persons as direct sellers;
- shall not collect any money by way of entry subscription or renewal charges or in any other form from the prospective or existing direct sellers ;

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- shall not fix any unworkable targets or forcibly insist any prospective consumers to purchase the products or services beyond their purchasing capacity;
- shall not provide any literature and / or training material to a prospect / or existing direct sellers without the approval of parent Direct Selling entity and shall not insist for the purchase of any sales demonstration equipment or products.

For more details

- (1) Please refer Direct Selling Guidelines published Vide F.No. 21/18/014-IT (Vol-II) dtd 09 Sept 2016 published vide Notification No. G.S.R 1013(E) dated 26 Oct 2016, of Ministry of Consumer Affairs, Food and Public Distribution, Government of India, New Delhi and the Kerala guidelines on Monitoring Mechanism for implementing the Central guidelines published as per GO(P) .No. 8/2018/CAD dtd 4/6/2018 , which are available in :

www.consumeraffairs.kerala.gov.in

www.civilsupplieskerala.gov.in

- (2) For training assistance and awareness programmes, please contact Gulati Institute of Finance & Taxation:

www.gift.res.in

E-Mail:- giftkerla@gmail.com

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Regulatory Framework of MLM/DSC

F.No. .21/18/2014-IT(Vol-II)
Government of India
Ministry of Consumer Affairs, Food & Public Distribution
Department of Consumer Affairs

Krishi Bhawan, New Delhi
Dated the 09th Sep, 2016

OFFICE MEMORANDUM

Subject:- Advisory to State Governments /Union Territories on Model Guidelines on Direct selling

An Inter-Ministerial Committee was constituted by the Government to look into matters concerning the direct selling industry consisting of representatives from Ministry of Finance, the Department of Industrial Policy and Promotion, Department of Legal Affairs, Department of Information Technology and Ministry of Corporate Affairs, besides representatives of State Governments of Delhi, Andhra Pradesh and Kerala. Consultations with stakeholders were also held.

2. Based on the deliberation of the Inter Ministerial Committee and consultation with Stakeholders, the model guidelines on direct selling have been formulated. State Governments/UTs may kindly take necessary action to implement the same. It is envisaged in the guidelines that the State Governments will set up a mechanism to monitor/supervise the activities of Direct Sellers, Direct Selling Entity regarding compliance of the guidelines for Direct Selling.

3. Any direct selling entity conducting direct selling activities shall submit an undertaking to the Department of Consumer Affairs within 90 days, stating that it is in compliance with these guidelines and shall also provide details of its incorporation.

Enclosure: Model Guidelines on Direct Selling.


09.09.2016
(Mohd. Zakir Hussain)
Director (IT)
Phone.No.23384390

To
All Chief Secretaries of States/ Administrators of UTs.

Copy for Kind information to:

1. Prime Minister Office.
2. CEO,NITI Aayog.
3. Department of Financial Service, Department of Industrial Policy and Promotion, Department of Legal Affairs, Department of Information Technology and Ministry of Corporate Affairs.

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Application for enrollment of MM/DS Companies before Govt. of India
DECLARATION BY DIRECT SELLING ENTITIES/COMPANIES

(To be filed at Dept.of Consumer Affairs, Govt.of India)

PROFORMA

PART – A

1	(i) Name of the Company (As Registered) (ii) CIN No: (iii) Name and address of Directors on Board(Enclose details)	
2	DETAILS OF REGISTRATION (WITH JURISDICTION) (a) Address of Registered Office (Enclose copy of Registration Certificate): (b) Email : (c) Telephone Nos: (d) Company Website: (e) Details of other registrations (with jurisdiction), if any (Attach copy of Registration Certificate) Type of Entity (Private, Public, Trust, Ltd. Etc.)	
3	HEAD OFFICE (a) Address (b) E-mail (c) Details of Key Management Personnel as per registration under the Companies Act: (d) Details of Regional Offices: (e) Nodal Officer for interacting with D/o Consumer Affairs; (Name, designation, Tel No., e-mail, Fax, mobile No.)	

4	Whether anyone from the Management was convicted by any court in the past within the past 5 years (from the date of application). If so, the details thereof;	
5	Whether direct selling is of Products or services or both?	
6	Details of License(s), Trade Mark or Principal Brand which identifies the company:	
7.	i. Address / Telephone Nos. / e-mails etc. of Customer Care & Grievance Redress Cells(HQ & Branches); ii. Details of Consumer Grievance Redress Committee as per guidelines: a. Member Name, Phone No and email: b. Member Name, Phone No and email: c. Member Name, Phone No and email:	

PART B

(Direct Selling Business Details)

8	Details of Products / Services offered(Give link of websites)	
9.	Please confirm the following about your direct selling scheme:- (a) It has no provision that a Direct Seller will receive remuneration or incentives for the recruitment / enrolment of new participants and provide that direct sellers will receive remuneration derived only from the sale of goods or services. (b) It does not require a participant to purchase goods or services: i. for an amount that exceeds an amount for which such goods or services can be expected to be sold or resold to consumers; ii. for a quantity of goods or services that exceeds an amount that can be expected to be consumed by, or sold or resold to consumers;	

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	<p>(c) It does not require a participant to pay any entry/registration fee, cost of sales demonstration equipment and materials or other fees relating to participation;</p> <p>(d) It provides a participant with a written contract describing the “material terms” of participation;</p> <p>(e) It allows or provides for a participant a reasonable cooling-off period to participate or cancel participation in the scheme and receive a refund of any consideration given to participate in the operations;</p> <p>(f) It allows or provides for a buy-back or repurchase policy for “currently marketable” goods or services sold to the participant at the request of the participant at reasonable terms;</p> <p>Note: 1. Give details in regard to the above in an enclosure.</p> <p>2. In case any of the answers in this para is ‘No’, please provide full details with reasons in an enclosure.</p>	
10	<p>(a) Whether proper identity document(s) to all the Direct Sellers are issued.</p> <p>(b) Whether you maintain “Register of Direct Sellers” wherein relevant details of each enrolled Direct Seller is updated and maintained with details including verifiable proof of address, proof of identity and PAN as per the Income Tax Act.</p> <p>(c) What is the mechanism for payment of VAT? Give details.</p>	
11	<p>(a) The website is proper and updated regularly with all relevant details, contact information, details pertaining to management, products, product information and complaint redress mechanism for direct sellers and consumers.</p> <p>(b) There are arrangements for registering consumer complaints online or otherwise and grievances are resolved within 45 days of date of making such complaints. Details to be provided</p>	
12	Notes/Remarks, if any.	

