

# Customer

"Customer" refers to any person/s whether an individual or an organisation (a group of individuals) who:

Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment who may be a user/consumer includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale.

or

Hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person but does not include a person who avails of such services for providing it to another person/s.

## Explanation - for this clause

**a. "commercial purpose" does not include use by a person who purchases the goods or services to use/consumes them, but the goods or services are purchased exclusively to earn his livelihood using self-employment.**

**b. The expressions "buys any goods" and hires or avails any services include offline and/online transactions through electronic means or by teleshopping or direct selling deploying direct, single-level or multi-level marketing compensation plan.**

The "customer" may or may not be a direct seller.

A customer may or may not be a consumer.

(with inputs from the [Consumer Protection Act, 2019](#))

# Direct Selling

"Direct selling" means marketing, distribution, and sale of goods or provision of services through a network of persons (registered with the company as independent contractors), other than through a permanent retail location/s.

It is primarily a B2C (Business to Customer) model with some exceptions (where the agreement is entered into between the **Direct selling** entity and an Entity / Organisation- Proprietary, Partnership, Limited liability Partnership, One-person company / Private limited company, Trust, Public limited company, etc.)

Also known as Direct Sales, Network marketing, Referral marketing, Affiliate marketing, etc.

# Company Literature

"Company Literature" refers to any documents in physical or in electronic form including business opportunity materials, product catalogues, brochures, newsletters, emails, etc. issued or published by the Company on their official platforms to share information, spread awareness, etc.

# Direct Selling Entity

"Direct Selling Entity", means a body corporate which may be a One-person company or a Limited liability partnership or a private limited company engaged in the business of Direct Selling.

The organisation may be a manufacturer or a trader of the product/s and/or services.

It utilises the services of persons who are independent contractors, also known as direct sellers, to recommend and retail product/s and /or services.

The company may commit, calculate and pay incentives/commissions to the direct sellers by deploying Direct, Single level or a Multi-level marketing compensation plan/s.

## Independent Contractor

An Independent Contractor is a person who signs a contract for service\* with the entity.

A contract for service\* implies an agreement wherein one party undertakes to provide services, to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his knowledge and discretion.

A direct seller/participant is an independent contractor.

## Direct Seller

"Direct Seller" is a person above the age of 18 years on the date of enrolment with eligibility to enter into a business contract\* who enrolls/registers/signs up with the direct selling entity through a legally enforceable agreement (as an "independent contractor") to undertake direct selling business on principal to principal basis for purchasing the goods at a discount for self-consumption and/or an opportunity to earn income by retailing goods and/or by helping others enrol and retail the goods.

A **direct seller** may be a consumer/user or a customer/purchaser/buyer or a reseller or all of the three.

Direct Sellers are generally also known as Distributors, Associates, Independent business owners, Consultants, Networkers, Members, Advisors, Independent business associates, Affiliates, Independent representatives, Agents, etc.

\*Explanation: - A 'contract' includes e-contracts or digital contracts and the same shall be governed as per the provisions of the Information Technology Act, 2000 and Indian Contract Act as amended from time to time.

## Active Direct Seller

"Active Direct Seller" is a direct seller whose monthly purchase (for consumption or retail) from the company exceeds INR 50/-.

## Prospect & Prospective

"Prospect" means a person to whom an offer or a proposal is made by the Direct Seller to join a Direct Selling business opportunity or to purchase a product/service.

## Goods

The term "goods" refers to movable property and includes anything, products or services, tangible or intangible that constitutes the subject of a proposed transaction.

## Saleable

"Saleable" concerning goods or services means unopened, unused, marketable and of merchantable quality, which has not expired, and which is not discontinued or goods or services of special promotion/s or the ones offered free or at a token price.

## Product

Product means any article or goods or substance or raw material or any extended cycle of such product, which may be in gaseous, liquid, or solid-state possessing intrinsic value which is capable of delivery either as wholly assembled or as a part and is produced for introduction to trade or commerce but does not include human tissues, blood, blood products and organs.

## Service

Service means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, the supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or additional information but does not include the rendering of any service free of charge or under a contract of personal service.

## Price

"Price" is the money consideration for a sale/purchase of goods or services.

## Purchase

"Purchase" means the acquisition of goods/service against a price.

## Person

"Person", unless otherwise provided, will mean a person as per the Consumer Protection Act, 2019.

## Quality

"Quality" is the ability to perform satisfactorily in service and is suitable for its intended purpose as indicated in the official literature/application/website including brochures, labels, and presentations developed/distributed/retailed by the company. Quality of goods/services includes their state or condition.

## Satisfaction Guarantee

"Satisfaction guarantee" is the promise to the customer who may or may not be a participant to empower him/her to return the good/s under certain conditions if he/she does not get the results as per the expectations or as promised/claimed by the company.

This policy is to address the quality issues of the good/s.

## Money Back Guarantee

"*Money back guarantee*" is the promise to the persons associated with the company and the customers to empower them to return the goods if they are unable to retail the purchased product/s to the customer/s alternatively, unable to use them for self-consumption.

This policy is to address the concerns of the overstocking of products by the persons (direct sellers/independent contractors) engaged in direct selling. It also builds good faith between the parties and helps minimise the wastage of resources.

## Negative Product List

"**Negative product list**" is the list of goods which are not to be promoted by the company.

## Special Product List

"Special product list" is the list of products/services which may be promoted following the conditions mentioned along with them.

## Official Communication

"Official communication" shall refer to any communication made by the entity or its authorised personnel in written form (printed or in electronic form on the domains/application owned and/or operated by the entity).

## Delivery

"Delivery" is a voluntary transfer of possession/s from one party to another.

## Office

"Office" means a room, set of rooms, or building used as a place of exclusively conducting business activities as mentioned on the official literature/website/application of the entity.

## Enrol

"Enrol" means to introduce/register/signup formally through a legally enforceable contract (as per the latest version of the Indian Contract Act and IT Act) for undertaking the business on principal to principal basis as a participant or a person or any entity including any names mentioned under the definition of a direct seller.

## Organization Structure

"Organization Structure" is the way of representing the tiered nature of persons in a graphical form to help them recognize their relative positions to the company or the persons above or below them.

**This arrangement is also known as the Tree structure or Network Structure.**

### Types of **Organization Structures**

#### **a) Types of frontline (or leg) structures (the maximum number of participants that can be arranged in the frontline)**

Participants mapped directly with the Participant in his/her Organisation Structure are known as the frontline.

1. Single – Maximum of one participant in the frontline
2. Binary – Maximum two persons in the frontline
3. Trinary – Maximum three participants in the frontline
4. Fixed – Maximum four or five or x (where 'x' is the number of participants as per the constraint/logic of the compensation plan published by the company) participants in the frontline
5. Infinity – An unlimited number of participants positioned in the frontline.

## **b) Types of Generation (or Level) Structures (of participant/s)**

A company may choose to have the participants (independent contractors) structured in a Direct, Single level or a Multi-level structure/s. It is completely influenced by the compensation plan of the company.

Generation is commonly referred to as a level.

1. Direct - Directly connected with the company
2. Single level – The participants are connected to the company via another participant with an existing contractual relationship with the company
3. Multi-level – The participants are connected to the company via another participant/s arranged in more than a single level all having existing contractual relationships with the company.

## **Compensation Plan**

"Compensation plan" is a technique to calculate the returns/commissions/incentives and/or the rewards assured/promised to be given to/among participant/s from the money invested/turnover from the sales of goods/provision of services directly/indirectly provided by them personally or by other participants in their organisation structure.

The **Compensation plans** are developed to encourage and reward various behaviours – Personal purchase for self-consumption or retail, and/or supporting the participants in the Organisation Structure for retailing, enrolling participants (though offering compensation on conscription of persons is an unethical practice), etc.

This is also known as Remuneration system.

### **Types of compensation plans**

#### **a) Paid on Generation/s:**

1. Direct – The participants using/consuming or selling the goods get compensated on their personal purchases/retail.
2. Single - The participants using/consuming or selling the goods get an opportunity to be paid on their purchases/retail and the purchases/retail by participants in the first generation. This type of compensation plan is/may be deployed by companies having a single level or a multi-level marketing organisation structure.
3. Multiple - The participants using/consuming or selling the goods get an opportunity to be compensated on their purchases/retail and the purchases/retail by persons in more than the first generation. This type of compensation plan is usually deployed by companies having persons arranged in multiple levels or Multi-level marketing organisation structure.

#### **b) Rank/ Title achievement:**

1. Non-cumulative – Participants, regardless of their ranks/titles in the previous month, start a new calendar month with the same levels/ranks/ titles. The sales counter starts with zero every month.
2. Cumulative – On achievement of any ranks/titles, the participants continue to enjoy the privileges meant for the highest rank attained although their association with the company while the earning is calculated on the sales for that specific period.

#### **c) The frequency of Compensation Pay-outs:**

1. As and when the criterion is achieved /on a Real-Time basis
2. Daily – Pay-out is calculated and disbursed daily
3. Weekly - Pay-out is calculated and disbursed weekly
4. Monthly – Pay-out is calculated and paid once a month

## **Virtual Currency**

"Virtual currency" (also known and is generally circulated in the form of crypto-currency, e-currency, e-money, electronic cash, electronic currency, e-vouchers, digital money, digital cash, virtual cash, digital currency, cyber currency or any other name) is a token.

These types of tokens are created by the company and are not backed by any collateral or any government.

## Cryptocurrency

A token that is generated by using the computers to solve cryptographic puzzles while the transactions are/may be done using cryptography. This type of tokens may or may not be created and/or backed by any collateral or any government.

The terms used "Cryptocurrency" and "Crypto asset" misdirect the public in believing that it is a type of currency or has some value in the real world.

They do not have any intrinsic value but may/may not be capable of universal acceptance since they are electronically created/transferred and are intangible in nature.

## Pyramid Scheme

The participants in this type of schemes have to pay a hefty amount for a one-time purchase or make periodic purchases by paying considerable amounts to earn income from the performance of the participants in the downline organization structure.

In a pyramid model, the participants who joined earlier always stand to make more money than the new participants.

## Money Circulation Scheme

"Money Circulation Scheme" means any scheme, in which the verbal or written commitments are not arithmetically sustainable and/or may not be related to the sale of goods/services by the participants engaged or the participants below them in their organisation structure.

This type of scheme is partly/entirely dependent on new investments for the earnings committed.

Also commonly known as a **Ponzi Scheme**

## Easy Money

"Easy money" means monies (fixed or variable) committed without the sales of good/s or services.

## Direct Marketing

"Direct marketing" is a method in which companies communicate directly with prospects through formats like online advertisements, direct mailing (postal mail and email), text messaging and voice calls.

## Ecommerce

"E-commerce" is the display and/or the sale and/or purchase of goods & services conducted using the digital or an electronic network including but not limited to the world wide web.

## Electronic Service Provider

Electronic service provider means a person/entity who provides technologies or processes to enable a product seller to engage in advertising or selling goods or services to a consumer and includes any online marketplace or online auction sites.

## Prevailing Laws

"Prevailing Laws" means all provisions of the applicable Acts, Rules, Regulations, Notifications, Guidelines, Circulars, Ordinances, Orders, Advisories, Clarifications, etc., including any amendments therein or enactment thereof, for the time being in force.

# PRODUCTS

1. Price - Maximum Retail Price of the product/s should be displayed clearly on the package and the official website of the company.  
*Additional Recommendations from Strategy India*  
The company should give a notice of at least 30 days to all its active direct sellers before modifying the price of any product.
2. *Additional Recommendations from Strategy India*  
Tax - the company should pay the applicable tax (Goods and Service tax) at M.R.P. (Maximum retail price).
3. *Additional Recommendations from Strategy India*  
Satisfaction Guarantee - A Satisfaction Guarantee / Refund Policy of at least 30 days from invoicing of the product. This policy will be applicable only if not more than 30% of the product is consumed in case of consumable products. The consumer should be refunded 100% (minus the taxes) of the amount collected against the product by the direct seller. In case of non-consumable products, the product may only be returned if in marketable condition. The consumer should also be given an opportunity to exchange the goods within 30 days if they find any manufacturing defect or the product is not useful for the purpose it was meant.
4. Money back Guarantee - Money back guarantee within 30 days from invoicing of the product. This policy would apply to all the goods returned in marketable condition. The direct sellers should be refunded 100% (minus the taxes) of the invoiced amount.
5. *Additional Recommendations from Strategy India*  
Service support - for products promoted by the company is the responsibility of the direct selling company.
6. *Additional Recommendations from Strategy India*  
Non-delivery of product/s - On non-delivery of the products / services to the direct seller within 20 days of invoicing (after the receipt of the payment by the company), the company, on request by the direct seller via email or post, will refund the entire amount paid by the direct seller by cheque / demand draft / pay order / reverse transaction within 7 working days of receiving the request.
7. *Additional Recommendations from Strategy India*  
Product Claims - all the claims made by the company (on the official website and literature, including brochures, packaging, and labels) for the products should be supported by evidence in the form of certifications from competent authorities (e.g. laboratories).
8. All applicable laws relevant to the category of products in India in force would apply.
9. *Additional Recommendations from Strategy India*  
Negative list: (not to be promoted by companies deploying direct, **single level and multilevel marketing compensation plans**):

- Deposits / Investments / Offered for free along with other products / services - in / for / in the form of or trading in - Stocks, Shares, Initial Public offering, Initial coin offering, Debentures, Regulated / Unregulated and regulated Currencies/Tokens including Virtual currencies including but not limited to Crypto tokens (wrongly referred to as “Cryptocurrencies”), Bullion markets, Preferential shares, Forex, Plantations, Farming, Infrastructure projects, Resorts, Trading in commodities, Birds (Poultry, Emu, Quail, etc.), Livestock (Rabbit, Goat, Sheep, Cow, Buffalo, etc.), Media, Car Lease and Real Estate.
- Crowdfunding ventures
- Discount coupons / Vouchers / Currency / Tokens
- Betting / Gambling activities
- Quiz portals
- Recharge portals
- Peer to Peer transactions in any names as Support, Gift, Help, Assistance, Donations, etc.
- Bid coupons / Vouchers / Tokens
- Websites / Web space / Bidding portals
- Buy in to get paid - to click, to give surveys, to watch advertisements, to receive SMS and to receive emails and to invest in an advertising medium
- Products used for intoxication
- Any product, which exceeds its validity period / use by date / expiry date
- Any illegal products
- Non fungible tokens
- Fantasy games and tokens/in game currency
- Estate (online/offline)
- Any equipment generating or claiming to generate tokens
- Any online/physical – live/recorded training/coaching/literature for generating tokens/currencies
- Any type of trading signals on any platforms and messaging applications

10. *Additional Recommendations from Strategy India*

Products to be promoted under specific conditions:

- Gift Vouchers / Coupons - commissions / incentives to be paid out only after redemption of the vouchers / coupons.
- Discount vouchers / coupons / promissory notes - commissions / incentives to be paid out only for the purchase of products bought using the same.
- Insurance - promoted only if the direct selling company is allowed by the IRDAI or if the direct sellers selling insurance are licensed as per the norms of the IRDAI.
- Online products including software applications / products, e-learning, websites, video emails / mails, etc. should have a money back guarantee of a minimum of 30 days after activation by the consumer. In case of non-activation of an online product for more than one month, the sale would be considered invalid, after which the consumer would have full right to demand his money back. Activation should include confirmation via email registered to the consumer and mobile number.
- Holiday / Timeshares coupons / vouchers / packages - commissions / incentives to be paid out after successful redemption of the coupon by the consumer.

## COMPENSATION PLAN

1. The commissions/incentives should only be paid out on the retail of product/s.

2. *Additional Recommendations from Strategy India*

The **direct seller** should have the opportunity to earn by retailing of products even though he may not have introduced any direct sellers in his/her tree structure/marketing organization.

3. *Additional Recommendations from Strategy India*



There should be no compulsion or the minimum purchase criteria to activate and start earning income from the compensation plan.

In other words, there should be no compulsion on the direct seller to buy products of a particular sum after or during enrolment.

However, the direct seller should -purchase for self-consumption and/or retail to meet the criteria as per the eligibility conditions defined in the compensation plan to qualify for an income.

4. No charge/fees for enrolment.
5. No commissions/incentives or rewards should be given/offered to the direct sellers for enrolment of new direct sellers.
6. Payment of Incentives/Commission - The payment of commissions/incentives should be made without fail and delay as per the commitments of the compensation plan followed by the company.
7. *Additional Recommendations from Strategy India*  
Calculations for all the illustrations used for explaining the compensation plan (online and offline) should be done and shown in Indian rupees only.
8. *Additional Recommendations from Strategy India*  
Equal Opportunity - The company should follow a single ID per individual policy and not promote and/or offer multiple IDs to people while not encouraging direct sellers to offer/provide power legs/existing network of direct sellers or additional incentives to prospects or other direct sellers. The company should also not offer additional incentives other than those mentioned in the compensation plan. The promotions launched by the company in public domain from time to time is however allowed.
9. The company should not provide commitments of returns on investment/s (on purchase of product/s or without the purchase of product/s) in the form of interest, salary, loan, help, donation, market development fees and support fund to/through the direct sellers, to any individual/s.
10. *Additional Recommendations from Strategy India*  
The company should not generate or pay-out or commit commissions/incentives against part payment or advance received against the sale or future commitment to sell any product/s.
11. *Additional Recommendations from Strategy India*  
The company should not deduct any charges (except Tax deducted at source) from pay-outs of the direct sellers.
12. The company should deduct (Tax deducted at source) from the pay-outs to the direct sellers
  - TDS @ 10% in case of availability of the PAN details of the direct sellers.
  - TDS @ 20% in the event of non-availability of PAN details
13. *Additional Recommendations from Strategy India*  
No commissions/incentives and/or rewards should be generated on purchase/retail marketing/promotional material/Events including Brochures. Posters, Motivational books (hard copy/softcopy), Audio/Video media and Event passes/tickets
14. *Additional Recommendations from Strategy India*  
Income/opportunity disclaimer to be the part of the compensation plan literature and should be displayed prominently before or after the presentation of the compensation plan every time.

# BUSINESS INFORMATION KIT

1. Mandatory for all the direct sellers
2. No incentives/commission should be offered to the direct sellers on sale/purchase of the kit.
3. Should be priced below INR 1500 inclusive of applicable taxes
4. The kit should be available with an option of 2 languages - Hindi and English.

5. Contents of the kit to include Business Manual including Policies and Procedures, Code of Conduct/Ethics, Details of the business model, Details of customer care including the contact numbers, Email IDs and addresses of the branches, Product catalogues, Compensation plan in detail and illustrations, Enrolment forms with terms and conditions, Product order forms and the Official website address.
6. Cooling off Period - for the return of kit should be 30 days from billing date (with all contents intact and in marketable condition)
7. In case of return of the kit, the company may deduct a maximum of 20% as handling charges and taxes and return the difference via cheque/ draft/reverse transaction within seven working days of receiving the returned kit at the designated address of the direct seller
8. Renewal Fee of not more than INR 1500(inclusive of applicable taxes) per year may be charged by the company to the direct seller wanting to continue association with the company. No incentive/commissions should be offered to direct sellers on renewal fees.

## DATA

1. The company would be responsible for conducting a Due Diligence (KYDS) for all its direct sellers and maintain the data online securely. The Due Diligence should include document/s issued by the government with Photograph, a Signature proof along with the evidence of address and the PAN.
2. Aadhaar eKYC is a preferable option.
3. *Additional Recommendations from Strategy India*  
Readiness to make available the Backup / Synchronization of data (of the direct sellers in India only) to government agencies / bodies including but not limited to the District / State / National Consumer Disputes Redressal Commissions, Enforcement/Investigating agency within 72 hours of receiving a request, only if the request is initiated via official email ID of the official/s belonging to the abovementioned agencies, stating a valid reason for the inquiry.
4. *Additional Recommendations from Strategy India*  
The company should maintain the log reports (with date and time) of all IPs (in India) accessing the online software (admin and direct sellers back office) in India.

## CRYPTO -

1. The company should not generate or deal with virtual currency.
2. All transactions should happen in Indian Rupees by platforms/systems approved by the Government of India.

## TRANSACTIONS

1. Payment of commissions/incentives to the direct sellers should be made via banks or platforms permitted by Reserve bank of India.
2. The payment should be made using valid instruments like Cheques / Demand drafts / Pay orders/ Wire Transfers (ECS, NEFT/EFT, RTGS, etc.) only.
3. The company should receive the payments against sales of product/s in its bank account/s in India and make payments to direct sellers in India via its bank accounts in India.
4. The company should have an account in Indian territory with a bank recognised by Reserve Bank of India through which the payments shall be received and made.