Part – C
(UNDERTAKING)

* * *

I/ We, in the capacity of of the.....
company / firm declare that we are compliant with the following:

- (a) We do not promote a Pyramid Scheme, as defined in Clause 1(11) or enroll any person to such arrangement in any manner whatsoever in the garb of doing Direct Selling business.
- (b) We do not participate in Money Circulation Scheme, as defined in Clause 1(12) in the garb of Direct Selling of Business Opportunities.
- (c) We are compliant with all the remaining aspects mentioned in the guidelines issued vide F. No. 21/18/2014-IT (Vol-II) dated 9th September, 2016 by the Department of Consumers, Ministry of Consumer Affairs, Food and Public Distribution and shall also provide such details as may be notified from time to time.

Place:

Sd/-

Date:

Name.....

Designation.....

Tel No.....

E-mail:.....

List of documents to be provided:

1. Certificate of Registration/Bye-laws/Memorandum of Association
2. List of Board of Directors, with contact details
3. Brief details of direct selling scheme and compensation plan.

Sample of contract with direct sellers/distributors.

**APPLICATION FOR ENROLLMENT OF MLM/DS
COMPANIES BEFORE GOVT. OF KERALA**

DECLARATION BY DIRECT SELLING ENTITIES/COMPANIES

(To be filed at Dept. of Consumer Affairs, Govt. of Kerala)

**PROFORMA
PART-A
COMPANY PROFILE**

1	1) Name of the Company (As Registered)	
	2) CIN No: / Reg. No.	
	3) Principal place of business	
	4) Name and address of top executives/officials of the Company (Enclose details)	
	5) Name and address of authorized contact person within the State	
2	ADDRESS FOR COMMUNICATION A . HEAD Office (With PIN Code, e-mail, Telephone with STD code and Company Website) B. Branch Office in Kerala (With PIN Code, e-mail, Telephone with STD code and Company Website)	
3	TAX PARTICULARS OF COMPANY (Enclose Copies ,as applicable)	
	1. Income Tax Registration. No. (PAN)	
	2 Income Tax TDS Registration. No. (TAN)	
	3 Service Tax Registration No. (Service Tax Code - STC)	
	4 Central Excise Registration No.	
	5 VAT Registration No.(TIN)	
	6 GST Registration No.(GSTIN)	

4	Details of Consumer Grievance Redress Committee as per guidelines:	
	1. Head Office	
	Member – 1 Name of the Contact Person	
	Phone No (with STD Code)	
	E-mail:	
	Member – 2 Name of the Contact Person	
	Phone No(with STD Code)	
	E-mail:	
	Member – 3 Name of the Contact Person	
	Phone No(with STD Code)	
	E-mail:	
	B. Branch Office in Kerala (as applicable)	
	Member – 1 Name of the Contact Person	
	Phone No(with STD Code)	
	E-mail:	
	Member – 2 Name of the Contact Person	
	Phone No(with STD Code)	
	E-mail:	
Member – 3 Name of the Contact Person		
Phone No(with STD Code)		
E-mail:		
5	Total number of Direct Sellers working within the State	

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PART– B

6	Details of Products/ Services offered (enclose details)	
7	Details of License (s), Trade Mark or Principal Brand which identifies the company: (Enclose details)	
8	Notes/Remarks, if any.	

Part- C (UNDERTAKING)

I/We, in the capacity of..... of the.....
company/firm declare that we are compliant with the following:

- We do not promote a Pyramid Scheme, as defined in Clause1 (11) or enroll any person to such scheme or participate in such arrangement in any manner whatsoever in the garb of doing Direct Selling business.
- We do not participate in Money Circulation Scheme, as defined in Clause1 (12) in the garb of Direct Selling of Business Opportunities.
- We are compliant with all the remaining aspects mentioned in the guidelines issued vide F.No.21/18/2014- IT (Vol-II) dated 9th September, 2016 by the Department of Consumers, Ministry of Consumer Affairs, Food and Public Distribution and shall also provide such details as may be notified from time to time.
- We are compliant with all the provisions mentioned in the Monitoring Mechanism Guidelines of the Government of Kerala as may be notified from time to time

Place:

Sd/-

Seal of the Company

Name.....

Designation.....

Tel No.....

E-mail.....

LIST OF ENCLOSURES

1. Encl. No. 1 : Name and Address of the [top executives/officials of the Company](#) [as](#) furnished in Column No. 1 (iv)
2. Encl. No. 2 : Copies of Tax Registration Nos. [as](#) furnished in Column No. 3
3. Encl. No. 3 : Details of Product/Services [as](#) furnished in Column No. 7
4. Encl. No. 4 : Details of Licenses/Trade Marks [as](#) furnished in Column No. 8
5. Encl. No. 5 : Copy of VAT/GST/IT/Service Tax/Central Excise returns including TDS returns for the last two Assessment years prior to the enrollment in the State as applicable;

LIST OF DOCUMENTS TO BE APPENDED:

Copy of the undertaking/ Declaration (Part A,B &C) filed by the Entity with the Department

of consumer Affairs, Government of India along with the following documents.-

Appendix I: Certificate of Registration/Bye-laws/Memorandum of Association

Appendix II: List of Board of Directors, with contact details

Appendix III: Brief details of direct selling scheme and compensation plan.