## WEBSITE –

The company should maintain the following information in public domain (with no requirement of a password to view the following):

1. *Additional Recommendations from Strategy India*  
Should have the content in 2 languages (Minimum) - Hindi and English
2. Certificate of incorporation or the CIN (Company Identification Number)
3. *Additional Recommendations from Strategy India*  
Brief profile of top management personnel based in India
4. *Additional Recommendations from Strategy India*  
Correspondence address, Email IDs and Contact numbers of offices including Head office and branches
5. *Additional Recommendations from Strategy India*  
Regular updates on the meetings in India (if organized by the company)
6. *Additional Recommendations from Strategy India*  
Detailed compensation plan with illustrations (in downloadable format)
7. *Additional Recommendations from Strategy India*  
Code of conduct for the Direct sellers
8. Details of the entire Product range promoted by the company with M.R.P. (Maximum Retail Price) and the Satisfaction guarantee.
9. *Additional Recommendations from Strategy India*  
Terms and conditions for enrolment.
10. Page for taking suggestions/complaints/compliments with proper complaint resolution mechanism.
11. Terms and Conditions for website users.
12. Privacy Policy for website users.

## NOTE

1. Companies following these guidelines shall not fall under the provisions of Prize Chits and Money Circulation Scheme (Banning) Act, 1978 more notably does not come within the meaning as defined in section 2(c) and 2(e) of the said Act OR "The Banning Act" (if enforced at the time of publishing)
2. Companies following these guidelines shall not fall under the provisions of MPID/TNPID/OPID Acts.
3. These guidelines are not applicable for businesses qualified as Non-Banking Financial Corporations as per the norms of the Reserve Bank of India.
4. These guidelines shall not apply to entities registered with Ministry of Corporate Affairs as Chit fund companies.
5. Investigating and/or Law enforcement agencies would need to inform and request clarification/s from the company via email or registered mail (on designated email ID/selected correspondence address of the head office mentioned on the website) for presumed non-compliance before initiating action on the company.
  - i. The email should be sent via official email ID of the official and should cite the reason for the query/concern.
  - ii. The email should have the details of the official, like Full name, Designation, Contact number (landline and mobile) and the office address.
  - iii. The company should be given seven days to reply or to fall in line before taking any action.
6. Compliance with policies is the responsibility of the company failing which the direct seller/s or consumer/s can approach government agencies.
7. The businesses to be given 90 days from the time of issuance of the guidelines to align the structure and processes accordingly.

# RIGHTS AND DUTIES OF THE DIRECT SELLER/COMPANY

1. **Eligibility:** The direct seller must be eligible to enter into a valid contract under the Indian Contract Act, i.e. the direct seller must be above 18 years of age; of sound mind; and otherwise not disqualified by law to enter into a contract.
2. **Agreement/Contract:** The direct sellers must enter into an agreement with the company outlining the terms of such appointment.
3. **Resignation -** The direct seller may resign from the company without giving a reason.
4. **Privacy -** The company should ensure confidentiality of data of its direct sellers including the information submitted for fulfilling the KYC/KYDS formalities and not part with it for commercial purposes.
5. *Additional Recommendations from Strategy India*  
**Complaint Resolution -** The company should have an online complaint resolution mechanism and all complaints should be resolved within 21 working days of being received by the company.
6. *Additional Recommendations from Strategy India*  
**Right to Know -** Every individual (prospect) approached to will have the full right to know the compensation plan and product details with relevant policies before enrolment.
7. **Taxation -** TDS to be filed and deposited accurately and on time against the PAN numbers of the direct sellers as per the rules of the Income Tax Act, 1961.
8. *Additional Recommendations from Strategy India*  
**Goods and Service tax**
  - If the company pays the Goods and Service Tax to the government on the Maximum Retail Price of the product sold to the direct sellers at wholesale prices, the direct sellers need not register for the Goods and Service tax number on crossing the threshold limit.
  - If the company does not pay the Goods and Service Tax to the government on the Maximum Retail price of the product sold to the direct sellers at wholesale prices, the direct sellers will be required to register themselves as per the requirement.
9. *Additional Recommendations from Strategy India*  
**No Prohibition -** A direct seller may engage in multiple opportunities at the same time as long as he does not disturb the business of the company/ies he is associated with.
10. *Additional Recommendations from Strategy India*  
**No Compulsion -** The **direct selling company** or direct seller should not force others to attend any event.
11. *Additional Recommendations from Strategy India*  
**Essential Details -** Each direct seller should be issued ID cards with Name, Address of the individual, Contact number, ID number, Tenure of validity, Address of the head office and Contact number of the company.
12. *Additional Recommendations from Strategy India*  
**Notice -** The direct sellers should be given a 3-months notice before addition or alteration of any policy related to the business.

More than 6 million (with couple of millions who were direct sellers once upon a time and more than double of that were the victims of scams) people within the country are engaged in direct selling which serves as an opportunity of entrepreneurship along with developing skills at a bare minimum investment, thereby reducing the spread of the deadliest ailment "Empty pockets" and "Empty minds".

While scam operations (commonly known as "Ponzi schemes") deploying Direct, Single level marketing compensation plans and Multilevel marketing compensation plans masquerading as direct selling continue to exploit greed and ignorance of our countrymen and the government officials, these Ponzi operations/illegitimate (unviable/unethical business operations) entities are gaining a foothold and creating financial and trust problems for the common man, due to the absence of clear understanding and regulations for operations deploying Direct, Single level and Multilevel marketing compensation plans.

It is primarily because a simple and easy to understand document to distinguish between viable and unviable/unethical does not exist and therefore the unsustainable/immoral business operations flourish with ethical and feasible operations being unfairly punished due to the confusion surrounding the identification of what is legal and what is not.

The **direct selling guidelines** published on the 12th September 2016 further increases the complications by having pointers to stop people based pyramid (which is good) but encourages easy money via product based pyramid, where the individual who joins earlier need not pay renewal fees or purchase products (for self-consumption or retail) but will be able to earn from product purchases in his marketing organization. Plus, there are a lot of areas open to interpretation which will spell TROUBLE for product selling companies who would want to do business ethically.

Policymakers should understand that the terminologies need to be defined (like the ones here <https://www.strategyindia.com/mlm-guidelines-1.html> ) and understood well to ensure that they can be used for or against operations deploying Direct, Single Level and Multilevel Marketing compensation plans.

In the last decade, many direct selling companies (viable business models) had to shut shop because of people opting for Unviable business operations or Scams promising easy money to the masses. Therefore, we should have policies to ensure that the direct selling companies (business units/profit centers) can sustain and continue to contribute positively towards our country.

Apart from scams, direct sellers with couple of years' experience with viable business operations (direct selling companies- MLM), Software development firms, Chartered accountants and Law practitioners continue to misguide many individuals to start up operations deploying Direct, Single level and Multi-level marketing compensation plans without understanding the concept and technicalities to make this model work. Not only do they manage to fleece the promoters of the companies and other direct sellers who follow them to the venture but also do considerable damage to the image of the direct selling industry.

Despite the guidelines (published), hundreds of Scamsters will continue to make full use of the commonly widespread ignorance and desperation of our countrymen to earn money quickly and will continue their adventures.

The **direct selling guidelines** published here have been developed by Strategy India to ensure that:

- They are SIMPLE – therefore understood by all
  - Preventing companies from short-changing direct sellers and consumers.
  - Enlightening the authorities including police and common man to recognize, report, and prosecute those unviable/unethical business operations which intend to cheat people.
- 
- Guide corporations with good intent wanting to start direct selling ventures or launch in India keeping in mind the laws prevalent in the retail sector.

These guidelines are developed as per activities/modus operandi of business entities (6 types of business models) and can be applied to various industries (not just limited to retail).

Glossary of Commonly used terms - <https://www.strategyindia.com/mlm-guidelines-1.html>

This document is developed by the **team at Strategy India** worldwide combining the experiences as a consumer, direct seller, corporate and **direct selling consultants** / advisors for direct selling companies deploying direct, single and multilevel marketing compensation plans.

Heads Up Research Team of Strategy India - Researches and evaluates the commitments made by operations deploying the Direct/Single/Multilevel marketing compensation plans (about 20 operations per week active in India) to continue to list and expose the scams on <https://www.strategyindia.com/blog/scam-alerts/> (after due evaluation and confirmation of them being unviable or having found evidence of deception).

## MLM TRAINING -

Over recent years the direct selling – MLM industry has come under scrutiny from both the media and the government agencies in almost every country. Although it is not a welcome attention - it was inevitable. The operational standards have declined in terms of compensation, recruitment, training and compliance, this has ultimately affected the consumer satisfaction.

Strategy India has been very instrumental in the creation of the "Self-Regulation - **Direct Selling Guidelines**" (July 29th 2013). We have been working hand in hand with the agencies as well as leading international direct selling companies, to create guidelines which are written, in a simple language that is easily understood by the general public at large. These guidelines also enable law enforcement officials to act, where necessary, in a fast, effective and efficient manner.

Our strategically placed MLM training and education program, "Set the New Gold Standard" has been crafted to educate everyone who is either involved in the industry or contemplating to do so. It is designed to provide a platform to corporate executives or field representatives upon which they can successfully build a company with assured longevity and international compliance. By implementing the "Set the New Gold Standard" your direct seller base will have greater pride and confidence in themselves and the company. This would reflect in increased revenues month by month and year by year.

The standard of recruitment, training procedures, *MLM Coaching*, understanding of compliance issues and ongoing support sets the standards for continuing success of both the company and the direct seller base.

Our highly experienced team, evaluates and improvises your processes, materials, and **MLM training** programs. We overlook nothing, right from the bottom rung of the ladder where your new direct sellers start to the very top where all the corporate decisions are made.

With Strategy India's international training experiences you can produce stronger, positive, and cost effective results with far reaching long term impact.

A simple call to one of our offices will result in a tailor-made, results oriented program that can be assessed immediately.

### Courses offered

1. Corporate and Direct Seller Compliance: With the advent of new and stringent rules, this is a vital course to avoid unnecessary legal action. This is a must course if you desire to have continuous success in this industry.
2. Employee Development: Employee recruitment and training especially at the executive level is of paramount importance. This is vital since they are the face of the company who work with the independent business owners known as the direct sellers.

3. Management Development: We have access to almost every executive working within our industries that have shown interest or willingness to expand their horizons by moving to new invigorating companies.
4. Customer Care: A specialist field in its own right, customer care can either make or break your business. We utilize the most modern and up to date methodology in use today. We take every step possible to ensure that your customer care department is the best that it can possibly be.
5. Telecommunication Skills: Your telephone team is the front line of your company. They are your gate keepers and represent your company to the world at large. Through our program we work with your teams and provide an ongoing monitoring program that keeps them up to date and on their toes.
6. Recruiting Skills: This is one area of the business that you have very little control over. But the recruitment activities of your direct seller networks can lead to investigations by the authorities. Through our unique modules we can establish `Train the Trainer` programs, geared to monitor all field activity, ensuring compliance according to the established Direct Selling Guidelines.
7. Sales Development: Through a well-structured direct seller's education programs the network base grows. Our experience has shown that many organizations do not operate a "Sales Development" program. In absence of such a program the company becomes direct seller driven instead of corporate driven. This needs to be avoided if "longevity" is the corporate vision.
8. Presentation Skills: Being a good speaker does not make you a good presenter. A good presentation sells and closes itself but presenters need to be taught how to present. Over the years we have developed many of the industry's top presenters and through our program we can develop yours too.

Based on your requirements, all our training programs are personally created, customized and led by our executive team.

# START-UPS

There is no doubt that once a direct selling/MLM operation has been established, it can be highly profitable for all concerned, and over time becoming recognized as an internationally recognized household name.

But it also has to be said that there is the risk of it becoming a highly expensive and damaging exercise.

There are many crucial elements that need to be explored minutely - piece by piece.

We ask strong and direct questions to assess your motivation, your goals as well as your vision.

- Marketing strategy
- Leadership team
- Product category & product costs
- Packaging Type & packaging cost
- Approvals
- Guidelines for operations in a territory
- Research and Development
- Viability of Localization
- Compensation plan type and why?
- Compensation plan viability – Can you afford to pay as per the commitments?
- Staffing
- Policies and processes
- IT – Development of Software requisition specification document, User acceptance tests, Data security, etc.
- Attractive but legally compliant content for all literature and website

- 
- Social Media Strategy and Management

These are just a few of the initial conversation topics that we enter into with all our clients.

We believe that by asking these questions we can very quickly ascertain the viability of your project unemotionally and with accuracy.

Direct Selling - MLM business model has its unique advantages. It not only reaches out to a targeted and specific consumer segment, along with giving a better leveraging of USPs, it can also potentially create a huge product and brand loyalty.

For companies wanting to set up a Direct Selling vertical, Strategy India offers a complete hand holding service for setting up the business vertical.

1. Developing the Business Plan with Financials.
2. Assisting in formation of a core team for establishment.
3. Helping in connecting with reliable and experienced support agencies.
4. Development of policies and procedures (SOP's).
5. Hand holding in all strategic decisions.
6. Assistance in developing a Go To market strategy.
7. Coordinating with support agencies to reduce the turnaround time.
8. Development of training systems for Direct Sellers and corporates.
9. Development of SRS with advice on user experience enhancements.
10. Making representations about the business model to officials in the police and other investigation agencies on state and national level to reduce risk of being mistaken as **Ponzi or a Pyramid scam/scheme**.
11. Development of a Compensation Plan: In any direct selling business (SLM/MLM), Compensation Plan is very vital to the success of the business. It actually makes or breaks the business delivery.
12. Product Development and Promotion: The core of any genuine Direct Selling company is its product range. Hence developing of new products internally or identifying products suitable for your business externally, is an ongoing process and equally critical for any growing and evolving Direct Selling company.
13. Development & Induction: Strategy India works closely with the product development team of the company and helps them identify new products. From developing of new products to tie-up with existing manufacturers and induction into the company, Strategy India offers a comprehensive end to end solution.
14. Development of code of conduct and compliance **training** for the direct sellers.

Any organization either at the start-up stage, entering in a new market or otherwise always needs to develop a tool to enable it to reach its desired goals.

It must reflect the thoughts, feelings, ideas, and wants of the leadership and mould them along with the organization's purpose, mission, and regulations into an integrated document.

A strategic plan must be flexible and practical and yet serve as a guide to implementation and execution, along with tools for evaluating how the plans are working out and making adjustments when necessary.

**Strategy India** enables organizations to plan their business strategy at every stage of the business. This broadly includes:

- **Research & Evaluation** – In direct selling, a business strategy requires an in-depth understanding of the market practice, competition from other channels of retail, the customer and their habit, product acceptance and many other relevant information which may influence the acceptance and success of the business. Research is essential whether a new start-up, looking to expand, or seeking new product opportunities. We help to identify the probable key parameters, conduct a research and evaluate the possibilities, before defining a strategy. Strategy India provides means and measures for evaluation of strategies of direct selling companies already established in the region and taking corrective steps whenever or wherever needed.



- **Business Strategy Development** – Based on the research or -from understanding of the direct selling business and market/consumer habit, Strategy India enables its clients draw an appropriate business strategy with long term and short term delivery objectives.
- 
- **Financial Planning** – No business strategy is complete without the financial planning. Strategy India helps and guides the organization to draw a financial road map with projections in terms of revenue, profitability and complete financial structure.
  - Much of the confusion surrounding why certain companies deploying the Multilevel marketing compensation plans get prosecuted, and others do not come down purely to finding the right law firm to act on your behalf. Finding a law firm is easy but do the partners of that firm genuinely understand the workings of direct selling- MLM company as well as the language that is compliant.
  - Our experienced team here at Strategy India can save your legal team many hours of research by sharing with you, as well as researching on your behalf all questions that satisfy your needs and designing a tailored approach for conducting the business legally.
  - We are even associated and have advised some of the law firms in India “Confidentiality is assured at all times.”
  - The core of any genuine direct selling business is its products. Hence, developing new products internally or identifying products suitable for business externally, is an ongoing process and equally critical for any growing and evolving Direct Selling Company.
  - Direct Selling Companies and private investors are constantly seeking new innovative products with which they can build a substantial business.
  - Based on this, we have taken the responsibility and built a system of seeking out new products and concepts that we feel would be of great benefit to the consumers, distributors and the organization as a whole.
  - Strategy India has developed a relationship with reputed product manufacturers and service providers both nationally and internationally to find suitable business partners for unique and one-of-a-kind products having high potential in the marketplace.
  - Strategy India works closely with the product development team of many direct selling companies. From identifying and developing new products to tie-up with existing manufacturers and induction into the company, Strategy India offers a comprehensive end to end strategy and solution.
  - We investigate and do a proper due diligence of each product thoroughly, checking on its efficacy, reliability, manufacturing processes, claims, acceptability, viability, and legality.
  - Should you wish to have your product listed with Strategy India or are interested in a product being promoted by us, please complete the form below and submit.

Other than the products a Direct Selling company is identified by the popularity or success of its compensation plan or the career plan.

Compensation Plan is the heart of the Direct Selling business eco system. It should ensure that the outflow in the form of earnings and rewards to the direct seller’s flow continuously and proportionately to the business inflow.

Hence the success and failure of a Direct selling opportunity to a large extent depends on the compensation plan.

It actually makes or breaks the business delivery.

Many a times the company leadership tends to take the designing of compensation plan internally with their basic knowledge of finance and help of few financial experts and direct sellers “leaders”.

Looking at only the basic profitability aspect of the business on a short term basis is the biggest mistake in such adventures.

There are various factors that come into play when one creates a compensation plan and Strategy India makes sure that none of these are missed.

1. The design of the Compensation Plan has correlation with the product portfolio, pricing and target consumer segment.
2. The pay-out spread should have “just” enough for all associated with the opportunity - from starters/beginners to senior leadership in the network
3. The quantum of pay out excites the target audience to aspire and engage with the business on a long term as a career objective
4. It is legally tenable and commercially viable
5. It ensures and fulfils the objective of delivering higher product consumption in the short term or provide a long term career growth plan to the network, as the case may be
6. It has long term acceptability, hence scalable both in price and volume and future proof
7. It has international appeal and acceptability without changes, in case one desires to go global
8. The implications of a comp plan are very dynamic and evolve with time and as business grow. Hence it cannot be developed without proper evaluation with time tested results and only by experts

Strategy India helps its clients through a team of experts to choose the **right compensation plan structure** based on the product category and business objectives.

The compensation plan (Single level marketing or Multilevel Marketing) are then tested and simulated for scalability and strength.

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## **HR TRICK –**

Efficient human resource forms an integral part of any organization, more so for any consumer interface organization. Though hiring the right manpower is easier said than done, ensuring that the workforce relates and follows the company vision and policy is equally important.

### **Broadly, Strategy India offers the following –**

1. Placement Services – Strategy India is associated with some of the experienced placement agencies around the world which gives it access to a large database of skilled candidates who are capable and experienced in the Direct Selling Arena.
2. HR Policy, Process & Development – Strategy India help and support to define HR policies including performance management processes. Not only does this enable us to find the right person for the right job for start-ups, it also enables us to offer streamlined recruitment services to companies who are looking to revamp their workforce.
3. Training & Development: Training and development forms an integral part of the business development - in any Direct Selling organization. Strategy India imparts trainings that are not only dynamic but also

continuous and rigorous. Every direct selling company ideally should always have a strong **training and development program** for both internal manpower and external network. Trainings will boost their confidence and provide in-depth understanding of the business model, this in turn will boost their confidence and will positively affect the business.

Launching and managing business in the new markets or countries has its own share of opportunities and challenges.

While the business processes may be running well in the home market or country, companies may find the same processes perform unsatisfactorily or at least sub-optimally in newer markets or their overseas entities.

India being a diverse demography with varied socio - economic behaviour has its own challenges and market habits that govern the possibility of success or failure of any new business.

Strategy India helps organisations to reduce and mitigate any such risk of loss of time and expenditure by providing a One Stop Solution for any organisation willing to launch its business or products in Indian and other Asian markets

1. Product viability and acceptance evaluation and advice
2. Business viability evaluation and advice
3. Advice on corporate structuring as per the norms of the FDI, Taxation, etc.
4. Compensation plan evaluation and advice on Indianization.
5. Regulatory strategy with appraising of the business model to the police and regulatory agencies for smooth operations in all the provinces & states.
6. Guidance and support to engage reliable and experienced agencies for statutory compliance like- Company Secretaries, Chartered Accountancy firms, Legal Attorneys, etc. and other support operations like – Placement Agencies, P.R & Marketing Agencies, etc.
7. Coordination and interface on behalf of the company with all agencies to reduce turnaround time.
8. Marketing & Communication: The knowledge on current competition at the ground level, cost-effective & innovative means for promotions, creative flair, imagination, knowledge and understanding of the Indian psyche and the desire to stand out from the crowd are the key ingredients which determine the marketing and communication policy leading to the success of a market penetration campaign.
9. Content Development and Creative's in line with the localized marketing strategy - The written word has been the cause of demise for many companies who have fallen foul of the law, but it can all be avoided with professional advice and guidance.
10. Designing / Tweaking and developing the marketing tools & merchandise as per the local requirements
11. Advice on organizing events, seminars and workshops for Business and Products Launches, Sales & Business promotion campaigns, Trainings and Corporate Conferences, etc.