Appendix IV: Sample of contract with direct sellers/distributors.

DIRECT SELLING GUIDELINES 2018

These are guiding principles for the State Government/Monitoring Authority set up by the State Government for regulating the business of “Direct Selling” and Multi-Level Marketing (MLM) and strengthen the existing regulatory mechanism on Direct Selling and MLM, for preventing fraud and protecting the legitimate rights and interests of consumers.

Clause 1. Definitions:

In these Guidelines unless and otherwise required:

1. “Act” means the Consumer Protection Act, 1986 (68 of 1986);
2. “Consumer” shall have the same meaning as provided under the Consumer Protection Act, 1986;
3. “Prospect” means a person to whom an offer or a proposal is made by the Direct Seller to join a Direct Selling opportunity;
4. “Direct Seller” means a person appointed or authorized, directly or indirectly, by a Direct Selling Entity through a legally enforceable written contract to undertake direct selling business on principal to principal basis.
5. “Network of Direct Selling” means a network of direct sellers at different levels of distribution, who may recruit or introduce or sponsor further levels of direct sellers, who they then support:

Explanation: “network of direct selling” shall mean any system of distribution or marketing adopted by a direct selling entity to undertake direct selling business and shall include the multi-level marketing method of distribution.

6. “Direct Selling” means marketing, distribution and sale of goods or providing of services as a part of network of Direct Selling other than under a pyramid scheme,

Provided that such sale of goods or services occurs otherwise than through a “permanent retail location” to the consumers, generally in their houses or at their workplace or through explanation and demonstration of such goods and services at a particular place.

7. “Direct Selling Entity”, means an entity, not being engaged in a pyramid scheme, which sells or offers to sell goods or services through a direct seller.

Provided that “Direct Selling Entity” does not include any entity or business notified otherwise by the Government for the said purpose from time to time.

8. “Goods” means goods as defined in the Sale of Goods Act, 1930 and “Service” means service as defined in the Consumer Protection Act, 1986;
9. “Saleable” shall mean, with respect to goods and / or services, unused and marketable, which has not expired, and which is not seasonal, discontinued or special promotion goods and / or services;
10. “Cooling-off Period” means the duration of time counted from the date when the direct seller and the direct selling entity enter into an agreement under Clause 4 and ending with date on which the contract is to be performed and within which the direct seller may repudiate the agreement without being subject to penalty for breach of contract;
11. “Pyramid Scheme” means: A multi layered network of subscribers to a scheme formed by subscribers enrolling one or more subscribers in order to receive any benefit, directly or indirectly, as a result of enrollment, action or performance of additional subscribers to the scheme. The subscribers enrolling further subscriber(s) occupy higher position and the enrolled subscriber(s) lower position, thus, with successive enrollments, they form multi-layered network of subscribers.

Provided that the above definition of a “Pyramid Scheme” shall not apply to a multi layered network of subscribers to a scheme formed by a Direct Selling Entity, which consists of subscribers enrolling one or more subscribers in order to receive any benefit, directly or indirectly, where the benefit is as a result of sale of goods or services by subscribers and the scheme/financial arrangement complies with all of the following:

- a) It has no provision that a Direct Seller will receive remuneration or incentives for the recruitment / enrollment of new participants.
- b) It does not require a participant to purchase goods or services:
 - i. for an amount that exceeds an amount for which such goods or services can be expected to be sold or resold to consumers;
 - ii. for a quantity of goods or services that exceeds an amount that can be expected to be consumed by, or sold or resold to consumers;
- c) It does not require a participant to pay any entry/registration fee, cost of sales demonstration equipment and materials or other fees relating to participation;

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- d) It provides a participant with a written contract describing the “material terms” of participation;
- e) It allows or provides for a participant a reasonable cooling-off period to participate or cancel participation in the scheme and receive a refund of any consideration given to participate in the operations;
- f) It allows or provides for a buy-back or repurchases policy for “currently marketable” goods or services sold to the participant at the request of the participant at reasonable terms;
- g) It establishes a grievance redressal mechanism for consumers, more particularly described in Clause 7 herein.

Explanation 1 – For the purposes of this proviso the term “material terms” shall mean buy-back or repurchase policy, cooling-off period, warranty and refund policy.

12. “Money Circulation Scheme” has the same meaning as defined under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

13. “Remuneration System” means the system followed by the direct selling entity to compensate the direct seller which illustrates the mode of sharing of incentives, profits and commission, including financial and non-financial benefits, paid by the direct selling entity to the direct sellers, on a monthly or periodic or yearly basis or both, as the case may be. This system, for every Direct Selling entity, shall:

- a) Have no provision that a direct seller will receive remuneration from the recruitment to participate in such direct selling;
- b) ensure that direct sellers shall receive remuneration derived from the sale of goods or services;
- c) clearly disclose the method of calculation of remuneration.

14. State includes a Union territory.

Clause 2. Conditions for the setting up of Direct Selling business:

Every Direct selling entity intending to carry out direct selling business subsequent to the publication of the notification in the Gazette, shall within 90 days comply with the following set of conditions for the conduct of direct selling business:

It shall

1. be a registered legal entity under the laws of India.

2. Provide a mandatory orientation session to all prospective direct sellers providing fair and accurate information on all aspects of the direct selling operation, including but not limited to the remuneration system and expected remuneration for newly recruited direct sellers;
3. Provide accurate and complete information to prospective and existing direct sellers concerning the reasonable amount of remuneration opportunity, and related rights and obligations;
4. Pay all dues and make with holdings from direct sellers in a commercially reasonable manner;
5. Notify and provide a full refund or buy-back guarantee to every direct seller on reasonable commercial terms which can be exercised within a period of 30 days, from the date of the distribution of the goods or services to the direct seller;
6. Notify and provide to every direct seller a cooling-off period which entitles such direct seller to return any goods /services purchased by the direct seller during the cooling-off period;
7. The promoter or key management personnel should not have been convicted of any criminal offence punishable with imprisonment in last 5 years by any Court of competent jurisdiction;
8. It shall have an office with identified jurisdiction of its operation in the State to enable the consumers and direct seller to acquaint themselves with price of products, return or replacement of products and efficient delivery of goods and services, and post-sale redressal of grievances;

Clause 3: Conditions for conduct of Direct Selling Business

Every Direct Selling entity shall comply with the following conditions:

1. It shall be the owner, holder, licensee of a trademark, service mark or any other identification mark which identifies the entity with the goods to be sold or supplied or services to be rendered;
2. It shall issue proper identity document(s) to its Direct Sellers;
3. It shall maintain proper records either manual or electronic of their business dealings, with complete details of their goods, services, terms of contract, price, income plan, details of direct sellers, including but not limited to enrollment, termination, active status, earning etc.

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- a) Every Direct Selling entity shall maintain a “Register of Direct Sellers” wherein relevant details of each enrolled Direct Seller shall be updated and maintained;
- b) The details of Direct Sellers shall include and not be limited to verified proof of address, proof of identity and PAN;
- 4. It shall maintain proper and updated website with all relevant details of the entity, contact information, its management, products, product information, product quality certificate, price, complete income plan, terms of contract with direct seller and complaint redressal mechanism for direct sellers and consumers. The website should have space for registering consumer complaints and should ensure that grievances are addressed within 45 days of making such complaints;
- 5. It shall provide to all direct sellers their periodic account / information concerning, as applicable, sales, purchases, details of earnings, commissions, bonus and other relevant data, in accordance with agreement with the direct sellers. All financial dues shall be paid and any withholding made in a commercially reasonable manner;
- 6. It shall monitor the value of the purchases of all its Direct Sellers/Distributors on a monthly basis and once the purchase value crosses the VAT threshold; it must intimate the Direct seller/Distributor to pay the VAT;
- 7. A Direct Selling entity shall not:
 - a) Use misleading, deceptive or unfair recruiting practices, including misrepresentation of actual or potential sales or earnings, in their interaction with prospective or existing direct sellers;
 - b) Make any factual representation to a prospective direct seller that cannot be verified or make any promise that cannot be fulfilled;
 - c) Present any advantages of direct selling to any prospective direct seller in a false or deceptive manner;
 - d) Make or cause, or permit to be made, any representation relating to its direct selling business, including remuneration system and agreement between itself and the direct seller, or to the goods or services being sold by itself or by the direct seller which is false or misleading;
 - e) Engage in, or cause or permit, any conduct that is misleading or likely to mislead with regard to any material particulars relating to its direct selling business, including remuneration system and agreement between itself and the direct seller, or to the goods or services being sold by itself or by the direct seller;

- f) Use, or cause or permit to be used, fraud, coercion, harassment, or unconscionable or unlawful means in promoting its direct selling practice, including remuneration system and agreement between itself and the direct seller, or to the goods or services being sold by itself or by the direct seller;
 - g) Require its direct sellers to provide any benefit, including entry fees and renewal fees or to purchase any sales demonstration equipment or material in order to participate in its direct selling operations;
 - h) Provide any benefit to any person for the introduction or recruitment of one or more persons as direct sellers;
 - i) Require the direct sellers to pay any money by way of minimum monthly subscription or renewal charges;
8. Notwithstanding the distribution system adopted by a direct selling entity, the Direct Selling Entity shall be responsible for compliance of these Guidelines by any member of its network of direct selling, whether such member is appointed directly or indirectly by the Direct Selling Entity.

Clause 4: Conditions for Direct Selling contract between Direct Seller/Distributor and Direct Selling Entity.

1. Every Direct Selling entity shall execute a contract agreement, whether directly or indirectly, with Direct Sellers before enrolment:
 - a) The Agreement shall be provided in a manner consistent with Section 10 of the Indian Contract Act, 1872;
 - b) In addition to the rights and obligations of parties to this agreement under these guidelines or any other law in force, parties shall have rights and obligations that are coextensive with rights and obligations of parties under the Indian Contract Act, 1872;
2. The agreement shall be made in writing, describing the material terms of participation and shall:
 - a) Not compel or induce the direct seller to purchase goods or services in an amount that exceeds an amount that can be expected to be sold to consumers within a reasonable period of time;
 - b) Allow or provide the direct seller a reasonable cooling-off period in which to cancel participation and receive a refund for goods or services purchased;

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- c) Allow for the termination of contract, with reasonable notice, in such instances and on such terms where a direct seller is found to have made no sales of goods or services for a period of up to two years since the contract was entered into, or since the date of the last sale made by the direct seller;
- d) Allow or provide for a buy-back or repurchase policy for currently marketable goods or services sold to the direct seller at the said direct seller's request at reasonable terms.