## GOVERNMENT AGENCIES

During the past decade, we have had hundreds of interactions with numerous governmental departments, all of whom have been seeking advice and guidance on the intricacies of Direct selling and the Unsustainable business models deploying the direct, single level and multilevel marketing compensation plans.

Strategy India's Police Training Programs on identifying unsustainable MLM operations, gathering evidence for Suo Moto action, phased action and arranging proof to the court has been, and still are a massive success with the officials of the LEA's.

Our experienced team is available for your conference, departmental training, and education programs.

We understand that the approach and the proceedings including the evidence collection and using the burden of evidence to one's advantage vary while investigating and presenting the evidence to the tribunals or courts for the same operation with regards to the Federal laws and the State laws. So, therefore, we develop and deliver customized training with case studies to ensure practical application of Price Chit and Money Circulation

(Banning)Act 1978, Section 420 of the Indian Penal Code, The Banning of Unregulated Deposit Schemes Act 2018, Foreign Exchange Management Act, Prevention of Money Laundering Act 2002, and the state laws to protect the interest of depositors.

Over recent years direct selling industry has come under scrutiny from both the media and the government agencies in almost every country. Although it is not a welcome attention, it is inevitable as operational standards have declined in terms of compensation, sponsoring, training and compliance which ultimately affect consumer satisfaction.

This is crucial at the time when consumer expectations are rising and very soon we will see the implementation of improvised COPRA in India.

Strategy India is committed to the industry and dedicates considerable amount of time and resources towards social awareness in direct selling and educating the government agencies (Enforcement and investigation) and train their personnel to understand the industry better and help them identify and act against the unsustainable (illegal) operations with deceptive business models.

**The activities include:**

1. Conducting workshops on direct selling business models
2. Conducting workshops for understanding the modus operandi of 6 types of operations which deploy the MLM compensation plans and the best methods of investigation
3. Conducting research and analysis of operations deploying MLM compensation plans and passing on actionable data to the nodal officials.
4. Advice on measures to be deployed to minimize the instances of deceptive and unviable operations
5. Actionable intelligence on habitual offenders including promoters, support agencies, etc.
6. At a time, when fraudulent operations deploying the [Multilevel \(MLM\) compensation plans](#) are launched every other day, Forensic Auditing has become an important part of the services that we offer.
7. Strategy India has a Fraud Audit and Accounting team which consists of specialists investigative accounting in digital formats.
8. From analysing the financial aspects of an entity to validating assets and standing as an expert witness if alleged fraudulent activity is discovered or the fraud comes to trial, the auditing team has done it all.
9. Strategy India is fully equipped to work with investigation and law enforcement agencies in analysing fraudulent companies that give direct selling a bad name.
10. In its effort to help unsuspecting consumers and networkers falling prey to any fraudulent business opportunity, Strategy India identifies fraudulent operations and publishes them on [SCAM ALERT](#) page which is updated weekly.
11. Strategy India also carries out auditing in non-fraud situations like mergers and takeovers apart from guidance on fraud risk governance for direct selling companies.

# MLM LEGAL & STATUTORY COMPLIANCE

The direct selling industry has long been plagued with more than a fair share of miscreants who have attempted to make the most out of its myriad business models to line their own pockets with money from innocent investors who

have been fooled to part with their hard earned savings by the lure of immediate and adequate compensation usually in terms of money and often in the guise of a better, richer and posh lifestyle.

For an industry so often maligned even with the right procedures and laws firmly in place to follow, it seems a little surprising that more often than not companies by themselves just cannot get the ideal governance right. This is where there is a need for an authority on the subject.

**A consultancy that will help you conceptualize, execute and even grow your business model under the ambit of all the possible legalities that are set to govern the direct selling industry.**

**Strategy India will help you identify the best model suited to your business, help you establish it correctly and within the entire regulatory framework and will help you tactically outperform your competition.**

As it stands there is no other agency not just in India but across the globe that has and offers such in-depth and accurate information on the workings of the direct selling industry.

Direct selling is in fact a popular business practice not just in India but around the world. More than 20 such MLM direct selling operations come into the scanner of Strategy India every week with a possibility of even more numbers being launched and executed. The Indian direct selling market is of particular interest to international operators as well. It is reliably understood that at any given time there are more than a 100 international MLM based operators who are vying to establish a successful entry and then carry out progressive operations within the ambit of the country.

In a thriving environment like this, there are several corporates who are looking to expand but without driving in with too much investment while the others are looking to proverbially test the waters by being cautious in their approach. **This is where Strategy India makes a difference not only by guiding client companies by running the mandatory limited legal checks and measures but also by helping the company sustain the course of the business.**

**Periodic and useful actionable data, a quarter by quarter marketing and sales strategy, digital and social media-based strategic input are just a part of the offering that Strategy India brings to your business.**

The consultancy model however has often been questioned in an economy where either completely outsourcing functions or then keeping them in-house and under close control have been the featured methods of working. This is one of the key reasons why several companies especially in the direct selling model have come under fire and attracted punitive action from regulatory authorities like the FTC (Federal trade commission), ACCC (Australian Competition and Consumer Commission).

Pyramid schemes, Ponzi schemes, and front loading are often the traps that direct selling businesses tend to get sucked into either advertently or inadvertently. The unscrupulous will see it as a way of immediate gratification with little regard to the legalities. However, sometimes due to not having the strongest understanding of the industry, even the more conscious can be affected by these issues in a direct selling model.

Strategy India makes it's a primary objective to ensure that the vision set forth by the management of the direct selling client company is communicated down the line clearly and without any sort of ambiguity whatsoever to the direct selling arm of the company. This sales force that engages the end consumer to purchase a product or service is the very fulcrum of any direct selling business and they have to be kept in the loop about company policy to ensure that the path they tread is straight and narrow but one of commitment, dedication, and most importantly absolute honesty.

Strategy India also ensures that the business model selected by the direct selling organization deploying the MLM compensation plans does not fall foul of the existing laws including **the Prize Chit and Money Circulation (Banning) Act 1978, IPC 420, Prevention of Money laundering Act, Protection of the Interest of Depositors Act for various states including Maharashtra, Andhra Pradesh, Orissa, Madhya Pradesh, Tamil Nadu and the forthcoming "The Banning of Unregulated Deposit Schemes Act"**.

Advice on the Functional laws, Laws applicable on products and services and laws related to organization and revenue like **Consumer Protection Act, Indian Contract Act, Legal Metrology Act, Sales of Goods Act, Food Safety and Standard Act, Drugs and Cosmetics Act, Legal Metrology Act, BIS Act along with Income-tax Act and The Companies Act** form an integral part of the legal consulting.

One must also consider that while one template may have worked for a particular developed or underdeveloped country, it may not be as effective for a developing market like India. **Strategy India helps tune the code of conduct, terms, and conditions along with the policies and procedures laid down by client companies in India to reduce chances of being embroiled in the challenges due to the doctrine of Vicarious Liability as a Respondeat Superior.**

All of the above when coupled with sound consultation and advice on sustainability derived purely by in-depth market research drastically helps to reduce the chances of your MLM direct selling business of being labelled as a Ponzi scheme and also allows for sustainable and realistic growth based progressive development of the business model and the organization.

When all the pieces have been put into place, at the end of the day, a business should be able to develop a win-win situation for everyone who's life it touches including the customer, the direct seller, the distribution partner or the franchise, the parent company and of course its investors/promoters.

Strategy India helps you partner your journey towards creating the perfect scenario for all who are a part of it.

**“A Sentinel that helps safeguard business integrity”**

## PROFESSIONAL AUDITS

External Annual audits are an essential element for any company seeking longevity and wishing to stay ahead of the game.

It is just not good enough to have a good product, strong leadership, and exciting compensation plan.

It is far more important to ensure the viability of the compensation element to assess pay-outs to income generated, COG's, which is where the value of utilizing external audit companies comes to the forefront.

Our team works confidentially hand in hand with audit companies as we guide them through the definitions and many written contradictions that exist within the complexities of running a Direct Selling-MLM operation.

## TALENT ACQUISITION AND COMPLIANCE MANAGEMENT

Setting up a business is one thing but building a successful organization requires having a reliable and capable team working together.

To build a billion-dollar brand, direct selling - MLM companies not only need to win the marketplace but also the workplace. This aspiration requires companies to build strong pillars made of 3 P's: People, Process and Performance.

Our placement wing operates under an able leadership of a Senior Business and Human Resource Leader, Change Management/Transformation advisor with over two decades of Corporate, Consulting and Entrepreneurial experience in the Six Sigma Project Management and Human Resource (Major) in various industries including Banking, IT/ITES, Direct Selling-MLM, Insurance, Fashion, Liquor/FMCG, Manufacturing, Engineering and Consulting.

## *What Do We Do?*

- Work with CEO's/MD's/Leadership in Transforming their organization's people practices and inculcate the culture of High Performance and Accountability.
- Help either Setting up or Scaling up – End to end People Practices, Excellent Business Processes by utilizing some of the Six Sigma methodologies.
- Talent Attraction, Acquisition and Management, especially Leadership Hiring, Leadership Training, Performance Enhancement and Capability Building.
- Last but not least, helping CEO's/MD's/Leaders with a Matrix & Analytics-Driven Culture focusing on the Return on Investment (ROI) for various initiatives.

# CORPORATE) SOCIAL RESPONSIBILITY

Business entities are no more considered as profit churning machines. It is in their benefit to take care of all their stakeholders to exist in the society that nurtures them and allows them to prosper.

Being a socially responsible business entails that the enterprise operates ethically and sustainably taking into account the environmental and social impacts of its policies and processes.

The 2015 Cone Communications/Ebiquity Global CSR Study found that 91% of global consumers expect businesses to operate responsibly to address social and environmental issues, wherein 84% say they seek out responsible products wherever possible.

As these statistics suggest, consumers are increasingly aware of the importance of social responsibility and actively seek products from businesses that operate ethically.

### **An entity that behaves responsibly towards society is rewarded manifold:**

- It improves its public image and creates brand value, known among its consumers, not just for product quality but also for its practices.
- Contrary to popular belief, being socially responsible is not only rewarded by customers but also makes it a pocket-friendly exercise, if appropriately strategized. It may churn out more robust financial performance through eco-efficiency.
- It gives the entity a substantial advantage over its competitors. Customers are conscious nowadays, and they seek out products that are manufactured by socially responsible companies in comparison with their competitors who resort to unethical, environmentally destructive means to create products.
- Not just consumers, investment community also seeks out socially responsible companies who have the right image in the eyes of their consumers. A socially responsible company is considered more reliable and sustainable by investors.
- Socially reasonable companies receive much positive public attention and gain publicity by word of mouth.
- Employees also find themselves comfortable to commit themselves with socially responsible entities. Employees feel proud of being associated with an entity that is well known in society for its ethical practices.



Social responsibility is not restricted to tax planning, nor is the sole responsibility of giant corporations. Though Corporate Social Responsibility is mandatory for certain companies under Section 135 of the Companies Act, 2013, there is much more to social responsibility than what meets the eye.

Social responsibility is not just related to giving annual donations to a cause or a relief fund. It is about imbuing those practices in your daily business activities that culminate into society-friendly products through sustainable means. Ideal CSR relates to those activities that the company can find a connection with, and in the long run, can derive benefits out of it.

A company that associates itself with social causes on a regular business is respected by its local community that spreads these positive vibes further, leading to good publicity of the business. CSR need not be completely aloof from the business that is performed by the company a good CSR strategy stitches the company's goals with socially responsible activities in such a way, that company end up multiplying its profits in the longer term as a result of those activities.

These activities could be injected in business from community involvement to human resource development to environmental contribution to product contribution and customer relations to rural development or even shareholders relations.

### **What can Strategy India do for direct selling - MLM entities?**

- Suggest ways to perform CSR that will comply with the laws in force
- Help the companies recognize that they need to engage in giving back to society, even when it is not mandatory wherein, after understanding their business model. SI can help highlight the company's ethical practices and improvise on others to optimize the benefit derived out of a company's functions.
- Discuss with the companies about their practices and way of the production cycle, distribution, customer engagement, etc.
- Deploy a fulltime resource (CSR strategy provider - Business analyst) who can suggest ways in which the companies can imbibe the CSR practices without diverting the focus from the core business activities or help the company scout and verify the credentials, the works of the companies/NGOs/societies etc. who exclusively undertake such activities on company's behalf. That way, a company will be contributing to the community without dedicating permanent staff to perform such functions.
- Suggest ways of advertising and emphasizing these aspects of CSR adopted by the company to build positive brand value, via marketing, via reports and other details that they send out to their investors and lenders.

CSR can go a long way in building a good reputation and enhancing the brand image of a company if done rightly.

*"Conducting your business in a socially responsible way is good business. It means you can attract better employees and the customers will know what you stand for and like you for it" Anthony Burns, CEO, Ryder Systems*

# INVESTMENT OPPORTUNITIES

Investments are the bloodline of a business, and the right set of investors can create a paradise for the management while the misguided ones can sink the business and with it the aspirations and years of the toil of thousands of direct sellers.

From helping you find investors, to handholding you in sealing the deal, from helping you find a suitable buyer for your business to aiding you in a spin-off, We do it all!

We ensure a smooth transition of business and injection of investments in a way that optimises the finances of the seller and ensures the continued success of the **Direct Selling** company in the long run.

Finding that best fitting shoe for Cinderella, assuring the best investment choice for you is our prime goal. We help you in attracting that befitting investment via the following services: Evaluation of your company on various parameters to help you put the best foot forward for a well-priced deal. Your company's strengths must be highlighted, drawbacks should be corrected, and grey areas must be gauged carefully to achieve the best possible deal.

The business valuation is perhaps the most crucial aspect of the entire process, especially for a **Direct Selling** company where the direct sellers are also the consumers, customers and the brand ambassadors. It will help you achieve the highest, most accurate and the most attractive investment.

A company may be doing very well, but if its strengths are not emphasised in the right way, the company may stand at a disadvantage. The experts at our firm will help you with the following in this respect:

- Designing tailor-made Presentations, Reports and Advertisements.
- Developing and creating publicity campaigns for print and other online mediums.
- Highlighting the areas of improvement in the business for getting noticed in the Direct Selling industry worldwide.

- 
- Advising on ways to create more visibility for the network marketing company among the target audience.

Apart from the above, the Right worded and appropriately highlighted campaigns will go a long way in ensuring the success of this entire process. Our team will help your company in:

- Designing the format, structure and content for expression of interest.

- 
- Promoting the designed material online and in selected print mediums for optimal exposure.

Zeroing in on the right buyer/investor will be the ultimate goal of the entire exercise. A wrong choice could not only mean inconveniences and financial loss but also denting the legacy of the company. Our specialised team will help you identify the best option.

Effective communication and choicest of experts at your service at all times. Strategy India is well aware of the limited time available at the hand of your personnel as well as the significance of concluding a good deal.

# DIRECT SELLING: A BOON OR A BANE?

## *What Is Direct Selling?*

Direct selling is a form of non-store retailing that occurs outside of a traditional retail establishment. It consists of Direct Selling Entity, Direct Sellers, customers, and consumers. It means marketing, distribution, and sale of goods or provision of services through a network of persons (registered with the company as independent contractors), other than through a permanent retail location/s.

Direct selling as a distribution channel originated when a producer sold its products or services directly to an end-user or consumer. Most direct selling currently involves independent contractors, individuals who purchase from a producer (at wholesale) and resell to consumers at retail. However, the modern aspect of the internet has brought a slight change where the seller can sell off their products using the internet. Compared to other marketing methods, direct selling possesses several essential benefits.

Most prominent among these benefits are its flexibility and the quality and quantity of information exchanged. It is flexible in that it is not constrained by location or time. It can occur in places and times most convenient to a potential buyer and seller.

## *What Are The Different Variations?*

A complete understanding of direct selling requires that it is to be viewed from three perspectives, here designated as "operational", "tactical", and "strategic". These perspectives collectively provide a framework for discussing direct selling and facilitate its exposition at three levels. The levels can be better distinguished as direct, single-level, and multi-level. In the direct structure, people are directly connected with the company. In contrast, in the case of the single-level, participants are connected to the company via another participant with an existing contractual relationship with the company. Finally, in the multi-level structure, the participants are connected to the company via other participant/s arranged in more than a single level, all having existing contractual relationships with the company.

## *How Does The Business Model Work?*

The business model of direct selling works in a very simplified manner. A wide range of products are manufactured by the direct selling companies, which make life convenient for the consumers, and instead of marketing, companies appoint people who are termed as "direct sellers" to sell the genuine products to the possible consumers and connect people through it. The company offers commission to the direct sellers, and the business model operates. The model is entirely dependent on the user's confidence, and therefore one must use the products themselves to gain the confidence of the product's efficacy.

It's a risk-free business approach that compensates individuals only when they put forth the necessary work, expertise, and dedication to successfully retail the goods offered by the company. Multi-level compensation plans must be carefully designed and managed to avoid the risk of becoming an illegal pyramid operation or a money circulation scheme.

The central character of a pyramid scheme is that the founders and early entrants to the organization profit from the fees and inventory investments required of later participants when they join rather than from revenues created by sales to ultimate users of the organization's products or services.

"Money Circulation Scheme", also known as Ponzi Schemes, means any scheme in which the company's verbal or written promises are not arithmetically sustainable and/or are not tied to the sale of goods/services by the participants engaged or those below them in their organizational structure. This scheme is wholly/partially reliant on future investments for the earnings committed.

## *Perks Of Direct Selling*

There are many perks attached to direct selling, and it suits a large group of people because of the convenience factor attached to it. People engaged in direct selling can work at their own time, and unlike other businesses, they can work with a group of people they like with ease, anytime, anywhere. Plus, it helps people connect, develop their communication skills, and gradually build their personalities. Moreover, direct selling provides an opportunity to do some other jobs or business while you are engaged in the direct selling business, which is nothing but an add on to the productivity of the person engaged.

## *Boon Or A Bane?*

Even though widely discussed, direct selling is not well understood, and the term itself is often abused, confused, and misused. A suggested definition is face-to-face selling away from a fixed retail location. It brings plenty of opportunity in front of the people to get engaged and earn a livelihood when it is not seen to take advantage of the weaker section of the society instead to provide strength to that section and obviously when it is seen with that perspective it is a boon and not a bane.

## **RULE 2021 –**

### **MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION**

**(Department of Consumer Affairs)**

New Delhi, 28<sup>th</sup> December, 2021

**G.S.R. 889(E).**—In exercise of the powers conferred by clause (zg) of sub-section (2) of section 101 read with section 94 of the Consumer Protection Act, 2019, the Central Government hereby makes the following rules, namely

### *1. Short Title And Commencement*

1. These rules may be called the Consumer Protection (Direct Selling) Rules, 2021.
2. They shall come into force on the date of their publication in the Official Gazette.

### *2. Application*

1. Save as otherwise expressly provided, these rules shall apply to
  - all goods and services bought or sold through direct selling;
  - all models of direct selling;
  - all direct selling entities offering goods and services to consumers in India;

- 
- all forms of unfair trade practices across all models of direct selling;

Provided that existing direct selling entities shall comply with the provisions of these rules within ninety days from the date of publication of these rules in the Official Gazette;

2. Notwithstanding anything contained in sub-rule (1), these rules shall also apply to a direct selling entity which is not established in India, but offers goods or services to consumers in India.

### *3. Definitions*

1. In these rules, unless the context otherwise requires,
  - "Act" means the Consumer Protection Act, 2019 (35 of 2019);
  - "cooling-off period" means a period of time given to a participant to cancel the agreement he has entered into for participating in the direct selling business without resulting in any breach of contract or levy of penalty;

- "direct seller" means a person authorized by a direct selling entity through a legally enforceable written contract to undertake direct selling business on principal to principal basis;
  - "direct selling entity" means the principal entity which sells or offers to sell goods or services through direct sellers, but does not include an entity which is engaged in a Pyramid Scheme or money circulation scheme;
  - "money circulation scheme" means the schemes defined in clause (c) of section 2 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (43 of 1978);
  - "mis-selling" means selling a product or service by misrepresenting in order to successfully complete a sale and includes providing consumers with misleading information about a product or service or omitting key information about a product or providing information that makes the product appear to be something it is not;
  - "prospect" means a person to whom an offer or a proposal is made by a direct seller to join a direct selling entity;
  - "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 enrolment or action or performance of additional subscribers to the scheme, in which the subscribers enrolling further subscribers occupy a higher position and the enrolled subscribers a lower position, resulting in a multi-layered network of subscribers with successive enrolments;
  - "saleable", in relation to goods or services, means unused and marketable goods or services which have not expired, and which are not seasonal, discontinued or used for special promotion;
- 
- "sensitive personal data" means the sensitive data or information as specified from time to time under section 43A of the Information Technology Act, 2000 (21 of 2000);
1. "State" includes a Union territory;
  2. Words and expressions used herein and not defined, but defined in the Act shall have the meanings respectively assigned to them in the Act.