Clause 5 : Certain obligations of Direct Sellers

1. Direct Seller engaged in direct selling should carry their identity card and not visit the customer's premises without prior appointment/approval;
2. At the initiation of a sales representation, without request, truthfully and clearly identify themselves, the identity of the direct selling entity, the nature of the goods or services sold and the purpose of the solicitation to the prospective consumer;
3. Offer a prospective consumer accurate and complete explanations and demonstrations of goods and services, prices, credit terms, terms of payment, return policies, terms of guarantee, after-sales service;
4. Provide the following information to the prospect / consumers at the time of sale, namely:
 - a) Name, address, registration number or enrollment number, identity proof and telephone number of the direct seller and details of direct selling entity;
 - b) A description of the goods or services to be supplied;
 - c) Explain to the consumer about the goods return policy of the company in the details before the transaction;
 - d) The Order date, the total amount to be paid by the consumer along with the bill and receipt;
 - e) Time and place for inspection of the sample and delivery of good;
 - f) Information of his/her rights to cancel the order and / or to return the product in saleable condition and avail full refund on sums paid;
 - g) Details regarding the complaint redressal mechanism;

5. A direct seller shall keep proper book of accounts stating the details of the products, price, tax and the quantity and such other details in respect of the goods sold by him/her, in such form as per applicable law.

6. A direct seller shall not:

- a) Use misleading, deceptive and / or unfair trade practices;
- b) Use misleading, false, deceptive, and / or unfair recruiting practices, including misrepresentation of actual or potential sales or earnings and advantages of Direct Selling to any prospective direct seller, in their interaction with prospective direct sellers;
- c) Make any factual representation to a prospective direct seller that cannot be verified or make any promise that cannot be fulfilled;
- d) Present any advantages of Direct Selling to any prospective direct seller in a false and / or a deceptive manner;
- e) Knowingly make, omit, engage, or cause, or permit to be made, any representation relating to the Direct Selling operation, including remuneration system and agreement between the Direct Selling entity and the direct seller, or the goods and / or services being sold by such direct seller which is false and / or misleading;
- f) Require or encourage direct sellers recruited by the first mentioned direct seller to purchase goods and / or services in unreasonably large amounts;
- g) Provide any literature and / or training material not restricted to collateral issued by the Direct Selling entity, to a prospective and / or existing direct sellers both within and outside the parent Direct Selling entity, which has not been approved by the parent Direct Selling entity;
- h) Require prospective or existing direct sellers to purchase any literature or training materials or sales demonstration equipment.

Clause 6: Relationship between Direct Selling Entity and Direct Seller

1.1 The relationship between Direct Selling entity and Direct Seller shall be determined as per the written agreement between the parties which shall contain the rights and obligations that are expressly provided as conditions for the conduct of Direct Selling business as well as provide for the obligation of the direct selling entity and the direct seller in terms of these guidelines;

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1.2 All other rights and obligations shall be determined as per the express terms of written agreement between a Direct Selling entity and Direct Seller;

2. The Direct Selling entity will be liable for grievances arising out of sale of products, services or business opportunity by its Direct Sellers;

3. It will be the responsibility of the Direct Selling entity to monitor and control the practices/methods adopted by the Direct Sellers;

Clause 7: Conduct for the Protection of Consumer

1. Direct Sellers and Direct Selling Entity shall take appropriate steps to ensure the protection of all private information provided by a consumer;

2. Direct Sellers and Direct Selling Entity shall be guided by the provision of the Consumer Protection Act 1986;

3. All complaints received over phone, email, website, post and walk-in should have a complaint number for tracing and tracking the complaint and record time taken for redressal;

4. Every Direct Selling company shall constitute a Grievance Redressal Committee whose composition, nature of responsibilities shall include but not limited to:

a) The Grievance Redressal Committee shall consist of at least three officers of the Direct Selling entity;

b) The Grievance Redressal Committee shall address complaints and inform complainants of any action taken;

c) Complaints may be made by any member of the general public against a Direct Seller of the company, an employee or any other officer of the entity;

d) All such grievances will be resolved directly by the Direct Selling Entity;

5. The Direct Selling entity shall provide information to the consumer upon purchase which shall contain:

(a) the name of the purchaser and seller;

(b) the delivery date of goods or services;

(c) procedures for returning the goods; and

(d) warranty of the goods and exchange / replacement of goods in case of defect.
Provided that no Direct Seller shall, in pursuance of a sale, make any claim that is not consistent with claims authorized by the Direct Selling Entity.

6. Any person who sells or offers for sale, including on an e-commerce platform / marketplace, any product or service of a Direct Selling Entity must have prior written consent from the respective Direct Selling Entity in order to undertake or solicit such sale or offer.

Clause 8: Prohibition of Pyramid Scheme & Money Circulation Scheme

1. No person or entity shall promote a Pyramid Scheme, as defined in Clause 1(11) or enroll any person to such scheme or participate in such arrangement in any manner whatsoever in the garb of doing Direct Selling business.
2. No person or entity will participate in Money Circulation Scheme, as defined in Clause 1(12) in the garb of Direct Selling of Business Opportunities

Clause 9: Appointment of Monitoring Authority

1. The Nodal department to deal with the issues related to Direct Selling will be Department of Consumer Affairs at the Union and the respective State Governments in the States;
2. The State Governments will also set up a mechanism to monitor/supervise the activities of Direct Sellers, Direct Selling Entity regarding compliance of the guidelines for Direct Selling;
3. Any direct selling entity conducting direct selling activities shall submit an undertaking to the Department of Consumer Affairs, stating that it is in compliance with these guidelines and shall also provide such details of its incorporation and other business details as may be notified from time to time.

MONITORING MECHANISM FOR IMPLEMENTING THE CENTRAL GUIDELINES

1.Objectives of the Monitoring Authority

The Monitoring Authority will function with the following objectives:-

1. To regulate the business of Direct Selling/Multi-Level marketing as per the Central Guidelines to prevent fraud and protect the legitimate rights and interests of consumers;
2. To monitor /supervise the activities of Direct Sellers, Direct Selling Entity regarding compliance of the Central Guidelines;
3. To implement the guidelines.

2. Composition of Monitoring Authority

a) The Monitoring Authority shall consists of:-

1. The Secretary/Principal Secretary – Department of Consumer affairs as the Chairman,
2. Director of Food, Civil supplies and Consumer affairs as the Nodal Officer & Convener and the following members:
3. The Secretary to Govt., Finance Dept. or any other Officer nominated by him not below the rank of Deputy Secretary
4. The Secretary to Govt., Law Dept. or any other Officer nominated by him not below the rank of Deputy Secretary
5. The Secretary to Govt., Taxes Dept. or any other Officer nominated by him not below the rank of Deputy Secretary
6. Commissioner, CGST Department ,Kerala;
7. Commissioner ,SGST Department; Kerala
8. ADGP rank officer from the Police Department dealing with Economic offences;
9. One Subject Expert, duly nominated by the Government.

b) The Monitoring Authority shall meet in every three months in an year

3. Responsibilities of the Monitoring Authority

- i) Provide facilities for the enrollment of Direct Selling Entities for carrying out their Direct Selling/Multi-Level marketing business in the State of Kerala;

- ii) Provide appropriate platform for receiving complaints from the Consumers / Direct Sellers including general public against the violation of Central guidelines by the Direct Selling Entities;
- iii) Inform respective enforcement authorities regarding the unethical and unlawful practice, if any, carried out by direct selling entities/direct sellers including non-compliance/evasion of tax laws, noticed by the Monitoring Authority
- iv) Provide Policy inputs to the Central Government for appropriate modifications in the Central Guidelines, if warranted, from time to time;
- v) Provide awareness among law enforcement authorities, consumers, direct sellers and the general Public and impart education and training regarding the “Do’s and Don’ts of Multi-Level Marketing/ Direct Selling “ through Training Institutes like Gulati Institute of Finance & Taxation (GIFT), Govt. of Kerala, Thiruvananthapuram or any such Institute recognized for the purpose by State Government.

4. Enrolment formalities for carrying out the Direct Selling/Multi Level

Marketing business in the State of Kerala

1. No Direct Selling Entity or such other person shall engage in a Direct Selling/ Multi-Level Marketing business in the State of Kerala unless such entity or other person has enrolled with the Monitoring Authority by filing an application in the format given at annexure.
2. The application for such enrolment shall contain/supported by the following particulars/enclosures:-
 - a) Copy of the undertaking/ Declaration (Part A,B &C) filed by the Entity with the Department of Consumer Affairs, Government of India along with the following documents.-
 - i) Certificate of Registration/Bye-laws/Memorandum of Association
 - ii) List of Board of Directors, with contact details.
 - iii) Brief details of direct selling scheme and compensation plan.
 - iv) Sample of contract with direct sellers/distributors.
 - b. Place of office within the State of Kerala for ensuring easy Access to the Direct Sellers / Consumers ;
 - c. Authorized contact person and details within the State of Kerala;

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- d. Total number of direct sellers within the State of Kerala;
 - e. Copy of GSTIN PAN and TAN or such other registrations necessary for the lawful conduct of the business undertaken by the Direct Selling Entity.
 - f. A copy of the VAT/GST/ Service Tax/Central Excise returns including TDS returns for the last two Assessment years prior to the enrollment in the State as applicable;
 - g. Such other information or documents, if any, as may be specified for the purposes of determining the applicant's suitability;
3. Upon receipt of the application in the prescribed format with the required enclosures /annexures , the Monitoring Authority may –
- i) Enroll the applicant entity in the register maintained by it and publish the same in the website of Consumer Affairs Department, Kerala, or
 - ii) refuse to grant enrolment if any violation of the Central Guidelines is noted prima facie or for the non –filing of required enclosures / Annexures:

Provided at any time after receiving an application and before it is disposed of, the Monitoring Authority may issue notice , in writing, demanding the applicant entity to provide additional information or documents. Where the corrected application or any additional information or document required is not provided within the time specified in the said notice or any extension thereof granted by the Monitoring Authority, the application shall be rejected.

4. Enrollment of a direct selling entity with the Government would be made purely on the basis of the particulars furnished by the Applicant in the prescribed Enrollment Application form which do not confer any legal rights on the enrolled entity to represent themselves as Government approved agencies. Rather the purpose of enrollment is for enabling the Monitoring Authority to carry out its objectives as provided in clause 1 above, in an effective manner.

5. Necessary staff may be provided by the Government for assisting the activities of the Monitoring Authority / Consumer Affairs Department for the smooth functioning of the Monitoring Mechanism as envisaged in this guidelines.

5. Action against violations of the Central Guidelines:-

The Monitoring Authority, may, either *suo-motu* or on the report filed by the designated officers under clause 7, take action against Direct Selling Entities violating the Central Guidelines with due intimation to the Department of Consumer Affairs, Ministry of Consumer Affairs, Government of India, New Delhi. The Monitoring Authority, may:-

- a) Issue show cause notice to those companies violating the Central Guidelines, and to companies which failed to enroll with the Monitoring Authority.
- b) call for information from Direct Selling Entities when it is expedient to do so.
- c) engage one or more persons to make an inquiry in relation to the affairs of any Direct Selling Entity.
- d) call upon the books of accounts, registers, certified copies of mandatory registration certificates as per the Central Guidelines or other documents for necessary verification and examination in such circumstances as required by the Monitoring Authority.
- e) direct the Direct Selling entity to take corrective steps, if violation of Central Guidelines are committed by entity itself or by their duly appointed Direct Sellers.
- f) cancel the enrollment or black list those Direct Selling Entities violating the Central Guidelines repeatedly even after show cause notices and warnings by the Monitoring Authority.
- g) such other responsibilities as may be specified by the State/Central Government in accordance with the Central Guidelines.