## 4. *Mandatory Maintenance Of Records*

Every direct selling entity shall maintain at its registered office, either manually or electronically, all such documents as are required under any law for the time being in force, including the following documents or records, as may be applicable, namely

- Certificate of Incorporation;
  - Memorandum of Association and Articles of Association;
  - Permanent Account Number and Tax Deduction and Collection Account Number;
  - Goods and Services Tax registration; (e) Goods and Services Tax Returns;
  - Income Tax Returns;
  - Balance Sheet, Audit Report and such other relevant reports; (h) Register of direct sellers;
  - Certificate of Importer-Exporter code (in case of imported goods)
  - License issued under the Food Safety and Standards Authority of India Act, 2006 (34 of 2006) for the purposes of manufacture or sale of food items;
  - License and Registration Certificate issued under the Drugs and Cosmetics Act, 1940 (23 of 1940) for the purposes of manufacture or sale of drugs, including Ayurvedic, Siddha and Unani drugs and Homoeopathic Medicines;
- 
- Certificate of Registration of Trademark.

## 5. *Obligations Of Direct Selling Entity*

1. Every direct selling entity shall
  - if a company, be incorporated under the Companies Act, 2013 (18 of 2013) or if a partnership firm, be registered under the Partnership Act, 1932 (9 of 1932) or if a limited liability partnership, be registered under the Limited Liability Partnership Act, 2008 (6 of 2009);
  - have a minimum of one physical location as its registered office within India;
  - make self-declaration to the effect that it has complied with the provisions of these rules and is not involved in any Pyramid Scheme or money circulation scheme;

- maintain proper and updated website with all relevant details of that entity, including the documents or records specified in rule 4, the self-declaration specified in clause (c), contact information which is current and updated, details of its nodal officer, grievance redressal officer, its management, products, product information, price and grievance redressal mechanism for consumers;
- own, hold or be the licensee of a trademark, service mark or any other identification mark which identifies that entity with the goods or services to be sold or supplied, but shall not give commissions, bonus or incentives on sale of goods or services of which it is not the owner, holder or licensee of trademark, service mark or other identification marks;
- obtain all applicable trade registrations and licenses, including Permanent Account Number and Goods and Services Tax Registration;

- 
- get all information provided by it on its website duly certified by a Company Secretary.

**Explanation.**—For the purposes of this clause, "Company Secretary" means a person as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980);

- have a prior written contract with its direct sellers in order to authorize them to sell or offer to sell its goods or services, and the terms of such agreement shall be just, fair and equitable;
- ensure that all its direct sellers have verified identities and physical addresses and issue identity cards and documents only to such direct sellers;
- create adequate safeguards to ensure that goods and services offered by its direct sellers conform to applicable laws;

- 
- be liable for the grievances arising out of the sale of goods or services by its direct sellers.

2. Every direct selling entity shall provide the following information on its website in a clear and accessible manner, which shall be displayed prominently to its users, namely

- registered name of the direct selling entity;
- registered address of the direct selling entity and of its branches;
- contact details, including e-mail address, fax, land line and mobile numbers of its customer care and grievance redressal officers;
- a ticket number for each complaint lodged through which the complainant can track the status of the complaint;
- information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, grievance redressal mechanism and such other information which may be required by the consumers to make informed decisions;
- information on available payment methods, the security of those payment methods, the fees or charges payable by users, the procedure to cancel regular payments under those methods, charge-back options, if any, and the contact information of the relevant payment service provider;
- total price of any goods or service in single figure, along with its break-up price showing all compulsory and voluntary charges, including delivery charges, postage and handling charges, conveyance charges and the applicable tax;

- 
- provide correct and complete information at pre-purchase stage to enable buyers to make informed purchase decisions, and such information shall, in addition to the mandatory declarations to be provided under the Legal Metrology (Packaged Commodities) Rules, 2011, contain the following information, namely:—

- the name of purchaser and seller;
- description of goods or services;
- quantity of goods or services;
- the estimated delivery date of goods or services;
- the process of refund;
- warranty of the goods;
- exchange or replacement of goods in case of it being defective;

- 
- all contractual information required to be disclosed by or under any law for the time being in force.

3. No direct selling entity shall adopt any unfair trade practice in the course of its business or otherwise, and shall abide by the requirements specified in any law for the time being in force.
4. All products of a direct selling entity shall comply with the declarations to be made under the Legal Metrology Act, 2009 (1 of 2010).
5. Every direct selling entity shall store sensitive personal data within the jurisdiction of India, in accordance with the applicable law for the time being in force and shall take appropriate steps to ensure protection of such

data provided by a consumer and also ensure adequate safeguards to prevent access or misuse of such data by any unauthorized person.

6. Every direct selling entity shall, having regard to the number of grievances ordinarily received by such entity from persons in India, establish an adequate grievance redressal mechanism and appoint one or more grievance redressal officers for redressal of consumers' grievances and display the current and updated name, contact details including telephone number, email address and designation of such officer on its website, and the details of its website shall also be prominently printed on the product information sheet or pamphlet.
7. Every direct selling entity shall ensure that the grievance redressal officer referred to in sub-rule (6) acknowledges the receipt of any consumer complaint within forty-eight working hours of receipt of such complaint and redresses the complaint normally within a period of one month from the date of receipt of the complaint and in case of delay of more than a month, reasons for the delay, and the actions taken on the complaint, are informed to the complainant in writing.
8. Every direct selling entity shall appoint a nodal officer who shall be responsible for ensuring compliance with the provisions of the Act and the rules made thereunder, and to ensure compliance with any order, or requisition, made in accordance with the provisions of any other law for the time being in force or the rules made thereunder.
9. Every direct selling entity shall establish a mechanism for filing of complaints by consumers through its offices or branches or direct sellers, either in person or through post, telephone, e-mail or website.
10. Every direct selling entity shall maintain a record of all its direct sellers, including their identity proof, address proof, e-mail and such other contact information.
11. Every direct selling entity shall, on the request in writing made by a consumer after the purchase of any goods or services, provide him with the information regarding any direct seller from whom such consumer has made a purchase, and such information shall include the name, address, e-mail, contact number and any other information which is necessary for making communication with such direct seller for effective dispute resolution.
12. Every direct selling entity shall ensure that the advertisements for marketing of goods or services are consistent with the actual characteristics, access and usage conditions of such goods or services.
13. No direct selling entity shall, directly or indirectly, falsely represent itself as a consumer and post reviews about its goods or services or misrepresent the quality or features of any of its goods or services.
14. Notwithstanding the distribution system adopted by it, a direct selling entity shall monitor the practices adopted by its direct sellers and ensure compliance with these rules by means of legally binding contract with such direct sellers.
15. Notwithstanding the distribution system adopted by it, a direct selling entity shall monitor the practices adopted by its direct sellers and ensure compliance with these rules by means of legally binding contract with such direct sellers.
16. Every direct selling entity shall maintain a record of relevant information allowing for the identification of all direct sellers who have been delisted by the direct selling entity and such list shall be publicly shared on its website.
17. Every direct selling entity shall become a partner in the convergence process of the National Consumer Helpline of the Central Government.

## *6. Obligations Of Direct Seller*

1. Every direct seller shall
  - have a prior written contract with the direct selling entity for undertaking sale of, or offer to sell, any goods or services of such entity;
  - at the initiation of any sale representation, truthfully and clearly identify himself, disclose the identity of the direct selling entity, the address of place of business, the nature of goods or services sold and the purpose of such solicitation to the prospect;
  - make an offer to the prospect providing accurate and complete information, demonstration of goods and services, prices, credit terms, terms of payment, return, exchange, refund policy, return policy, terms of guarantee and after-sale service;
  - provide an order form to the consumer at or prior to the time of the initial sale, which shall identify the direct selling entity and the direct seller and shall contain the name, address, registration number or enrollment number, identity proof and contact number of the direct seller, complete description of the goods or services to be supplied, the country of origin of the goods, the order date, the total amount to be paid by the consumer, the time and place for inspection of the sample and delivery of goods, consumer's rights to cancel the order or to return the product in saleable condition and avail full refund on sums paid and complete details regarding the complaint redressal mechanism of the direct selling entity;

- obtain goods and service tax registration, Permanent Account Number registration, all applicable trade registrations and licenses and comply with the requirements of applicable laws, rules and regulations for sale of a product;
  - ensure that actual product delivered to the buyer matches with the description of the product given;
- 
- take appropriate steps to ensure the protection of all sensitive personal information provided by the consumer in accordance with the applicable laws for the time being in force and ensure adequate safeguards to prevent access to, or misuse of, data by unauthorized persons.
2. A direct seller shall not
- visit a consumer's premises without identity card and prior appointment or approval;
  - provide any literature to a prospect, which has not been approved by the direct selling entity;
  - require a prospect to purchase any literature or sales demonstration equipment;
- 
- in pursuance of a sale, make any claim that is not consistent with claims authorized by the direct selling entity.

## *7. Duties Of Direct Selling Entity And Direct Seller*

Subject to the provisions of Chapter VI of the Act, relating to Product Liability, the following shall be the duties of direct selling entity and direct seller, as may be applicable, namely

1. Every direct selling entity and every direct seller shall ensure that
- the terms of the offer are clear, so as to enable the consumer to know the exact nature of offer being made and the commitment involved in placing any order;
  - the presentations and other representations used in direct selling shall not contain any product description, claim, illustration or other element which, directly or by implication, is likely to mislead the consumer;
  - the explanation and demonstration of the goods or services offered are accurate and complete, particularly with regard to price and, if applicable, to credit conditions, terms of payment, cooling-off periods or right to return, terms of guarantee, after-sales service and delivery;
  - the descriptions, claims, illustrations or other elements relating to verifiable facts are capable of substantiation;
  - any misleading, deceptive or unfair trade practices are not used;
  - direct selling is not represented to the consumer as being a form of market research;
  - the promotional literature, advertisement or mail contain the name and address or telephone number of the direct selling company, and include the mobile number of the direct seller;
  - direct selling shall not state or imply that a guarantee, warranty or other expression having substantially the same meaning, offers to the consumer any rights in addition to those provided by law, when it does not;
  - the terms of any guarantee or warranty, including the name and address of the guarantor, shall be easily available to the consumer and limitations on consumer rights or remedies, where permitted by law, shall be clear and conspicuous;
  - the remedial action open to the consumer shall be clearly set out in the order form or other accompanying literature provided with the goods or service;
  - the presentation of the offer does not contain or refer to any testimonial, endorsement or supportive documentation unless it is genuine, verifiable and relevant;
  - when after-sales service is offered, details of the service are included in the guarantee or stated elsewhere in the offer and if the consumer accepts the offer, information shall be given on how the consumer can activate the service and communicate with the service agent;
  - products, including, where applicable, samples, are suitably packaged for delivery to the consumer and for possible return, in compliance with the appropriate health and safety standards;
  - unless otherwise stipulated in the offer, orders shall be fulfilled within the delivery date proposed to the consumer at the time of purchase and the consumer shall be informed of any undue delay as soon as it becomes apparent or comes within the knowledge of the direct selling entity or the concerned direct seller;
  - in cases of delay under clause (n), any request for cancellation of the order by the consumer shall be granted, irrespective of whether the consumer has been informed of the delay, and the deposit, if any, shall be refunded as per the cancellation terms proposed to the consumer at the time of purchase, and if it is not possible to prevent delivery, the consumer shall be informed of the right to return the product at the direct selling company's or the direct seller's cost as per the procedure for return of the goods proposed to the consumer at the time of purchase;



- right of return offered by that entity shall be in writing;
- whether payment for the offer is on an immediate sale or installment basis, the price and terms of payment shall be clearly stated in the offer together with the nature of any additional charges such as postage, handling and taxes and, whenever possible, the amounts of such charges;
- in the case of sales by installment, the credit terms, including the amount of any deposit or payment on account, the number, amount and periodicity of such installments and the total price compared with the immediate selling price, if any, shall be clearly shown in the offer;
- any information needed by the consumer to understand the cost, interest and terms of any other form of credit is provided either in the offer or when the credit is offered;
- unless the duration of the offer and the price are clearly stated in the offer, prices shall be maintained for a reasonable period of time;
- the procedure for payment and debt collection shall be determined in writing before any contract is signed and it shall be such as to avoid undue inconvenience to the consumer, making due allowance for delays outside the consumer's control;

- 
- the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules framed thereunder shall be followed.

2. A direct selling entity or direct seller shall not

- indulge in fraudulent activities or sales and shall take reasonable steps to ensure that participants do not indulge in false or misleading representations or any other form of fraud, coercion, harassment, or unconscionable or unlawful means;
- 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, or to the goods or services being sold by itself or by the direct seller;
- indulge in mis-selling of products or services to consumers;
- use, or cause or permit to be used, any fraudulent, coercive, unconscionable or unlawful means, or cause harassment, for promoting its direct selling business, or for sale of its goods or services;
- refuse to take back spurious goods or deficient services and refund the consideration paid for goods and services provided;

- 
- charge any entry fee or subscription fee.

3. A direct selling entity and a direct seller shall comply with the requirements of all relevant laws, including payment of taxes and deductions thereunder.

4. A direct selling entity and a direct seller shall not induce consumers to make a purchase based upon the representation that they can reduce or recover the price by referring prospective customers to the direct sellers for similar purchases.

## *8. Persons Not To Be Engaged In The Business Of Direct Selling*

No person who is convicted, or bankrupt during the last five years prior to his association with the business of direct selling, or a person of unsound mind, shall be engaged in the business of direct selling.

**Explanation.**—For the purpose of this rule, the term 'Bankrupt' shall have the same meaning as assigned to it in clause (3) of section 79 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).

## *9. Application Of E-Commerce Rules*

The direct sellers as well as the direct selling entities using e-commerce platforms for sale shall comply with the requirements of the Consumer Protection (e- Commerce) Rules, 2020.

## *10. Prohibition Of Pyramid Scheme And Money Circulation Scheme*

No direct selling entity or direct seller shall

- promote a Pyramid Scheme or enroll any person to such scheme or participate in such arrangement in any manner whatsoever in the garb of doing direct selling business;
- 
- participate in money circulation scheme in the garb of doing direct selling business.

## *11. Monitoring By State Government*

For ensuring compliance of these rules by direct selling entity and direct sellers, every State Government shall set up a mechanism to monitor or supervise the activities of direct sellers and direct selling entity.

## *12. Inconsistencies In Laws*

Where any regulation made under the Reserve Bank of India Act, 1934 (2 of 1934) is applicable to a direct selling entity governed under these rules, the provisions of such regulations shall prevail over the provisions of these rules to the extent of inconsistency.

## *13. Contravention Of Rules*

The provisions of the Act shall apply for any contravention of these rules.

# **WHAT IS A MONEY CIRCULATION SCHEME?**

The term "Money Circulation Scheme" is an unsustainable operation that depends on future investments/purchases made by participants to pay off the commitments rather than generating and/or using the profits if at all earned by the company.

These schemes rely on new investments to come in under the garb of product purchases or plain vanilla investments or financial products not approved by the respective regulators by exploiting loopholes in the existing law.

They commit to offer fixed or high returns on purchase/investments, thus luring gullible, desperate people with a prospect of easy money.

Thus, all these operations promise to pay more than the attainable amount and are hinging on the principle of "Robbing Peter to Pay Paul," i.e., They take money from one person to give to another.

## *Two Types Of Money Circulation Schemes*

1. With products (real value or token): In these types of Schemes, the promoters commit to paying a fixed amount (mostly in percentage) at set intervals, which may vary depending on the amount of the purchase; generally, the bigger the purchase, the higher the commitment of the returns.
2. Without products: In these types of Schemes, there is no product given/offered. Instead, the promoters commit to paying a fixed sum (usually expressed in percentage) at set intervals, which may vary depending on the investment; generally, the more significant the investment, the higher the returns commitment.

## *Prominent Cases From India*

### *1. KURIACHAN CHACKO & ORS. V. STATE OF KERALA, JT 2008 (7) SC 614*

The appellants are partners of M/s LIS, Ernakulam, a partnership firm engaged in the sale of lotteries and magazines after collecting advance money. They floated a scheme known as the "LIS Deepasthambham Scheme". The Scheme appeared to be very attractive to several people, and they started investing money; the membership collection during a short period reached almost Rs. 500 crores. The Supreme Court held that:

"The promoters of the Scheme very well knew that it is certain that the Scheme was impracticable and unworkable making tall promises which the makers of the promises knew fully well that it could not work successfully. It could work for some time in that 'Paul can be robbed to pay Peter', but ultimately, when there is a large mass of Peters, they will be left in the lurch without any remedy as they would by then have been deceived and deprived of their money."

Para 32: "In the instant case, both the essentials of Section 2(c) are present. The Scheme provides for (i) making of quick or easy money, and (ii) it is dependent upon an event or contingency relative or applicable to the enrolment of members into the Scheme."

<https://indiankanoon.org/doc/450905/>

### *2. STATE OF WEST BENGAL V. SWAPAN KUMAR, AIR 1982 SC 949*

Sanchita Investment, a registered partnership firm, started its business in finance and investment with a share capital of Rs 7000/- An FIR was registered against the firm alleging that the firm had been offering 48 per cent interest which was later reduced to 36 per cent. The firm's partners moved Calcutta High court for quashing the FIR, and after the FIR was quashed, the State of West Bengal filed an appeal by Special Leave in the Supreme Court. The apex court interpreted section 2(c) of the act and made an in-depth analysis.

<https://www.legitquest.com/case/state-of-west-bengal-ors-v-swapan-kumar-guha-ors/2C18>

### *3. M/S APPLE FMCG MARKETING PVT. LTD. V. UNION OF INDIA*

In the present case, the petitioner (M/s Apple FMCG Marketing Private Limited was registered under the Companies Act, 1956); it marketed various products through network marketing. Accordingly, the company prayed for a writ of declaration that selling products through the Network Marketing System is legal and not in contravention of the provisions of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 or any other law.

#### *4. Ram Sumiran Pal Vs State*

M/S SPEAK ASIA ONLINE PVT. LTD. was established in Singapore in the name and style of M/S. HAREN TECHNOLOGIES PVT. LTD in 2006. In the year 2010, the company was renamed M/S SPEAK ASIA ONLINE PVT. LTD., which was incorporated with the ACRA (Accounting and Registration Authorities) of Singapore. The company was in the business of conducting surveys through its web portal [www.speakasiaonline.com](http://www.speakasiaonline.com). The company recruited new panellists (who were to carry out the survey) using marketing tools of various modes like print and electronic media, seminars, etc. Manoj Sharma, CEO of, India and Tarak Bajpai, COO, India, was responsible for the company's marketing campaign.

Speak Asia had floated two different types of subscription plans. The first plan was of "Standard" panellist plan. In this plan, members had to enrol themselves as "Standard" panellists by paying a one-time fee of approximately INR 5500. The panellist got a subscription of 26 weekly issues of its Online Surveys Today E-bulletin in lieu of this fee. After the training period, panellists were entitled to complete two surveys each week for six months. In return, the panellist was to get INR 450 for each week for the tenure of six months. This sounded good to members because it seemed that by carrying out the survey, the initial investment of 'one-time fee' (of Rs 5500) could more than double within six months (Rs 11,700 = 26 weeks x Rs 450/week).

The Enforcement Directorate received the green signal from the PMLA (Prevention of Money Laundering Act), Mumbai court in the year 2019 to seize properties worth INR 89.56 Crore of Speak Asia Online Pvt Ltd. Mumbai police had registered this case in 2011, and based on that case, Enforcement Directorate had initiated an investigation against Speak Asia Online Pvt. Ltd, Singapore and its directors and others as per the money laundering act (PMLA).

#### *5. V-Can Network (P) Ltd Vs The Home Secretary*

V-Can Network was a private limited company registered under the Companies Act on 2-11-2001 and under Central Sales Act and the Tamil Nadu General Sales-tax Act. The company was engaged in manufacturing Home Appliances of consumer durables, etc., and adopted the Multi-Level Marketing or Network Marketing System to promote the company. The three significant products introduced by the company were, "Ozone Water Purifier", "Magnetic Bed", and "Companion" which would cost Rs. 5,990/-. Under the MLM scheme of the company, the customers purchased the goods at their own will without any compulsion and were free to become either a distributor of the company or remain as the customer.

The three major products were manufactured scientifically for day-to-day use without violating any legal requirements. The distribution of these products nearly involved 5,0,000 people as the distributors, and about two lakh people were directly involved and earned their bread and butter under this system as well as the company never defaulted in paying kind of taxes to the Government. Though there were no complaints against the company, the Police arrested the three distributors of these goods, all their offices were sealed, and even their bank accounts were frozen.