6. Filing of Periodical Reports before the Monitoring Authority

Every Direct Selling Entity should furnish reports with the following information and submit to the Monitoring Authority within 20/45 days from the end of each such quarter/financial year respectively, as the case may be;

A. Yearly Basis

- i) Details of training imparted to the Direct Sellers as per clause 2.2 of the Central Guidelines.
- ii) Individual wise particulars maintained by the Direct Selling Entity in respect of their direct sellers including but not limited to enrollment, termination, active status, purchase value, remuneration paid in the last financial year;
- iii) Copy of GST returns, Income Tax returns including TDS returns of the last year;

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iv) Any other particulars as and when found necessary by the Monitoring Authority

B. Quarterly Basis

i) Total number of complaints received from customers within the State and the total numbers redressed & pending status in the last quarter;

ii) Total number of complaints received from direct sellers within the State and the total numbers redressed & pending status in the last quarter

iii) Any other particulars as and when required by the Monitoring Authority

7. Procedure for disposal of complaints

i) Government shall designate officers at district level to receive complaints.

ii) A direct seller or consumer or any member of the general public whose grievance has not been resolved within 45 days of its receipt by the grievance redressal committee of the Direct Selling Entity may file complaint in writing along with necessary details before the designated officer. Every complaint against the compensation plan which is in conflict with any of the provisions of the guideline must be submitted along with a valid document published by the Direct Selling Entity and clear mentioning of the relevant provisions.

iii) The designated officer may entertain complaints only after the expiry of 45 days of its original complaint received by the grievance redressal committee of the Direct Selling Entity and only if such grievance redressal committee fails to take redressal action on it.

iv) The designated officer who receives such a complaint shall forward the same to the Direct Selling Entity with a direction to redress the complaint within 10 days of its receipt and to intimate the complaint redressal report to the designated officer immediately. If the designated officer do not receive the complaint redressal report within 15 days of its receipt by the Direct Selling Entity, he shall file non-compliance report before the Monitoring Authority.

v) Where the contents of the non-compliance report received from the designated officer against Direct Selling entity or a Direct Seller or any other person who is part of the network of Direct Selling/Multi-Level Marketing, is found to be genuine & true, the Monitoring Authority may take such action as the Monitoring Authority deems appropriate as mentioned in clause 5 above including due intimation to the enforcement authorities for their appropriate

action as per the applicable provisions of the relevant Acts as provided in clause 9 below.

vi) Monitoring Authority shall give a reasonable opportunity of being heard to the Direct Selling Entity before taking action, if any against such entity.

8. Maintenance of Records

The Direct Selling Entities shall maintain the following documents/ records (READY INFORMATION FILE) either manually or electronically at the registered office of the Entity including office of operation within the State;-

1. Certificate issued by Registrar of Companies, Memorandum of Association (MoA), Articles of Association (AoA);
2. Copies of Taxpayer Identification Number (TIN), Director Identification Number (DIN) of Directors, Tax Deduction Account Number (TAN), and Permanent Account Number (PAN);
3. Copies of Licenses/permits required for the trading of goods/services issued by the local authority or any other authority as the case may be;
4. Certificate of Sales Tax, Service Tax and CST Registrations(Earlier years)
5. Sales Tax /VAT Returns filed with the authorities; (Earlier years)
6. Service Tax Returns filed with the authorities; (Earlier years)
7. GST Returns filed with the authorities (Current Year)
8. IT Returns of the company filed with the authorities;
9. Tax Deducted at Source (TDS) Statements of Distributors and respective challans paid;
10. Copy of the latest balance sheet, profit and loss account and reports of the auditors or directors of the applicant;
11. Records of Know Your Customer (KYC) and Know Your Direct Sellers (KYDS), the formats of which should be available on the company website; (Password protected)
12. Register of Direct Sellers; (State Wise)
13. Grievance Redressal Register;
14. Copies of Product / Services marketing Brochure;

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15. Copies of Enrollment Application for new members/ Direct Sellers along with the Agreement;
16. Copy of duly filled Undertaking in the prescribed format filed with the Central Consumers Affairs Dept. along with copy of acknowledgment of receipt of application by the Central Consumers Affairs Dept.

9. Application of other laws

The provision contained in clause 5 shall be in addition to and not in derogation of provisions contained in other laws. The Direct Selling Entities and the Direct Sellers have to follow the Central guidelines meticulously. The violation of the central guidelines shall be dealt appropriately by the Monitoring Authority. Any direct selling activity in violation of the central guidelines shall be dealt appropriately by the law Enforcement Authorities under the provisions of the appropriate Acts & rules, which may include the following,-

1. Violation relating to product/ services to be filed before the appropriate Consumer Forum having jurisdiction under Consumer Protection Act, 1986.
2. Violation relating to any activity leading to money circulation or pyramid/ ponzy schemes to be dealt with under Prize Chits and Money Circulation Scheme (Banning) Act, 1978, including criminal case under Indian Penal Code.
3. Violation relating to taxation laws to be dealt with by the respective Taxation Authorities under the respective Taxation Statutes.
4. Violation of any other applicable laws to be dealt with by the respective Authorities under such respective Statutes.
5. Civil remedies for breach of contract

10. Miscellaneous

1. Orientation Session /training.- Every Direct Selling Company / MLM Company shall conduct a mandatory Orientation Session for all of its members/ Direct Sellers/ Independent Representatives providing precise and accurate information on all aspects of direct selling operations, including the remuneration system and mode of its disbursements. The Direct Selling Guidelines, 2016

released by the Dept of Consumer Affairs, Govt of India shall be incorporated in the training curriculum of Orientation Session conducted by all Direct Selling / MLM Companies as mandatory Session.

2. The 101st Constitutional Amendment Act, 2017 replaces the term ‘Sale’ with ‘Supply’ in determining the taxable event along with the introduction of GST in India. Therefore, for ensuring due taxes from the Direct Selling Entity and Direct Sellers, the 101st Constitutional Amendment Act, 2017 may also be considered in the monitoring mechanism.