Further, the five distributors of V-can Network Private Limited filed a petition against the arresting officer that the Police was unnecessarily interfering in their business and that their business would not fall within the ambit of the prize, chit as described in Section 2 (c) and 2 (e) of the Central Act 43 of 1978. They also opined that their business does not fall within the definition of Section 2 (1) of the money circulation or prize chit within the meaning of Section 2 (e) of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

However, the Government Advocate demonstrated that it was very evident in the brochure of V-Can Network Private Limited that it was based on the Money Circulation Scheme, which is banned under Section 3 of The Central Act 43 of 1978 and whoever contravenes Section 3 shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to Rs.5,000/- or with both. Therefore, the petitioner was also charged under Sections 420 and 506 (i) IP C. apart from other provisions.

<https://indiankanoon.org/doc/378163/>

## *6. Achamma Chacko Vs Government Of Kerala*

A partnership firm with the name and style "M/s. LIS, Ernakulam" is said to be conducting the business of making available Government lottery tickets to the public under the Multi-Level Marketing principle in partnership. As shown, the partnership has registered three lakhs' members in the Scheme evolved by it. The partnership deed further provides that the firm's primary business shall be arranged online and paper lottery tickets for the public. The firm is seen registered with the Registrar of Firms, Trivandrum, on 26.11.2002, and the duration of the firm is stated to be five years.

The firm LIS (Regd) is conducting Prize Chits and Money Circulation Scheme throughout Kerala in LIS Deepasthambam Project. The business of these persons claimed to be genuine, even though styled by the investigating agency as under the bogus name LIS (Regd), is making advertisements in all leading dailies and through visual media offering fabulous returns for deposits from the public. The nature of business is that an individual must deposit Rs.625/- per unit or multiplies thereof. For each unit, a member is given a lottery ticket worth Rs.350/- purchased over 35 weeks at Rs.10/- per week and subscribes Rs.275/- to a magazine called 'Trikalam' alleged to be published by LIS Printers and Publishers.

However, the Court observed from the circumstances that the petitioners' business was practicable, and the closing of the business would amount to a loss to the petitioners.

<https://indiankanoon.org/doc/446882/>

## *Prominent Cases From Foreign Jurisdiction*

### *1. IN BENSON V. JP MORGAN CHASE BANK*

NA, Investors, sued JPMorgan Chase Bank as a successor of bankrupt Washington Mutual, Inc. because it aided and abetted the promoters of a Ponzi scheme. The US District Court for the Northern District of California allowed proceedings against JPMorgan on the theory of aiding and abetting because evidence showed that the bank employees knew that:

- the deposited checks were for the purchase of Certificates of Deposit from the promoters of the Scheme even though they were not authorised or registered to sell securities.
  - all investor deposits were comingled in the same accounts; and
- 
- investor funds were not being used to purchase securities but were being wired to offshore accounts of the promoters.

Based on the above principles, a bank is not liable for aiding and abetting if it merely serves as a passive mechanism for illegal transactions. Thus, for example, the bank is not responsible for acting as an automated clearing house since it cannot have known of the wrongdoing. However, the bank is substantially involved in the transactions—often through personal bankers trying to accommodate wealthy clients—the bank's risk of liability increases.

## 2. SMITH V. FIRST UNION NATIONAL BANK

Involved the use of banks to perpetrate a Ponzi scheme. Bartoli, the owner of Cyprus Funds, a mutual fund company, claimed to have investments in American and Latin American securities. Bartoli opened accounts with several banks in the United States to accept investments, make remittances and payments, and launder the money through wire transfers. These banks did not file any suspicious activity reports or close the accounts used in the Scheme. As a result, investors continued investing in the fund until the SEC finally intervened, placing Cyprus Funds and related companies under receivership. Investors claimed that a Miami bank branch aided and abetted the Cyprus Funds' Ponzi scheme in the proceedings.

The Court accepted circumstantial evidence of the bank's aiding and abetting, such as (1) evidence of multiple wire transfers performed without apparent legitimate business reasons.

- wires to bank haven countries typically involved in money laundering.
  - unusual correspondence, loans, and a business trip assisting Bartoli.
  - statement by the bank's representative acknowledging a degree of malfeasance; and
- 
- failure to file the suspicious activity reports required by law. According to the Court, the bank committed financial fraud under the principle of aiding and abetting, failing to observe the "know your customer" rule - it failed to file suspicious activity reports; hence, the bank was presumed to have the knowledge of the unlawful conduct.

## 3. US V. STANFORD

Stanford Investment Bank Limited (SIBL), an offshore bank domiciled in St. John's, Antigua, West Indies, sold more than \$7.2 billion worth of Certificates of Deposits to more than 50,000 unsuspecting clients in over 100 countries. Unfortunately, Robert Stanford, Chairman of the Stanford International Bank Limited (SIBL), surrounded himself with a closely-knit group of trusted family, friends, and confidants, which allowed him to perpetuate and maintain the Ponzi scheme.

Through a series of organisational controls, Stanford and a core group of corporate officers:

- prepared CARI. Nolasco et al. false financial statements to reflect increases in investment returns.
  - structured investments into three tiers, allowing Stanford to misappropriate more than \$1.6 billion of assets classified under Tier III (through the purchase of grossly overvalued estates and unsecured personal loans); and
- 
- bribed a foreign government regulatory agency through payment of approximately \$163,000.

# WHAT IS A PYRAMID MLM SCHEME?

Many MLM operations deliberately or inadvertently end up being pyramid schemes.

The actual meaning of the Pyramid scheme is an operation in which the individual who joins the earliest makes most of the money while the people joining later stand to earn a pittance, if at all.

In the business model, which is a pyramid, the participants have to pay a hefty amount for a one-time purchase or make periodic purchases by paying considerable amounts to earn income from the performance of the downline

marketing organization. In a pyramid model, the participants who joined earlier stand to make more money than the new participants.

In a pyramid scheme, the participants are encouraged to purchase a certain amount of product at fixed (weekly/monthly) intervals, even if they already have more inventory than they can use or sell.

The participants may even have to buy products before they are eligible to be paid or get specific bonuses/commissions.

Some direct selling companies, which are pyramids, may sell quality items at competitive prices. However, some offer overpriced goods, have questionable benefits as compared to similar products available in the market.

## *Types Of Pyramids*

### 1. Without products

- One time investments

- 
- Periodic investments

### 2. With products (Token/Real value/Inflated value)

- One time purchase

- 
- Periodic purchases

## *Prominent Cases*

### *1. F.T.C. V. 2Xtreme Performance International L.L.C. (1999), JFM99CV-3679 (N.D. Maryland, December 9)*

**Case Synopsis:** At the request of the Federal Trade Commission, a U. S. District Court Judge has halted the operation of an alleged pyramid scheme and frozen the defendants' assets, pending trial. The F.T.C. alleges that consumers lost substantial sums of money to the scheme and has asked the Court to order consumer redress after a trial on the merits of the agency's charges.

**Court Ruling** - On December 9, 1999, the F.T.C. filed suit in U. S. District Court for the District of Maryland seeking a Preliminary Injunction and an asset freeze, pending trial. After a two-day preliminary injunction hearing that concluded February 25, 2000, Judge J. Frederick Motz found that based on the F.T.C.'s preliminary evidence, it is likely to succeed in proving in a full trial that the defendants deceived consumers. Accordingly, Judge Motz issued preliminary injunctions prohibiting the defendants from operating illegal pyramid schemes and making various misrepresentations pending trial. The injunctions also froze the individual and corporate assets to preserve them for consumer redress.

<https://www.ftc.gov/sites/default/files/documents/cases/1999/12/polk2extreme.htm>

## *2. F.T.C. V. Amway Corp. (1979), 93 FTC 618*

**Case Synopsis:** In *F.T.C. v. Amway* (1979), the Court ruled that Amway was not operating a Pyramid scheme because they were not charging a large sum of money upfront and noted the following provisions and controls in their operating procedures: 1) 70% or all distributor purchases were required to be resold before re-ordering (preventing inventory loading), 2) the ten customer rule which required each distributor to make retail sales to at least ten different customers each month, and 3) the company's buyback policy which offered a minimum 90% refund on all product returned to the company in saleable condition (Vander Nat and Keep 2002).

**Court Ruling:** This landmark case and ruling saved the direct selling industry from extinction, and it opened up and showcased it as a viable business model.

[https://www.ftc.gov/sites/default/files/documents/commission\\_decision\\_volumes/volume-93/ftc\\_volume\\_decision\\_93\\_january\\_-\\_june\\_1979pages\\_618-738.pdf](https://www.ftc.gov/sites/default/files/documents/commission_decision_volumes/volume-93/ftc_volume_decision_93_january_-_june_1979pages_618-738.pdf)

## *3. F.T.C. V. Equinox Int'l Corp. (1999), CV-S-99-0969-JBR-RLH (Nevada, August 3)*

**Case Synopsis-** The F.T.C. and five states (Hawaii, Maryland, Nevada, North Carolina, Pennsylvania and South Carolina) filed a joint action on August 3, 1999, alleging that the defendants operated a pyramid scheme, made false earnings claims, failed to disclose material information, and violated the F.T.C. Act as well as state securities laws, deceptive trade practices laws, false advertising laws, pyramid laws, and licensing requirements. The Court granted the F.T.C. and states' request for an ex parte TRO and imposed a freeze on the defendants' assets and a receivership over their business.

**Court Ruling:** On September 14, 1999, after a full hearing, the Court issued a modified preliminary injunction against the defendants. Pending a full trial, the order prohibits any pyramid activity or misrepresentations about earnings. In addition, it requires defendants to modify their business terms and keeps a receiver in place to monitor defendants' business and prevent the dissipation of assets.

<https://www.ftc.gov/news-events/press-releases/1999/08/ftc-six-states-sue-equinox-international-law-enforcers-ask-court>

## *4. F.T.C. V. Five-Star Auto Club Inc. (1999), Civ. No. 99-1693 (CM) (S.D.N.Y., March 8)*

**Case Synopsis:** Complaint Synopsis: Five Star promised online consumers an opportunity to lease their "dream vehicle" for free while earning between \$180 and \$80,000, based only on the payment of an annual fee and \$100 in monthly payments and recruiting others to join. The F.T.C. alleged that Five Star Auto was an illegal pyramid scheme, a deceptive trade practice. They also claimed that Five Star misrepresented the financial gain from joining the company through earnings claim representations.

**Legal Issue:** Is Five Star Auto an illegal pyramid scheme, and is Five Star liable for false and misleading claims regarding earnings potential and participants' likelihood of success in the program made by independent contractors?

**Court Ruling:** The U.S. District Court for the Southern District of New York ruled, after a trial on the merits, that Defendants, on their own and through representations by independent contractors, violated Section 5 of the F.T.C. Act by making false and material claims that consumers participating in the Five Star program could lease their



"Dream Car for Free" and earn a substantial income. The Court further ruled that Defendants were operating a pyramid scheme and therefore violated the F.T.C. Act by failing to disclose material information that because of Five Star's pyramid structure, the majority of participants had not and could not achieve the promised car or income.

[https://www.mlmllegal.com/legal-cases/FTC\\_v\\_FiveStarAutoClubInc.php](https://www.mlmllegal.com/legal-cases/FTC_v_FiveStarAutoClubInc.php)

## *5. F.T.C. V. Fortuna Alliance L.L.C. (1996), Civ. No. C96-799M (W.D. Wash., May 23)*

**Case Synopsis:** On October 30, 1997, the F.T.C. filed another contempt action against Fortuna and all individual defendants except Monique Delgado. The F.T.C. alleged that these defendants had failed to pay the additional \$2 million required for consumer redress and that they had failed to provide copies of ongoing solicitations, as required. The F.T.C. also alleged that the defendants and their lawyer had misrepresented the effect of the prior consent agreement, stating that Fortuna's prior solicitations had been legal. Hearings on the contempt action were held on Dec. 4 and 17, 1997, and defendants were ordered to comply with the final order and make additional redress payments.

**Court Ruling:** On June 5, 1998, the Court entered a final contempt order, banning defendants from promoting any marketing program until their \$2.2 million deficiency was paid. The F.T.C.'s redress administrator made partial payments to remaining consumers. Overall, 15,622 consumers from the U.S. and 70 foreign countries received approximately \$5.5 million in refunds.

<https://www.ftc.gov/public-statements/1998/05/pyramid-schemes>

## *6. FTC V. FutureNet Inc. (1998), Civ. No. 98-1113 GHK (AIIx) (C.D. Calif., February 17)*

**Case Synopsis** - Defendants claimed recruits could earn substantial incomes by joining a multi-level marketing program selling Internet access devices, but according to the Commission, defendants ran an illegal pyramid, where income was dependent not on product sales but on recruitment of paying members "downline."

**Court Ruling:** The Commission announced settlements with the two remaining defendants, Robert De Pew and David Soto. The settlements bar them from

- participating in any future pyramid schemes;
- misrepresenting sales, earnings or other material facts about products or services they sell;
- selling electric power or other energy services without meeting licensing and registration requirements; and

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• participating in any multi-level marketing program owned, operated or controlled by the other FutureNet principals. Both defendants also are required to obtain \$1 million performance bonds before engaging in future multi-level marketing. If their financial disclosure statements are shown to be false, they also will face a \$21 million judgment.

<https://www.ftc.gov/sites/default/files/documents/cases/1998/11/huffconsent.htm>

## *7. F.T.C. V. Global Assistance Network For Charities (1996), Civ. No. 96-2494 PHX RCB (D. Ariz., November 5)*

**Case Synopsis** - Defendants allegedly operated a pyramid scheme that purported to raise money for charities. Consumers paid an initial fee of \$70 and \$50 a month after that for membership. Defendants' promotional materials claimed that consumers would receive over 9 \$89,000 per month once their matrix was filled. Defendants also claimed that 10% to 100% of the earnings would be donated to charities. Defendants marketed their program on a Web site as well as through other media. In October 1996, the defendants estimated membership at 200 people.

**Court Ruling:** F.T.C. filed an action against the defendants, alleging violations of § 5 of the F.T.C. Act. The complaint alleges that defendants' representations that consumers would receive over \$89,000 per month and receive a full refund if they did not make a profit were deceptive. On the same day, the Court granted an ex parte Temporary Restraining Order, which among other things, prohibited the defendants from continuing to market G.A.N.C., froze the defendants' assets and required the defendants to provide access to their business records. On November 14, 1996, the Court issued a preliminary injunction order which extended relief similar to that contained in the TRO for the duration of the action. On April 24, 1997, the Court entered a stipulated final order, requiring defendants to pay \$4,900 in consumer redress.

<https://www.govinfo.gov/content/pkg/FR-2006-04-12/pdf/06-3395.pdf>

## *8. F.T.C. V. JewelWay International Inc. (1997), Civ. No. 97-383 TUC JMR (D. Ariz., June 24)*

**Case Synopsis**- Defendants ran an alleged pyramid scheme via a Web site and through group presentations, offering consumers the chance to earn up to \$2,250 a week plus bonuses for the purchase of expensive homes, automobiles, and vacations, by participating in a purported multi-level marketing scheme to sell fine jewellery. Consumers paid \$250 to \$2,750 or more and recruited at least two new JewelWay representatives. On June 24, 1997, the F.T.C. filed a complaint alleging the pyramid scheme was deceptive, in violation of the F.T.C. Act, and the Court entered an ex parte TRO and appointed a receiver. In addition, the defendants stipulated a preliminary injunction.

**Court Ruling:** The Court approved a stipulated permanent injunction and final order. The order requires a payment of \$5 million in redress for approximately 150,000 investors. In addition, the order prohibits all defendants and JewelWay representatives from operating any pyramid schemes and requires the defendants to establish a product re-purchasing program.

<https://www.govinfo.gov/content/pkg/FR-2008-03-26/html/E8-6059.htm>

## *9. F.T.C. V. Nia Cano (1997), Civ. No. 97-7947 IH (AJWx) (C.D. Calif., October 29)*

**Case Synopsis:** The F.T.C. alleged that defendants ran a pyramid scheme and falsely promised consumers an unsecured VISA or MasterCard and the opportunity to receive \$18,000 in monthly income. The defendants purportedly recruited new members at live sales presentations. In addition, many participants built their downline through unsolicited bulk e-mail ("spam"). F.T.C. filed a complaint against the defendants. The Court entered an ex parte TRO, ordered a freeze on the defendants' assets, and appointed a receiver to oversee the defendants' business. On November 20, 1997, the Court held a contested hearing to determine whether a Preliminary Injunction

should issue. The Court found that a Preliminary Injunction should issue and that the asset freeze and receivership should remain in place.

**Court Ruling:** The settlements provide nearly \$2 million in consumer redress, enjoin the defendants from operating pyramid or Ponzi schemes, and liquidate the businesses involved in the alleged scheme. The Court approved settlements with individuals Tkalec and Lewis on October 14, 1998, and on March 17, 1999, the Court approved the Receiver's redress plan.

[https://www.ftc.gov/sites/default/files/documents/cases/1998/06/ftc.gov-perminj.nia\\_.htm](https://www.ftc.gov/sites/default/files/documents/cases/1998/06/ftc.gov-perminj.nia_.htm)

### *10. Webster V. Omnitrition International Inc. (1996), 79 F. 3d 776, 781- 782 (9th Cir.), Cert. Denied, 117 S. Ct. 174 U.S. (No. 94-16477)*

**Court Ruling:** Multi-level marketing or vertical marketing programs are surfacing with greater frequency in marketing goods and services. Such multi-level marketing programs are often promoted through appeals to the entrepreneurial spirit and wealth creation. In Webster v. Omnitrition International, Inc., the Ninth Circuit Court of Appeals examined the differences between legal multi-level marketing programs and fraudulent pyramid schemes.

**Central Issue:** The central issue was whether Omnitrition could establish as a matter of law that its sales and marketing program was not a pyramid scheme.

<https://caselaw.findlaw.com/us-9th-circuit/1139924.html>

# DECODING THE NEW CONSUMER PROTECTION ACT, 2019

The new legislation has earned raves of late. The enactment promises to protect the consumers by regulating the actions of the sellers and by providing an effecting redressal mechanism. Following are noteworthy definitions and features of the new Consumer Protection Act from the perspective of direct selling medium:

## Definition Of Consumer

The definition includes the term customer also. If the usage of the product or service is made by a person other than the person who purchased it/paid for it, but the product/merchandise was utilized with his/her approval, that first-person can file a complaint under the Consumer Protection Act.

This definition excludes those persons who purchase the product for commercial use. However, if the person uses the product so purchased by him for earning his livelihood or for his self-employment, it would not be counted as "commercial use", and such person will be eligible to file a complaint.

Therefore, this definition will include direct sellers who utilize the product for their self-employment and for earning their livelihood. But if the direct seller is not using the product but purchasing it for resale, it would amount to 'commercial purpose', and the direct seller would not be covered under the definition of Consumer.

For instance, where a salon owner orders hair colour products from the marketing company/brand owner/manufacture. When s/he uses the same products for colouring hair of the clients, the salon owner becomes

a consumer under the Act. However, when the salon owner offers these hair products in the salon for sale to the clients, the salon owner is not a consumer because s/he must "use" the product to claim right as a consumer.

Extending this understanding to the area of direct selling, when a direct seller uses the product that he usually resells, he is a consumer and when the direct seller sells these goods to earn money, s/he is not using them and therefore he is not a consumer. In this case, the direct seller may or may not be a consumer.

What is relevant here is that the enactment has specifically included direct selling enterprises and multi-level marketing within the arena of where/whom the goods are purchased from.

## **Definition Of Direct Selling**

The Act has included the definition of direct selling to mean marketing, distribution and sale of goods or provision of services through a network of sellers, other than through a permanent retail location.

## **Definition Of The E-Commerce Entity**

An e-commerce entity means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. However, this term does not include a seller who offers his goods or services for sale on a marketplace e-commerce entity.

One must note the difference between e-commerce entity and marketplace e-commerce entity because marketplace e-commerce entity is defined as an entity that provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers. An example of such marketplace e-commerce entities would be Flipkart, Amazon, Myntra and eBay.

This definition will also cover foreign e-commerce websites such as Alibaba and amazon.com as per Rule 4(1)(a) of the E-commerce Rules, 2020.

## **Definition Of The Inventory E-Commerce Entity**

This means an e-commerce entity which owns the inventory of goods or services and sells such products or services directly to the consumers and shall include single-brand retailers and multi-channel single-brand retailers. As on date Fab India and Ritu Kumar come under this classification.

## **Definition Of A Manufacturer**

Definition of a manufacturer includes not only those who manufacture the goods or any part thereof but also those who assemble and with the ones who put their mark on the goods that are produced by another person/entity. Therefore, if a product is manufactured by one but the trademark is put by another, the other person/entity will also be captured within the definition of the manufacturer apart from the person/entity who/which made/produced that good.