GUIDELINES FOR THE DIRECT SELLING ENTITIES FAQs

1. Clause 1.4

“Direct Seller” means a person appointed or authorized, directly or indirectly, by a Direct Selling Entity through a legally enforceable written contract to undertake direct selling business on principal to principal basis.” **How shall digital and e-contracts be treated?**

Answer: The ‘written contract’ includes e-contracts or digital contracts and the same shall be governed as per the provisions of the Information Technology Act, 2000.

1. Clause 1.6 (Proviso)

“Provided that such sale of goods or services occurs otherwise than through a “permanent retail location” to the consumers, generally in their houses or at their workplace or through explanation and demonstration of such goods and services at a particular place”. Does this Proviso mean that every sale needs to take place away from permanent retail location only?

Answer: Clause 1.6 does not restrict / preclude sales made from permanent retail location. However, direct selling entity will be governed by these guidelines.

2. Clause 2.2

“Provide a mandatory orientation session to all prospective direct sellers providing fair and accurate information on all aspects of the direct selling operation, including but not limited to the remuneration system and expected remuneration for newly recruited direct sellers”. **Whether the training/orientation provided by the Direct Seller to other prospective Direct Sellers would be in compliance to this clause?**

Answer: Yes, the training / orientation will be provided by the Direct Selling Entity or by a Direct Seller or by any authorized representative of Direct Selling Entity, either in person or through any digital means.

3. Clause 2.8

“It shall have an office with identified jurisdiction of its operation in the State to enable the consumers and direct seller to acquaint themselves with price of products, return or replacement of products and efficient delivery of goods and services, and

post-sale redressal of grievances” **Whether an office in one State can be designated as focal point for jurisdiction of two or more states?**

Answer: An office in one particular State can be designated having jurisdiction over two or more states, subject to the accessibility of the consumers, where Direct Sellers/ consumers can interact with the Direct Selling Entity / Authorized representative of Direct Selling Entity.

4. Clause 3.3 (b)

“The details of Direct Sellers shall include and not be limited to verified proof of address, proof of identity and PAN”. **Should the Direct Selling Entity take verified proof of address, identity and PAN?**

Answer. The requirement of PAN shall be as per the provisions of the Income Tax Act, 1961. Direct Sellers should submit to Direct Selling Entity, any photo ID card as issued by the State or Central government. These ID cards could be from the following:- Aadhaar Card, Driving License, Voter ID Card, Passport and Ration Card or any other identity document issued by the state or central government which can be verified.

5. Clause 3.8

“Notwithstanding the distribution system adopted by a direct selling entity, the Direct Selling Entity shall be responsible for compliance of these Guidelines by any member of its network of direct selling, whether such member is appointed directly or indirectly by the Direct Selling Entity”. **How will a Direct Selling Entity ensure compliance of these Guidelines by Direct Sellers?**

Answer: To comply to this clause, Direct Selling Entity shall sign an addendum to the current contracts with the existing Direct Sellers. For the Direct Sellers to be appointed herein-after, this clause shall be added in the contract signed by both the parties. The Direct Selling Entity should ensure that it contractually binds its Direct Sellers to comply with these Guidelines and take disciplinary action against reported non-compliance.

7. Clause 4.2(c)

“Allow for the termination of contract, with reasonable notice, in such instances and on such terms where a direct seller is found to have made no sales of goods or services for a period of up to two years since the contract was entered into, or since

the date of the last sale made by the Direct Seller”. **When can the contract between Direct Selling Entity and Direct Seller be terminated?**

Answer: The date of termination shall be provided or governed by the respective conditions of the contract executed between Direct Selling Entity and Direct Seller or by giving notice of reasonable period by either party say one month or as per the provisions of the Indian Contract Act.

8. Clause 6.2

The Direct Selling Entity shall be liable for grievances arising out of sale of products and services or business opportunity by the Direct Seller. And

9. Clause 6.3

“It will be the responsibility of the Direct Selling entity to monitor and control the practices/methods adopted by the Direct Sellers”.

Does this mean that only the direct selling entity will be liable for all grievances arising out of sale of products and services or business opportunity by the direct seller?

Answer. It is clarified that the Direct Selling Entity will be responsible for the quality of products and services and it will guide and help the Direct Seller to follow best practices in the interest of consumers. The scope and specific liabilities of the Direct Seller in such cases will be defined in unambiguous terms in the contract signed. By way of providing in the contract, every Direct Selling Entity shall define and develop some mechanism to monitor the practices being adopted by its Direct Sellers.

10. Clause 7.5

Industry: It appears to be a typographical error in this Clause. As the consumer is buying the products or services from the Direct Sellers, it should be the Direct Seller which will provide various details listed in this sub-clause. **Please clarify.**

Answer – Yes, it should be the Direct Seller. Please read Direct Seller in place of Direct Selling entity in this sub-clause.

Composition of Monitoring Authority

The Monitoring Authority shall consists of:-

1. The Secretary/Principal Secretary – Department of Consumer affairs as the Chairman,
2. Director of Food, Civil supplies and Consumer affairs as the Nodal Officer & Convener and the following members:
3. The Secretary to Govt., Finance Dept. or any other Officer nominated by him not below the rank of Deputy Secretary
4. The Secretary to Govt., Law Dept. or any other Officer nominated by him not below the rank of Deputy Secretary
5. The Secretary to Govt., Taxes Dept. or any other Officer nominated by him not below the rank of Deputy Secretary
6. Commissioner, CGST Department ,Kerala;
7. Commissioner ,SGST Department; Kerala
8. ADGP rank officer from the Police Department dealing with Economic offences;
9. One Subject Expert, duly nominated by the Government.

Regulatory Framework of MLM/DSC