## **Definition Of The Product Manufacturer**

A product manufacturer will not include a person/entity who/which is only a reseller/distributor, such as a direct seller because a person must make AND/OR sell products. However, the definition of 'trader' which includes any person who sells /distributes for sale and consists of a manufacturer will cover the entity engaged in direct selling. In simpler terms, only that person who manufactures the good is called a manufacturer or the one who produces as well as sells this definition will cover it. Merely making sales does not make a person product manufacturer under this definition.

## Definition Of The Product Seller

The product seller includes direct sellers within its definition since it points out that any person who sells or distributes (among other things) products in the course of business will be termed as a product seller.

## Definition Of A Product Service Provider

If any person provides services concerning the product concerned, he will be called a product service provider. Generally, the direct seller will not amount to a product service provider. However, when he provides any service such as advice, after-sales services, agency services (e.g. insurance agents/advisors advising customers to switch funds - equity/balanced/debt).

## Definition Of The Restrictive Trade Practices

This legislation includes "unreasonable delays" in delivery of products as restrictive trade practice provided it is done so that it leads to/ is likely to lead to an increase in the price of that good/service. For example, if Uber causes a delay in connecting a traveller to a driver without any server-based congestion issue at 7.30 a.m., just so that the rider/traveller/customer will have to pay the peak hours from 8 a.m. onwards when the taxi is booked, it would amount to a restrictive trade practice under this definition.

Similarly, if a direct seller, knowing well that the product's prices will be revised, causes a delay in delivery of the product so that more amount can be earned from the Customer, it will be captured by this definition.

Trade practice wherein a consumer is required to buy, hire or avail of any goods or, as the case may be, services as a condition precedent for buying, leasing or availing of other products or services also amount to a restrictive trade practice.

## Definition Of Unfair Contract

The definition is relevant from the perspective of direct selling agencies. An unfair contract "unfair contract" means an agreement between a manufacturer, brand owner or trader or service provider on the one hand, and a consumer on the other, having such terms which cause a significant change in the rights of such Consumer, including the following, namely:

- i. requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; or
- ii. the imposition of any penalty on the Consumer, for the breach of contract thereof which is wholly disproportionate to the loss, occurred due to such breach to the other party to the contract; or
- iii. refusal to accept early repayment of debts on payment of applicable penalty; or
- iv. entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or

- v. permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or
- vi. imposing on the Consumer any unreasonable charge, obligation or condition which puts such Consumer to a disadvantage.

Here point (iv) emphasizes that if unilateral termination without any reasonable cause is enforced, it will amount to an unfair contract. Also, the practice of asking the Customer to bear the shipping/courier charges/restocking fees in a case where expired/defective products/irrelevant products are supplied would be frowned upon as per point (vi) of the definition.

One must note that the contract in such cases is legally tenable when looked in plain sight. It is usually when one reads and analyses, the unfairness of the contract surfaces.

## Unfair Trade Practice

Unfair trade practice involves adopting deceptive or unfair mechanisms to increase or make sales. These activities include making false statements w.r.t. The information, use or characteristics of the product or service, unsubstantiated warranty or guarantee regarding its performance, false promises of replacement or repairs or about his affiliation with /about approval of the manufacturer for sale of products. This would also include false statements that disparage goods or service of another person as well as activities of hoarding of goods to increase their prices.

As per the Clause 7(6) Direct Selling Guidelines "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 to undertake or solicit such sale or offer." This clause was used in the case of Amazon Seller Services Pvt Ltd v. Modicare Ltd & Ors (order dated 31 January 2020) wherein the direct selling companies (Modicare, Amway and Oriflame) requested the court to restrain Amazon from selling their products on Amazon's platform. The Delhi High Court's division bench set the restraining order aside because Direct Selling Guidelines were merely advisory in nature and had no enforcement value. Going by that basis, the existing definition of unfair trade practice will capture inventory e-commerce entities if they sell the products of the direct selling companies without their permission/approval. However, whether this provision will capture marketplace e-commerce entities is doubtful because of the very nature of operation of these entities. This is so because the marketplace e-commerce entities provide a market for the sale of products by sellers, and the e-commerce platform itself does not claim to be the seller or manufacturer of that product. Clarity is still awaited on this front.

Furthermore, if a product is advertised/ permitted to be advertised to be sold at a bargain price which is not intended for sale at such a bargain price will also amount to unfair trade practice. On the other hand, if a lottery, contest or gift is organized which is not free but is covered in the price of the product/service, it would be termed as an unfair trade practice (UTP).

If goods do not comply with standards established by the competent authority in different respects including performance, ingredients, etc. that, in the absence of such knowledge can be injurious to the Consumer, would also be covered by UTP.

Another aspect of UTP is the sale of counterfeit goods and refusal to take back the defective products. Non-issuance of cash bills/ cash memos/receipt of sold goods also amounts to UTP.

Furthermore, refusing to take back the defective goods after-sale and refusing refund within 30 days or within the stipulated time as mentioned in cash memo would also amount to UTP. The calculation of the period of 30 days is not specified in the definition. Whether one should calculate 30 days from the date of sale or should it be from the date of receipt of the product is not specified. In our opinion, the 30 days should be calculated from the date on which the product is received by the Consumer (actually or constructively).

Disclosure of confidential information supplied by the Consumer should be avoided since it amounts to a kind of unfair trade practice too. This area will be interesting to see since service providers such as search engines (Google, Duckduckgo, bing, Baidu, etc.) use information searched and input fed on various websites to suggest advertisements and search results. Though Google may not be captured under this definition since it is free of cost, the paid sites who would end up supplying confidential information of consumers to other agencies to make sales or for data analysis will be captured by this definition of unfair trade practice. On similar lines, the hospital chains use confidential data of the Consumer to make changes in their services in different countries and cities and for research. Though that data is usually anonymized, it still is a disclosure. Whether the definition of unfair trade practice will capture them and whether courts will opt for the technical interpretation or purposive interpretation will be seen in the times to come.

## Nature Of Complaint

A complaint can arise in any of the following circumstances:

- i. an unfair contract / unfair trade practice / a restrictive trade practice has been adopted by any trader or service provider;
- ii. goods bought by him/ agreed to be acquired by him suffer from one or more defects;
- iii. the services hired /availed of / agreed to be hired /availed of by him suffer from any deficiency;
- iv. a trader or a service provider has charged for the goods or the services mentioned in the complaint, a price in excess of the price:
  - a. fixed by or under any law for the time being in force; or
  - b. displayed on the goods or any package containing such goods; or
  - c. displayed on the price list exhibited by him by or under any law for the time being in force; or
  - d. agreed between the parties;
- v. the goods, which are hazardous to life and safety when used, are being offered for sale to the public:
  - a. in contravention of standards relating to the safety of such goods as required to be complied with, by or under any law for the time being in force;
  - b. where the trader knows that the goods so offered are unsafe to the public;
- vi. the services which are hazardous or likely to be dangerous to life and safety of the public when used, are being offered by a person who provides any service and who knows it to be injurious to life and safety;
- vii. a claim for product liability action lies against the product manufacturer, product seller or product service provider, as the case may be;

## Consumer Rights

Consumer rights have been enumerated in the statute this time, and they include the following:

- i. right to be protected against the marketing of goods/products/services which are hazardous to life and property
- ii. right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services
- iii. right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices
- iv. right to be heard
- v. right to seek redressal

## Central Consumer Protection Council

CCPC will be established as an advisory council for rendering advice on promotion and protection of the consumers' rights under the enactment. Similarly, every state will have a state-level protection council who will serve the same purpose within the state, and the work will be further decentralized through district consumer protection councils.

# Regulation Of E-Commerce

- i. Through the CPA E-Commerce Rules 2020, an attempt has been made to regulate e-commerce platforms from the perspective of consumer protection.
- ii. These rules apply to a) all goods and services bought or sold over the digital or electronic network including digital products; (b) all models of e-commerce, including marketplace and inventory models of e-commerce; and (c) all e-commerce retail, including multi-channel single-brand retailers and single-brand retailers in single or multiple formats.
- iii. These rules apply to all electronic retailers who are registered in India or abroad but are offering goods and services to Indian consumers. This is a great move to clear the air around extraterritoriality of the definition of e-commerce platform and the extent of applicability of these Rules.
- iv. E-commerce participants will have to display the total price of goods and services offered for sale along with a break-up of other charges. The amount cannot exceed the maximum retail price as was earlier decided by NCDRC in the case of M/S Cargo Tarpaulin Industries vs Sri Mallikarjun B. Kori (5 July 2007).
- v. They are also required to mention the 'expiry date' of goods, 'country of origin' of goods/services, details about return, refund, exchange, warranty and guarantee, delivery and shipment, etc. This is necessary for enabling the Consumer to make an informed decision for deciding on the purchase of goods.
- vi. An interesting provision that has been included in the Rules is that the e-platform cannot charge a cancellation fee unless sellers are ready to pay similar charges in case cancellation of orders are made from their side.
- vii. The e-retailers are now required to bear the burden of accountability towards payment gateways too. The platform will have to provide information w.r.t available payment methods, the security of those payment methods, any fees or charges payable by users, including contact information, etc. to the consumers.
- viii. These entities will have to display prominently the details about the 'sellers' offering goods and services, including the name of their business, whether registered or not. They must also display sellers' geographic address, customer care number, and any rating/feedback about such seller too.
- ix. Grievance officers have to be appointed to address complaints filed by the consumers and his name, contact details, and designation must be available on the platform.
- x. The e-retailer must generate a ticket number for each complaint lodged, through which the Consumer can track the status of the complaint
- xi. Sections 49(2) & 59(2) of the enactment empower the Commissions at state & national level to consider terms of the contract between the Consumer and the service provider/product manufacturer that are unfair to any consumer, to be ineffective and void. This is a useful tool in the hands of the Commission.

## Redressal Mechanism

- i. Pecuniary jurisdiction: The original pecuniary jurisdiction of the consumer commissions has been revised wherein the District Commission can handle cases worth up to Rs. 1 crore, the State Commission can handle cases from Rs. 1 crore to Rs. 10 crores and the National Consumer Disputes Redressal Commission will only deal with cases that are valued more than Rs. 10 crores. Appeal from NCDRC will lie to the Supreme Court.
- ii. Territorial Jurisdiction: A consumer or an association can now institute a complaint before the competent authority within the jurisdiction of the Commission where the complainant resides or personally works for gain. This option is available apart from the usual choice of filing complaint where the opposite party resides, works for gain or has a branch office.
- iii. Limitation period: the period of limitation for filing a complaint is still two years, and there is a provision for condonation of delay under Section 69.
- iv. Mediation as a means of dispute resolution: Subject to the satisfaction of the competent Commission, the matter can be referred to mediation for a peaceful resolution between the parties. However, apart from the subjective satisfaction of the Commission, the consent of the parties in writing will also be required to ensure free will. The mediation is performed through consumer mediation cell, which would be more economical and accessible to a common man and the companies. Usually, intervention is perceived as an expensive but peaceful mechanism opted only by those who have deep pockets. State organized mediation cell is expected to be cheaper and is a welcome move for all stakeholders.
- v. Duration: The period contemplated for redressal of complaint under this new Act is three months from the date of notice to opposite party.



- vi. Deposit: Opposite Party must now deposit 50% of the amount ordered by the District Commission before preferring an appeal to the State Consumer Disputes Redressal Commission in comparison to the earlier ceiling of maximum Rs. 25,000/-.
- vii. Fund for unidentified injured parties: If found guilty, the Commission has the power to order a sum to be paid in respect of unidentified consumers where harm may have been caused to many, but they cannot be identified conveniently. This is a massive step in the direction of effective protection of consumers and prevents future litigations too.

## Compliance By Companies

- i. Direct selling platforms cannot charge a cancellation fee.
- ii. Consumer has the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services (S.2(9))
- iii. Consumer must be assured, wherever possible, access to a variety of goods, products or services at competitive prices
- iv. Direct seller, if using an e-commerce platform, must ensure that the electronic retailer mentions the total price of goods and services offered for sale along with a break-up of other charges on the platform used for displaying/retailing.
- v. Since e-platforms are used to sell direct selling companies' products too, one must note that e-commerce entities are now required to display prominently the details about the 'sellers' who are offering goods and services, including the name of their business, whether registered or not. They must also display sellers' geographic address, customer care number and any rating/feedback about such seller.
- vi. Rule 6 of E-commerce Rules, 2020 applies to all sellers who sell their products on marketplace e-commerce platforms. This will include direct sellers too.
- vii. Rule 6(3) points out that the sellers on such platforms cannot refuse to take back the goods if they are defective, spurious, or where the goods do not carry the features as described/advertised by the seller or are delivered later than the stipulated time ( except due to extraneous circumstances such as lockdown) etc.
- viii. Grievance officers must be appointed to address complaints of the consumers.
- ix. Direct sellers should not indulge in unfair trade practice. They should be informed that providing inaccurate information about the price, description, quality, quantity, etc., would amount to unfair trade practice and should be avoided at all times.
- x. Non-issuance of cash bills/ cash memos/receipt of sold goods amounts to Unfair Trade Practice too.
- xi. Refusing to take back the defective goods after-sale and refusing refund within 30 days would also amount to unfair trade practice. The Rules do not explain as to from what date the 30 days period shall commence.
- xii. Disclosure of confidential information supplied by the Consumer should be avoided since it amounts to a kind of unfair trade practice.
- xiii. Section 84, 85 and 86 are extremely relevant for any direct selling company. Section 84 of the Act lays down in what conditions the product manufacturer will be responsible. One must note that the manufacturer will have strict liability under this section, i.e. intent does not matter. Section 85 points out the conditions in which the service provider will be responsible, and Section 86 establishes the grounds on which product seller will be held accountable.
- xiv. The application of Section 86(d) covers foreign companies/entities whose products are sold by product sellers in India. This is to arrest the activities of those entities that can't be touched by the domestic laws of India.

## Protection To DSA

- i. Going by the definition of "unfair trade practice", any person who falsely claims to be associated with the manufacturer or claims that he is selling under the approval of the manufacturer, it would amount to an unfair trade practice and would be punishable with fine and imprisonment. Drawing from this, if a rogue direct seller/suspended or an unauthorized direct seller attempts, among other persons, to sell a product belonging to the manufacturer who has neither approved nor sponsored the seller to sell or distribute the product nor is that seller affiliated to the DSA, it will amount to unfair trade practice.
- ii. Defences against product liability are available to the product seller in certain cases as provided under Section 87 wherein in timely information, adequate instructions and warnings can save the seller from being held liable for the harm caused to the other party.
- iii. Central government has been empowered to take measures to prevent unfair trade practices in e-commerce & direct selling under Section 94. This is a welcome step for promotion & sustenance of genuine direct selling companies.

## Regulator - Central Consumer Protection Authority

This authority will regulate matters relating to the violation of consumers' rights as provided in the Act, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of the public. It will also promote, protect and enforce the rights of consumers as a class.

Similar to the formation of Competition Commission of India, this regulator will have an investigation wing wherein Director-General will conduct inquiries and investigations when directed by the Authority.

Where the violations affect the consumers as a class, the complaint can be made to the Central Authority or his delegates to initiate the inquiry. If found in violation, the CCPA has the power to:

- i. recall goods or order withdrawal of services which are dangerous, hazardous or unsafe;
- ii. to reimburse prices of goods/services to purchasers of such goods or services;
- iii. order discontinuation of unfair practices that are prejudicial to consumers' interest;
- iv. to discontinue misleading advertisements or order modification;
- v. impose a penalty in this respect;
- vi. ban the endorser from endorsements of any product for a year extending up to 3 years in cases of subsequent violations.

Since its jurisdiction closely overlaps with the Competition Commission of India apart from sector-specific regulators, it is imperative that the provision such as Section 19(2) exists which talks about cooperation to be extended by the CCPA towards other authorities.

## Other Features

Actors who associate themselves with endorsements for goods/products that are misleading in nature are in for trouble. Not only there are provisions for imposition of a penalty when they appear in misleading advertisements, but also, they can be banned from endorsements of any product for a year extending up to 3 years in cases of subsequent violations. The factors of the frequency of advertisements, target audience and gross revenue generated will also be taken into consideration. The only defence available to him is if he had performed due diligence on the good/service that he was endorsing.

## Open Questions Under The Act

The Act promises a lot and with proper enforcement, is capable of protecting consumer rights more effectively than under the earlier regime. However, much remains to be said in the times that this enactment is being enforced. Ideally, the consumer rights are protected since they do not possess bargaining power as against the established companies who indulge in the manufacture, distribution and sale of goods. However, with the increasing dependence on electronic platforms for small start-ups, household and cottage businesses, the expenses to meet the rules would go higher and in some cases, uneconomical. For example, a person selling homemade pickles online via his/her online retail platform will now have to show dedicated grievance redressal mechanism, including grievance officer, customer care operation, etc. among other things.

Another challenge that is likely to arise under the new law is the question of extraterritoriality. If a different platform does not comply with the terms and conditions laid down by the current law, what actions can the regulatory authority take to effectuate compliance? If found in violation, how can the administration impose a penalty, would be a beaming question. One cannot apply domestic law on an entity registered in another sovereign state without the coordination and a treaty with that country in this respect, which undoubtedly is a difficult task.

The law has indeed bridged consumer protection in a number of ways and is a beacon of hope for consumers who have been at the receiving end of the deal since last few decades. India, a country that witnesses high consumerism, is moving in the right direction to ensure that its customers continue to enjoy services of the sellers and businesses keep blooming with this surge of consumerism.

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## Rule DS 2019 –

The draft suggested to the Ministry of Consumer Affairs in 2019 by Team Strategy India.

Care has been taken by our team to ensure that all the loopholes in the guidelines are fixed and do not anymore have elements which are open to interpretation.

### Chapter I - General

## *1.1 Short Title And Commencement*

1.1.1 These Rules may be called the Direct Selling Rules, 2020

1.1.2 It shall come into force with immediate effect from the date of its notification in the official Gazette.

## *1.2 Definitions*

In these Rules unless the context otherwise requires:-

**"Act"** means the Consumer Protection Act, 2019 (Central Act)

**"Consumer"** shall have the same meaning as provided under the Consumer Protection Act, 2019

**"Person"** shall have the same meaning as provided under the Consumer Protection Act, 2019

**"Prospect and/or Prospective"** means a person to whom an offer or a proposal is made by the Direct Seller to join a Direct Selling opportunity or purchase a product/service

**"Goods"** means every kind of movable property and includes "food" as defined in clause (j) of sub-section (1) of section 3 of the Food Safety and Standards Act, 2006 and "Service" means service as defined in the Consumer Protection Act, 2019 (Central Act)

**"Price"** is the money consideration for a sale/purchase of goods.

**"Direct selling"** means marketing, distribution, and sale of goods or provision of services through a network of sellers, other than through a permanent retail location/s.

**"Direct Selling Entity"** means a body corporate including an One person company, limited liability partnership, Private limited, Limited company engaged in the business of Direct Selling.

**"Direct Seller"** is a person above the age of 18 years on the date of enrolment with eligibility to enter into a business contract who enrolls with the direct selling entity through a legally enforceable contract to undertake direct selling business on principal to principal basis for purchasing the goods at a discount for self-consumption and/or an

opportunity to earn income by retailing goods and/or by helping others join the direct selling business to earn money by doing the same.

A direct seller may be a consumer/user or a customer/purchaser/buyer or a reseller or all of the three.

Explanation: - That a 'contract' includes e-contracts or digital contracts and the same shall be governed as per the provisions of the Information Technology Act, 2000 as amended from time to time.

**"Marketing organization"** is the way of representing the tiered nature of persons in a graphical form to help them recognize their relative positions to the direct selling entity or the persons above or below them.

This arrangement is also known as the Tree structure or Network Structure.

**"Saleable"** with respect to goods or services, shall mean, unopened, unused, of merchantable quality and marketable, which has not expired, and which is not discontinued or goods or services of special promotion/s or the ones offered free or at token price.

**"Satisfaction guarantee"** is the promise to the customer/consumer (includes persons associated with the company as a part of the marketing organization or persons not the part of the marketing organization) to empower him/her to return the good/s if he/she does not get the results as per the expectations or as promised/claimed by the company.

**"Buy back/Money back guarantee"** is the promise to the persons associated with the company/customers/consumers to empower them to return the goods if they are unable to sell the purchased product/s to the consumer/s alternatively, unable to use them for selfconsumption.

**"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 as per the terms stated in these Rules and ending with the 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.

**"Pyramid Scheme"** means a multi layered network of persons to a scheme formed by persons enrolling one or more persons in order to receive any benefit, directly or indirectly, as a result of enrolment, action or performance of additional persons to the scheme. The persons enrolling further persons(s) occupy higher position and the enrolled persons(s) lower position, thus, with successive enrolments, they form multi-layered network of persons known as a marketing organization:

Provided that the above definition of a "Pyramid Scheme" shall not apply to a marketing organization of persons formed by a Direct Selling Entity, which consists of persons enrolling one or more persons in order to receive any benefit, directly or indirectly, where the benefit is only a result of sale of goods or services by persons and the business model complies with all of the following:-

- It has no provision that a person will receive remuneration or incentives for the mere act of recruitment or enrolment of new participants;
  - It does not mandatorily require a participant to purchase goods or services for an amount that exceeds for which such goods or services can be expected to be consumed by, or sold or resold to consumers and/or for a quantity that exceeds that for which such goods or services can be expected to be consumed by, or sold or resold to consumers;
  - It does not require a person to mandatorily pay any entry or registration fee, cost of sales promotion equipment and materials or other fees relating to participation;
  - It provides a participant with a contract describing the "material terms" of participation;
- 
- It allows or provides for a buy-back or repurchase policy for saleable goods or services sold to the person within 30 days of delivery of the goods to the person at the request of the person at the at reasonable terms;

Explanation :- For the purposes of this proviso, the term "material terms" shall mean buy- back or repurchase policy, resignation policy, Code of conduct, cooling-off period, warranty and refund policy.

**"Compensation plan"** is a technique to calculate the commissions/incentives and/or the rewards to be given to/among person/s from the turnover of sales of goods or services by them personally and/or their persons in their marketing organization.

This system, for every Direct Selling entity, shall

- Have no provision that a person will receive any remuneration from the act of recruitment of new persons
- Ensure that the persons shall receive remuneration derived from the sale of goods or services.
- Clearly disclose the method of calculation of compensation with at least two relevant illustrations per income

- 
- Publicly display the turnover of the company if all/any income is linked to the turnover of the company;

**"Regulating Authority"** means such authority, entity or institution having the relevant jurisdiction under these Rules as designated or specified by the Central Government.

**"State"** includes Union Territories also.

**"Rules"** means the Direct Selling Rules, 2020.

Words and expressions used in the Rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

### Chapter II - Conduct Of Direct Selling Business

Any trading, marketing, distribution or sale of goods and services not adhering to the Conditions and Restrictions under this Chapter would be dealt accordingly both under these Rules as well as under the relevant laws.

## *2.1 Conditions For Any Entity Intending To Set Up Direct Selling Business*

2.1.1 Any entity intending to carry out direct selling business in India, shall comply with the following set of conditions for the conduct of direct selling business:-

- It shall be a registered legal entity under the extant laws of India
- The promoter or key management personnel should not have been convicted of any criminal offence punishable with imprisonment of one or more years in preceding five years by any Court of competent jurisdiction
- 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
- It shall be registered with the Goods and Services Tax Authority with a unique Good and Services Tax Identification Number
- It shall maintain proper and updated website with all relevant details of the entity, contact information including postal/correspondence address and address of the current head office and offices in various states email address and contact numbers, brief profile of its top management personnel in India, products, product information & price, compensation plan with illustrations explaining all types of potential incomes and rewards, terms of contract with the direct sellers and complaint redressal mechanism. The website should have a system for registering complaints and should ensure that grievances are addressed within forty-five days of making such complaints
- It shall have one or more fully functional permanent place(s) of business in India and adequate arrangement either digitally as stated in sub-clause (5) above or in physical location to satisfy the consumers, and direct sellers to acquaint themselves with price of products, return or replacement of products, efficient delivery of goods and services and post-sale redressal of grievances
- It shall provide accurate and complete information to prospects and existing direct sellers concerning the compensation plan and related rights and obligations
- It shall clearly and transparently disclose(in public domain- without the need for passwords or any type of verification) the turnover (in real time) if any/all of the income/reward/incentive committed is/are linked directly or indirectly to the turnover
- The payment of commissions/incentives should be made without fail and delay to the persons associated as per the commitments of the compensation plan followed by the company

- Product Claims - all the claims made by the company (on the official website and literature, including brochures, packaging, and labels) for the products should be supported by evidence in the form of certifications from competent authorities (e.g.laboratories)
  - It shall notify and provide a full refund or buy-back guarantee to every person on reasonable commercial terms which can be exercised within a period of thirty days, from the date of the delivery of the goods or services to the person  
Explanation:- For the purposes of this proviso, the term "Reasonable commercial terms" means:  
Not more than 15% may be deducted from the amount as an administration fee, restocking fee, or by any other name which was paid by the person to the company for purchasing the good/s which were returned.
  - It shall notify and provide a full refund or satisfaction guarantee to every person on reasonable commercial terms which can be exercised within a period of thirty days in case of services and fifteen days, from the delivery to the person  
Explanation:- For the purposes of this proviso, the term "Reasonable commercial terms" means:  
In case of Goods: Not more than 15% may be deducted from the amount as an administration fee, restocking fee, or by any other name which was paid by the person to the company for purchasing the good/s which were returned.  
In case of Services: Not more than 5% may be deducted from the amount as an administration fee, or by any other name which was paid by the person to the company for purchasing the service/s which were returned.
  - It shall notify and provide a full refund or satisfaction guarantee to every person on reasonable commercial terms which can be exercised within a period of thirty days in case of services and fifteen days, from the delivery to the person  
Explanation:- For the purposes of this proviso, the term "Reasonable commercial terms" means:  
In case of Goods: Not more than 15% may be deducted from the amount as an administration fee, restocking fee, or by any other name which was paid by the person to the company for purchasing the good/s which were returned.  
In case of Services: Not more than 5% may be deducted from the amount as an administration fee, or by any other name which was paid by the person to the company for purchasing the service/s which were returned.
  - It shall provide an option of undergoing an orientation session in person or through electronic / digital means to all prospective persons providing fair and accurate information on all aspects of the direct selling model followed by the entity, including but not limited to the compensation plan and illustrations explaining all the income types in the compensation plan for newly recruited persons  
Explanation: The 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 electronic or digital means.
  - The entity should not provide commitments of returns on investment/s (on purchase of good/s or without the purchase of good/s) in the form of interest, salary, loan, help, donation, market development fees and support fund to/through the persons , to any person/s.
  - The entity should not generate or pay-out or commit commissions/incentives against part payment or advance received against the sale or future commitment to sell any good/s or service/s.
  - The company should not deduct any charges except Tax deducted at source from payouts of the persons.
  - No commissions/incentives and/or rewards should be generated/paid out on purchase/retail marketing/promotional material/Events including Brochures. Posters, Audio/Video media and Event passes/tickets
- 
- Calculations for all the illustrations used for explaining the compensation plan (online and offline) should be done and shown in Indian rupees only

### *3.1 Conditions For Direct Selling Entity Carrying Out Business*

3.1.1 Every Direct Selling entity which is carrying out the direct selling business in India, shall comply with the following conditions: -

- It shall issue (in form of a hardcopy) proper identification document(s) to its persons in such a format that is easily legible and is clearly indicative of the association of the person with the Entity. The identification document should consist Full Name of the person , Address of the person, Contact number, ID number, Tenure of validity of the identification document , Address of the head office of the entity and Contact number of the entity where their identity may be verified (if required).
- It shall maintain proper records either manual or electronic of their business dealings, with complete details of their goods, services, terms of contract, price, compensation plan, details of the direct sellers, including but not limited to enrolment, termination, resignation, active status, marketing organization and incomes.

- It shall maintain a Record of Direct Sellers in a machine readable and printable format, wherein relevant details of each enrolled Direct Seller shall be updated and maintained; these details shall include and not be limited to verified proof of address, proof of identity(photograph and signature) and wherever applicable the Permanent Account Number.

Explanation 1: The Direct Selling Entity should collate from the Direct Sellers any photographic 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, Student ID Card issued by a State University or any other identity document issued by the State or Central Government which can be verified. Explanation 2: The requirement of Permanent Account Number shall be as per the provisions of the Income Tax Act, 1961 (Central Act 43 of 1961)

- It shall provide to all direct sellers their periodic account or information in reference to their sales, purchases, and their marketing organization along with the details of 8 earnings, commissions, bonus and other relevant data as applicable, in electronic form and/or in accordance with the terms of the agreement with the direct sellers.
- It shall provide training, promotional or demonstration materials, catalogues and brochures to the direct sellers at reasonable cost.
- Subject to compliance of applicable laws and policies, it shall be entitled to sell the products and or services digitally and or from its authorised physical location directly to the Consumers.
- All transactions including the pay-outs of compensation to the direct sellers in the country should be in Indian Rupees by platforms/systems approved by the Government of India.

- 
- It shall not generate/store/distribute/promote/use any form of currency/virtual currency.

## *4.1 Restrictions On The Conduct Of Direct Selling Entity*

4.1.1 A Direct Selling Entity shall have the following restrictions on their conduct, wherein they shall not: -

- Use misleading, deceptive or unfair recruiting practices, including misrepresentation of actual or potential sales or earnings, in their interaction with prospect or existing direct sellers
- Make any representation to a prospective direct seller that cannot be verified or make any promise that cannot be fulfilled
- Present any advantages of direct selling to any prospect in a false or deceptive manner
- Make or cause, or permit to be made, any representation relating to its direct selling model, including compensation plan 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
- Make or cause, or permit to be made, any representation relating to its direct selling model, including compensation plan 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
- Use or cause or permit to be used, fraud, coercion, harassment, or unconscionable or unlawful means in promoting its direct selling practice, including the compensation plan and agreement between itself and the direct seller, or to the goods or services being sold by itself or by the direct seller
- Require its direct sellers to provide any benefit or buy or acquire any goods or services, including entry fees and renewal fees in order to participate, other than the purchase of sales demonstration equipment or marketing materials at a resale and for which no commission, bonus or price or any other advantage will be given to any person
- Provide any remuneration to any Direct Seller for the introduction or recruitment of one or more persons as direct sellers
- Require the direct sellers to pay any money by way of minimum monthly/quarterly/yearly subscription/product purchase or renewal charges to earn commissions on sales by self or the persons in their marketing organization;
- Give commissions, bonus or incentives on sale of goods/service for which they are not the owner, holder, franchisee/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 of other brands.
- Deal with following goods or services:

- 
- Deposits / Investments / Offered for free along with other goods / services - in / for / in the form of - Stocks, Shares, initial Public offering, Initial coin offering, Debentures, Regulated/Unregulated Currencies including Virtual currencies including but not limited to Cryptocurrencies, bullion markets, Preferential shares, Forex Trading, Plantations, Farming, Infrastructure projects, Resorts, Trading in commodities, Birds (Poultry, Emu, Quail, etc.), Livestock (Rabbit, Goat, Sheep, Cow, Buffalo, etc.), Media, Car Lease and Real Estate.

- Crowdfunding ventures
  - Discount coupons / Vouchers / Currency ( including virtual)
  - Betting / Gambling activities
  - Quiz portals
  - Recharge portals
  - Peer to Peer transactions in any names as Support, Gift, Help, Assistance, Donations,etc.
  - Bid coupons and Vouchers
  - Websites / Web space / Bidding portals
  - Buy in to get paid - to click, to give surveys, to watch advertisements, to receive SMS and to receive emails and to invest in an advertising medium
  - Products used for intoxication
  - Any product, which exceeds its validity period/use by date/expiry date.
  - Any banned products
- 
- Any controlled substances
- Products to be promoted under specific conditions:
    - Gift Vouchers/Coupons - commissions/incentives to be paid out only after full redemption of the vouchers/coupons.
    - Discount vouchers/coupons / promissory notes - commissions/incentives to be paid out only for the purchase of goods bought using the same/ full utilization.
    - Insurance - promoted only if the direct selling entity is allowed by the IRDAI or if the direct sellers selling insurance are licensed as per the norms of the IRDAI.
    - Online products including software applications/products, e-learning, websites, video emails/mails, etc. should have a money back guarantee of a minimum of 60 days after activation by the customer. In case of non-activation of an online good/service for more than 30 days, the sale would be considered invalid, after which the customer would have full right to request the money back. Activation of these type of goods/services should include confirmation via email registered to the customer and a message to the registered mobile number of the customer.
- 
- Holiday/Timeshares coupons/vouchers/packages - commissions/incentives to be paid out to the seller or the marketing organization after successful full redemption/utilization of the same by the consumer or after the completion of the tenure of the membership, etc.

## *5.1 Conditions For Direct Selling Contract*

5.1.1 Every Direct Selling entity shall execute a contract, whether directly or indirectly, with Direct Sellers before their enrolment and every such contract would:

- Be in a manner consistent with Section 10 of the Indian Contract Act, 1872 (Central Act 9 of 1872)
- Include e-contracts or digital contracts and the same shall be governed as per the provisions of the Information Technology Act, 2000. (Central Act 21 of 2000)

- 
- Grant the parties in addition to their rights and obligations emanating from the contract under these Rules or any other law in force, such rights and obligations that are coextensive with rights and obligations of the parties under the Indian Contract Act, 1872 (Central Act 9 of 1872)

5.1.2 All contracts between the Direct Selling Entity and the Direct Sellers shall be made in writing, describing the material terms of participation and shall:

- 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 or consumed within a reasonable period of time
- Allow or provide the direct seller a 30 days cooling-off period in which to cancel participation and receive a refund for goods or services purchased
- Allow for the termination of contract, with reasonable notice of at least 30 days from Direct Sellers subject to the provisions of Indian Contract Act and fulfilment of obligation by both the parties as on the date of termination



- Allow Direct Selling Entity to terminate the contract where a direct seller is found to be violating any condition or its obligations stated in this Rule and or any terms & conditions of the contract.

- 
- Allow or provide for a buy-back or repurchase policy for currently saleable goods or services sold to the direct seller at the said direct seller's request on reasonable terms(as explained in point 9).

### Chapter III - Conduct And Obligations Of Direct Sellers

## *6.1 Obligations Of A Direct Seller*

6.1.1 Every Direct Seller engaged in Direct Selling shall have the following the Obligations:-

- That they shall carry their identity card as issued by the Direct Selling Entity and not visit the premises of the prospect or the consumer without their prior appointment or approval
- That they shall 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
- That they shall offer a prospect or customer accurate and complete explanations and demonstrations of goods and services, prices, credit terms, terms of payment, return policies, terms of guarantee, after-sales service
- That at the time of sale the following information (on request of the prospect or the customer) shall be provided to the prospect or customers, namely:

- 
- Name, address, registration number or enrolment number with Direct Selling Entity, identity proof and telephone number of the direct seller and details of direct selling entity
  - A description of the goods or services to be supplied
  - Explain to the consumer about the goods return policy of the company in the details before the transaction
  - The Order date, the total amount to be paid by the customer
  - Time and place for inspection of the sample (if available) and estimated time for delivery of goods
  - Information about their rights to cancel the order and / or to return the goods in saleable condition and avail refund on the consideration paid

- 
- Details regarding the complaint redressal mechanism
  - That they shall keep proper book of accounts stating the details of the goods, price, tax and the quantity and such other details in respect of the goods sold by them, in such form as per applicable law or as may be prescribed under law.

## *7.1 Restrictions On The Conduct Of Direct Sellers*

7.1.1 No Direct Seller shall during the course of their engagement by the Direct Selling Entity or in their interaction with a prospect or customer ever:

Use misleading, deceptive and /or unfair trade practices

- 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 prospect, in their interaction with prospective direct sellers
- Make any factual representation to a prospect that cannot be verified or make any promise that cannot be fulfilled
- Present any advantages of direct selling to any prospect in a false and/or a deceptive manner
- Knowingly make, omit, engage, or cause, or permit to be made, any representation relating to the direct selling operation, including compensation plan 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 or misleading
- Require or encourage direct sellers recruited by the first mentioned direct seller to purchase goods and/or services in unreasonably large amounts
- Provide any literature and/or training material not restricted to collateral issued by the direct selling entity, to a prospect or existing direct sellers both within and outside the parent direct selling entity, which has not been approved by the parent direct selling entity
- Mandatorily require or encourage prospective or existing direct sellers to purchase any literature or training materials or sales demonstration equipment and if at all required such purchase shall not be at a cost exceeding the cost of materials.

- Make any false, misleading statement and or otherwise disparage directly or indirectly any other Direct Selling Entity, its compensation plan, and or its products.

- 
- Shall not have more than one enrolment with a particular Direct Selling Entity.

#### Chapter IV - Protection Of Consumer Interests

### *8.1 Conduct Of The Direct Selling Entity And The Direct Sellers*

- Every Direct Seller and Direct Selling Entity shall be guided by the provisions of the Consumer Protection Act, 2019 (Central Act) whilst safeguarding the interests of the consumers
- Every Direct Selling Entity shall constitute a Grievance Redressal Committee whose composition and nature of responsibilities shall include but not limited to:

- 
- The Grievance Redressal Committee shall consist of at least three officers (employees) of the Direct Selling entity;
  - The Grievance Redressal Committee shall address complaints and inform complainants of any action taken;
  - 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;
  - All such grievances will be resolved directly by the direct selling entity;

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

- Direct Sellers and Direct Selling Entity shall take appropriate steps to ensure the protection of all personal information provided by a customer
- Any person who displays or sells or offers for sale, including a retailer/shop, ecommerce platform or marketplace, of 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.

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- The e-commerce platform or marketplace, or shops/retailer and the sellers/re-sellers on such platform or marketplace shall ensure that the prior written consent from Direct Selling Entity is obtained, and that no sale or offer is made, or no product or service is displayed through/on such platform or marketplace in the absence of such consent.  
Explanation:- The prior written consent that is granted by a Direct Selling Entity would not create an unalterable/irrevocable right and could be revoked by the Direct Selling Entity granting such consent, as and when required.

### *9.1 Relationship Between Direct Selling Entity And Direct Seller*

The relationship between Direct Selling entity and Direct Seller shall be determined as per the contract between the parties wherein for rights and obligations that are expressly provided under these Rules for the Direct Selling entity and Direct Seller, the same shall prevail whereas all other rights and obligations shall be determined as per the express terms of the 14 contract unless expressly provided otherwise in the contract between a Direct Selling entity and Direct Seller;

The Direct Selling entity will be liable for grievances arising out of sale of products / services as per the Act;

### *10.1 Prohibition Of Pyramid Schemes*

10.1.1 No person or entity shall promote a Pyramid Scheme, as defined in Rule 1.2 (12) of these Rules or enrol any person to such scheme or participate in such arrangement in any manner whatsoever in the garb of doing Direct Selling business.

## *11.1 Appointment Of Regulating Authority*

11.1.1 The Central Government may by notification appoint or assign a Regulating Authority for the purposes of the enforcement of these Rules as per the provisions of the Act.

## *11.2 Powers Of Regulating Authority*

11.2.1 The Regulating Authority shall have the power to ensure that upon any contravention of these Rules, appropriate action is taken and that the said contravention is remedied.

11.2.2 An offence under these Rules shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to ten lakh rupees and for every subsequent offence, be punished with imprisonment for a term which may extend to five years and with fine which may extend to fifty lakh rupees.

Explanation: The action to be taken by the Regulating Authority could be either penal or pecuniary or both, and all such action would be in consonance with the provisions of the Act without being in excess to that envisaged under the Act.

## *11.3 Registration Of Direct Selling Entity*

11.3.1 Every Direct Selling Entity shall register, within 90 days from the notification of these Rules and in case of a new Direct Selling entity within 90 days of the starting of Direct Selling business, with The Regulating Authority or such body as specified by the Regulating Authority with the following:

- A copy of the Memorandum and Articles of Association or other constituent documents under which the Direct Selling Entity is established, duly verified by an oath or declaration made by a director of the Direct Selling Entity
  - A copy of the latest audited balance sheet and profit and loss account, if applicable
  - A copy of Registration under GST Act
- 
- A detailed statement on
    - The name, place and date of the establishment of the Direct Selling Entity
    - The names, places and dates of the establishment of its related corporations
    - The principal business and field of operations of the Direct Selling Entity and of its related corporations
    - The names and addresses of the directors and of the substantial shareholders of the Direct Selling Entity and its related corporations
    - The current compensation plan or the proposed compensation plan of the Direct Selling Entity in respect of that business
    - Undertaking that it is in compliance with the requirements under these Rules for a Direct Selling Entity
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- Such other information or documents as may be specified by the Regulating Authority.

## *11.4 Grant Of Registration*

11.4.1 The Regulating authority shall provide a registration certificate within 30 days on receipt of the registration application supported with documents as mentioned in Clause 11.3.1.

11.4.2 At any time after receiving an application and before it is determined, The Regulating authority may, by written notice, require the applicant to provide additional information or documents.

11.4.3 In case the Regulating Authority does not provide Registration within 30 days of submission of application or submission of response to written notice under Clause 11.4.2, whichever is later, the registration shall be deemed to have been granted.

## *11.5 Power Of Regulating Authority*

11.5.1 The Enforcement Officer, as appointed by the Regulating Authority, not below the rank of Gazetted Officer may with a view to securing compliance with this Rule; inspect or cause to be inspected the premises of Direct Selling entity, in case of violation of this Rules require any person to give any information in his possession about the goods / services of the Direct Selling entity; enter and search, with such aid or assistance as may be necessary

The Enforcement Officer shall submit the enquiry report before the Regulating Authority.

The provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) relating to search shall so far as may be, apply to searches under this order.

## *11.6 Appeal*

11.6.1 Any person aggrieved by any order passed by the Regulating Authority may within 30 days from the date of receipt by him/her, of such order appeal against such order, to the appellate authority

### Chapter VI - Miscellaneous

## *12.1 These Rules Will Prevail Over Other Laws*

12.1.1 Unless otherwise specifically stated in this Rule, all the actions of Direct Selling Entities and Direct Sellers shall be governed by this Rule notwithstanding anything contrary stated under any other laws.

For any queries: [info@strategyindia.com](mailto:info@strategyindia.com)

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# NEGATIVE / SPECIAL PRODUCT LIST – EYE OPENER

## **Negative / Special Product List – Eye Opener**

Direct selling industry is growing exponentially in India and across the world. The direct selling companies are engaged in a business model wherein they market and sell products manufactured by them or another company to the customers via direct sellers.

While most products and services may be sold by direct selling companies, there are a few items that they should not be “selling” or should sell while adhering to a few conditions specified.

Strategy India, a **consultancy specializing in direct selling**, has developed negative product list that contains items that should not be sold by direct selling companies and a select product list with things that direct selling companies can promote conditionally.

## What Prompted the Development of Negative Product List?

Strategy India ardently studies the direct selling industry in India and evaluates 20 to 25 new MLM operations every week. Their analysis has shed light on a few interesting facts. Many companies engage in scams under the façade of direct selling.

These companies are either pyramid schemes whose business models fail sustainability checks or entities that have misleading information on their websites.

A **comprehensive list of MLM scam alerts** can be found on the official website of Strategy India.

The team of Strategy India developed the negative products list in 2013 after thorough analysis. The research conducted provides a few fascinating insights into the characteristics of the negative products.

- Items on the negative products list are used by MLM operations to cheat the common man.
  - These products have no intrinsic value. They are of no use to the customers and are meant to confuse the common man, media, law enforcement agencies and the court by masquerading the pyramid scheme as a direct selling business.
- 
- The MLM entities promoting the negative products try to evade the law by disguising themselves as Sustainable Direct Selling operations and Deploying MLM Compensation Plans.

The special products list was added by Strategy India in early 2014, considering that many companies were promoting products/services which were worthless tokens for the majority of individuals purchasing them.

An example of this is a farmer's wife who had no access to the internet, computer or mobile but purchased five packages of online training courses that taught excel and word. She was misled into the purchase by promises of a commission on every package she bought or promoted to others.

In another incident, a college student from Bengaluru broke down into tears while urging team members of Strategy India to come up with a solution that would stop pyramid scams masquerading as ethical direct selling companies. The student in concern was arrested by the police under the P.C.M.C. (B) Act 1978 / Prize Chits and Money Circulation (Banning) Act 1978 because he was promoting the online training programs to multiple individuals. His career was over before it even started.

A company from Chennai was selling holiday coupons at ₹5000 after purchasing them at just ₹120 from an agency. Moreover, the company imposed a preposterous condition that any couple wishing to utilize the coupons had to pay an additional administrative/service fee of ₹750 months in advance along with an application listing at least three likely destinations.

The company was considering the probability that 99% of people will not avail the coupons because of unfriendly terms and conditions. It would allow the company to make significant profits and increase their turnover as the payout was higher for holiday coupons and vouchers sold.

Strategy India devised the lists to make it easy for ordinary people and direct sellers to identify the pyramid schemes and ensure that they were not cheated or misled.

## Why should the companies prohibited/restricted from selling a few products/services?

Companies should be prohibited or restricted from selling a few products or services because of multiple reasons.

- **Worthless Products/Services** – Some companies sell products at exorbitant prices. Customers might not have bought the products at such high rates if they were not associated with the business opportunity. The overpriced products are used to masquerade the company as a marketing organization and prevent it from being classified as an investment scheme.
  - **The Requirement of Specialized Licenses** – A company may require specific licenses for selling a few products or services like insurance policies, etc.
- 
- **Products/Services Prohibited by Law** – There are a few products or services that companies are prohibited from selling by law. These include deposits or investments in farming (animal and horticulture), real estate, crowdfunding, etc.

## What is the Negative Product List?

Strategy India defines – "**Negative product list**" is the list of products/services which are not to be promoted by the company deploying a Direct / Single level / Multilevel marketing compensation plan.

The following items are included in negative product list:

- Deposits / Investments / Offered for free along with other products / services - in / for / in the form of or trading in - Stocks, Shares, Initial Public offering, Initial coin offering, Debentures, Regulated / Unregulated and regulated Currencies/Tokens including Virtual currencies including but not limited to Crypto tokens (wrongly referred to as "Cryptocurrencies"), Bullion markets, Preferential shares, Forex, Plantations, Farming, Infrastructure projects, Resorts, Trading in commodities, Birds (Poultry, Emu, Quail, etc.), Livestock (Rabbit, Goat, Sheep, Cow, Buffalo, etc.), Media, Car Lease and Real Estate.
  - Crowdfunding ventures
  - Discount coupons / Vouchers / Currency/Tokens
  - Betting / Gambling activities
  - Quiz portals
  - Recharge portals
  - Peer to Peer transactions in any names as Support, Gift, Help, Assistance, Donations, etc.
  - Bid coupons / Vouchers/Tokens
  - Websites / Web space / Bidding portals
  - Buy in to get paid - to click, to give surveys, to watch advertisements, to receive SMS and to receive emails and to invest in an advertising medium
  - Products used for intoxication
  - Any product, which exceeds its validity period / use by date / expiry date.
  - Any illegal products
  - Non fungible tokens
  - Fantasy games and tokens/in game currency
  - Estate (online/offline)
  - Any equipment generating or claiming to generate tokens
  - Any online/physical – live/recorded training/coaching/literature for generating tokens/currencies.
- 
- Any type of trading signals on any platforms and messaging applications.

## What is the Special Product List?

As per Strategy India – "**Special product list**" is the list of products/services which may be promoted along with the conditions mentioned along with them.

Items belonging to the special product lists include:

- Gift Vouchers/Coupons – Direct Selling companies should promote gift vouchers and coupons with the condition that the direct sellers should only be compensated when the coupons are used by the customer and not when sold.
  - Discount Vouchers/Coupons/Promissory notes – Direct sellers that have promoted discount vouchers or coupons should be paid the commission only after the buyer of the discount vouchers utilizes them.
  - Insurance – The direct selling company and the direct sellers should obtain special licenses from IRDAI if they are going to promote insurance or insurance related products or services.
  - Online Products – Direct selling companies should only promote products and services online if they have a money back guarantee of a minimum of 30 days from the date of activation of the products by the customer.
- 
- Holiday/Timeshares Coupons/Vouchers/Packages – Holiday packages and vouchers should be marketed and sold by a direct selling company if commissions are paid to direct sellers once the coupons have been fully redeemed by the buyer.

## What if the companies deploying the MLM compensation plans sell prohibited products?

Any direct selling company or direct sellers that sell prohibited products or services will face action under the P.C.M.C. (B)Act,1978 or relevant laws in force with lawsuits. It may lead to imprisoning of the directors, stakeholders, management and the top promoters (beneficiaries) of the company. The direct sellers and individuals associated with the company may face legal actions under relevant laws.

The new legislation has earned raves of late. The enactment promises to protect the consumers by regulating the actions of the sellers and by providing an effecting redressal mechanism. Following are noteworthy definitions and features of the new Consumer Protection Act from the perspective of direct selling medium:

### Definition Of Consumer

The definition includes the term customer also. If the usage of the product or service is made by a person other than the person who purchased it/paid for it, but the product/merchandise was utilized with his/her approval, that first-person can file a complaint under the Consumer Protection Act.

This definition excludes those persons who purchase the product for commercial use. However, if the person uses the product so purchased by him for earning his livelihood or for his self-employment, it would not be counted as "commercial use", and such person will be eligible to file a complaint.

Therefore, this definition will include direct sellers who utilize the product for their self-employment and for earning their livelihood. But if the direct seller is not using the product but purchasing it for resale, it would amount to 'commercial purpose', and the direct seller would not be covered under the definition of Consumer.

For instance, where a salon owner orders hair colour products from the marketing company/brand owner/manufacturer. When s/he uses the same products for colouring hair of the clients, the salon owner becomes a consumer under the Act. However, when the salon owner offers these hair products in the salon for sale to the clients, the salon owner is not a consumer because s/he must "use" the product to claim right as a consumer.

Extending this understanding to the area of direct selling, when a direct seller uses the product that he usually resells, he is a consumer and when the direct seller sells these goods to earn money, s/he is not using them and therefore he is not a consumer. In this case, the direct seller may or may not be a consumer.

What is relevant here is that the enactment has specifically included direct selling enterprises and multi-level marketing within the arena of where/whom the goods are purchased from.

## Definition Of Direct Selling

The Act has included the definition of direct selling to mean marketing, distribution and sale of goods or provision of services through a network of sellers, other than through a permanent retail location.

## Definition Of The E-Commerce Entity

An e-commerce entity means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. However, this term does not include a seller who offers his goods or services for sale on a marketplace e-commerce entity.

One must note the difference between e-commerce entity and marketplace e-commerce entity because marketplace e-commerce entity is defined as an entity that provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers. An example of such marketplace e-commerce entities would be Flipkart, Amazon, Myntra and eBay.

This definition will also cover foreign e-commerce websites such as Alibaba and amazon.com as per Rule 4(1)(a) of the E-commerce Rules, 2020.

## Definition Of The Inventory E-Commerce Entity

This means an e-commerce entity which owns the inventory of goods or services and sells such products or services directly to the consumers and shall include single-brand retailers and multi-channel single-brand retailers. As on date Fab India and Ritu Kumar come under this classification.

## Definition Of A Manufacturer

Definition of a manufacturer includes not only those who manufacture the goods or any part thereof but also those who assemble and with the ones who put their mark on the goods that are produced by another person/entity. Therefore, if a product is manufactured by one but the trademark is put by another, the other person/entity will also be captured within the definition of the manufacturer apart from the person/entity who/which made/produced that good.

## Definition Of The Product Manufacturer

A product manufacturer will not include a person/entity who/which is only a reseller/distributor, such as a direct seller because a person must make AND/OR sell products. However, the definition of 'trader' which includes any person who sells /distributes for sale and consists of a manufacturer will cover the entity engaged in direct selling. In simpler terms, only that person who manufactures the good is called a manufacturer or the one who produces as well as sells this definition will cover it. Merely making sales does not make a person product manufacturer under this definition.

## Definition Of The Product Seller



The product seller includes direct sellers within its definition since it points out that any person who sells or distributes (among other things) products in the course of business will be termed as a product seller.

## Definition Of A Product Service Provider

If any person provides services concerning the product concerned, he will be called a product service provider. Generally, the direct seller will not amount to a product service provider. However, when he provides any service such as advice, after-sales services, agency services (e.g. insurance agents/advisors advising customers to switch funds - equity/balanced/debt).

## Definition Of The Restrictive Trade Practices

This legislation includes "unreasonable delays" in delivery of products as restrictive trade practice provided it is done so that it leads to/ is likely to lead to an increase in the price of that good/service. For example, if Uber causes a delay in connecting a traveller to a driver without any server-based congestion issue at 7.30 a.m., just so that the rider/traveller/customer will have to pay the peak hours from 8 a.m. onwards when the taxi is booked, it would amount to a restrictive trade practice under this definition.

Similarly, if a direct seller, knowing well that the product's prices will be revised, causes a delay in delivery of the product so that more amount can be earned from the Customer, it will be captured by this definition.

Trade practice wherein a consumer is required to buy, hire or avail of any goods or, as the case may be, services as a condition precedent for buying, leasing or availing of other products or services also amount to a restrictive trade practice.

## Definition Of Unfair Contract

The definition is relevant from the perspective of direct selling agencies. An unfair contract "unfair contract" means an agreement between a manufacturer, brand owner or trader or service provider on the one hand, and a consumer on the other, having such terms which cause a significant change in the rights of such Consumer, including the following, namely:

- i. requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; or
- ii. the imposition of any penalty on the Consumer, for the breach of contract thereof which is wholly disproportionate to the loss, occurred due to such breach to the other party to the contract; or
- iii. refusal to accept early repayment of debts on payment of applicable penalty; or
- iv. entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or
- v. permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or
- vi. imposing on the Consumer any unreasonable charge, obligation or condition which puts such Consumer to a disadvantage.

Here point (iv) emphasizes that if unilateral termination without any reasonable cause is enforced, it will amount to an unfair contract. Also, the practice of asking the Customer to bear the shipping/courier charges/restocking fees in a case where expired/defective products/irrelevant products are supplied would be frowned upon as per point (vi) of the definition.

One must note that the contract in such cases is legally tenable when looked in plain sight. It is usually when one reads and analyses, the unfairness of the contract surfaces.

# Unfair Trade Practice

Unfair trade practice involves adopting deceptive or unfair mechanisms to increase or make sales. These activities include making false statements w.r.t. The information, use or characteristics of the product or service, unsubstantiated warranty or guarantee regarding its performance, false promises of replacement or repairs or about his affiliation with /about approval of the manufacturer for sale of products. This would also include false statements that disparage goods or service of another person as well as activities of hoarding of goods to increase their prices.

As per the Clause 7(6) Direct Selling Guidelines "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 to undertake or solicit such sale or offer." This clause was used in the case of Amazon Seller Services Pvt Ltd v. Modicare Ltd & Ors (order dated 31 January 2020) wherein the direct selling companies (Modicare, Amway and Oriflame) requested the court to restrain Amazon from selling their products on Amazon's platform. The Delhi High Court's division bench set the restraining order aside because Direct Selling Guidelines were merely advisory in nature and had no enforcement value. Going by that basis, the existing definition of unfair trade practice will capture inventory e-commerce entities if they sell the products of the direct selling companies without their permission/approval. However, whether this provision will capture marketplace e-commerce entities is doubtful because of the very nature of operation of these entities. This is so because the marketplace e-commerce entities provide a market for the sale of products by sellers, and the e-commerce platform itself does not claim to be the seller or manufacturer of that product. Clarity is still awaited on this front.

Furthermore, if a product is advertised/ permitted to be advertised to be sold at a bargain price which is not intended for sale at such a bargain price will also amount to unfair trade practice. On the other hand, if a lottery, contest or gift is organized which is not free but is covered in the price of the product/service, it would be termed as an unfair trade practice (UTP).

If goods do not comply with standards established by the competent authority in different respects including performance, ingredients, etc. that, in the absence of such knowledge can be injurious to the Consumer, would also be covered by UTP.

Another aspect of UTP is the sale of counterfeit goods and refusal to take back the defective products. Non-issuance of cash bills/ cash memos/receipt of sold goods also amounts to UTP.

Furthermore, refusing to take back the defective goods after-sale and refusing refund within 30 days or within the stipulated time as mentioned in cash memo would also amount to UTP. The calculation of the period of 30 days is not specified in the definition. Whether one should calculate 30 days from the date of sale or should it be from the date of receipt of the product is not specified. In our opinion, the 30 days should be calculated from the date on which the product is received by the Consumer (actually or constructively).

Disclosure of confidential information supplied by the Consumer should be avoided since it amounts to a kind of unfair trade practice too. This area will be interesting to see since service providers such as search engines (Google, Duckduckgo, bingo, Baidu, etc.) use information searched and input fed on various websites to suggest advertisements and search results. Though Google may not be captured under this definition since it is free of cost, the paid sites who would end up supplying confidential information of consumers to other agencies to make sales or for data analysis will be captured by this definition of unfair trade practice. On similar lines, the hospital chains use confidential data of the Consumer to make changes in their services in different countries and cities and for research. Though that data is usually anonymized, it still is a disclosure. Whether the definition of unfair trade practice will capture them and whether courts will opt for the technical interpretation or purposive interpretation will be seen in the times to come.

## Nature Of Complaint

A complaint can arise in any of the following circumstances:

- i. an unfair contract / unfair trade practice / a restrictive trade practice has been adopted by any trader or service provider;
- ii. goods bought by him/ agreed to be acquired by him suffer from one or more defects;
- iii. the services hired /availed of / agreed to be hired /availed of by him suffer from any deficiency;
- iv. a trader or a service provider has charged for the goods or the services mentioned in the complaint, a price in excess of the price:
  - a. fixed by or under any law for the time being in force; or
  - b. displayed on the goods or any package containing such goods; or
  - c. displayed on the price list exhibited by him by or under any law for the time being in force; or
  - d. agreed between the parties;
- v. the goods, which are hazardous to life and safety when used, are being offered for sale to the public:
  - a. in contravention of standards relating to the safety of such goods as required to be complied with, by or under any law for the time being in force;
  - b. where the trader knows that the goods so offered are unsafe to the public;
- vi. the services which are hazardous or likely to be dangerous to life and safety of the public when used, are being offered by a person who provides any service and who knows it to be injurious to life and safety;
- vii. a claim for product liability action lies against the product manufacturer, product seller or product service provider, as the case may be;

## Consumer Rights

Consumer rights have been enumerated in the statute this time, and they include the following:

- i. right to be protected against the marketing of goods/products/services which are hazardous to life and property
- ii. right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services
- iii. right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices
- iv. right to be heard
- v. right to seek redressal

## Central Consumer Protection Council

CCPC will be established as an advisory council for rendering advice on promotion and protection of the consumers' rights under the enactment. Similarly, every state will have a state-level protection council who will serve the same purpose within the state, and the work will be further decentralized through district consumer protection councils.

## Regulation Of E-Commerce

- i. Through the CPA E-Commerce Rules 2020, an attempt has been made to regulate e-commerce platforms from the perspective of consumer protection.
- ii. These rules apply to a) all goods and services bought or sold over the digital or electronic network including digital products;(b) all models of e-commerce, including marketplace and inventory models of e-commerce;

- and (c) all e-commerce retail, including multi-channel single-brand retailers and single-brand retailers in single or multiple formats.
- iii. These rules apply to all electronic retailers who are registered in India or abroad but are offering goods and services to Indian consumers. This is a great move to clear the air around extraterritoriality of the definition of e-commerce platform and the extent of applicability of these Rules.
  - iv. E-commerce participants will have to display the total price of goods and services offered for sale along with a break-up of other charges. The amount cannot exceed the maximum retail price as was earlier decided by NCDRC in the case of M/S Cargo Tarpaulin Industries vs Sri Mallikarjun B. Kori (5 July 2007).
  - v. They are also required to mention the 'expiry date' of goods, 'country of origin' of goods/services, details about return, refund, exchange, warranty and guarantee, delivery and shipment, etc. This is necessary for enabling the Consumer to make an informed decision for deciding on the purchase of goods.
  - vi. An interesting provision that has been included in the Rules is that the e-platform cannot charge a cancellation fee unless sellers are ready to pay similar charges in case cancellation of orders are made from their side.
  - vii. The e-retailers are now required to bear the burden of accountability towards payment gateways too. The platform will have to provide information w.r.t available payment methods, the security of those payment methods, any fees or charges payable by users, including contact information, etc. to the consumers.
  - viii. These entities will have to display prominently the details about the 'sellers' offering goods and services, including the name of their business, whether registered or not. They must also display sellers' geographic address, customer care number, and any rating/feedback about such seller too.
  - ix. Grievance officers have to be appointed to address complaints filed by the consumers and his name, contact details, and designation must be available on the platform.
  - x. The e-retailer must generate a ticket number for each complaint lodged, through which the Consumer can track the status of the complaint
  - xi. Sections 49(2) & 59(2) of the enactment empower the Commissions at state & national level to consider terms of the contract between the Consumer and the service provider/product manufacturer that are unfair to any consumer, to be ineffective and void. This is a useful tool in the hands of the Commission.

## Redressal Mechanism

- i. Pecuniary jurisdiction: The original pecuniary jurisdiction of the consumer commissions has been revised wherein the District Commission can handle cases worth up to Rs. 1 crore, the State Commission can handle cases from Rs. 1 crore to Rs. 10 crores and the National Consumer Disputes Redressal Commission will only deal with cases that are valued more than Rs. 10 crores. Appeal from NCDRC will lie to the Supreme Court.
- ii. Territorial Jurisdiction: A consumer or an association can now institute a complaint before the competent authority within the jurisdiction of the Commission where the complainant resides or personally works for gain. This option is available apart from the usual choice of filing complaint where the opposite party resides, works for gain or has a branch office.
- iii. Limitation period: the period of limitation for filing a complaint is still two years, and there is a provision for condonation of delay under Section 69.
- iv. Mediation as a means of dispute resolution: Subject to the satisfaction of the competent Commission, the matter can be referred to mediation for a peaceful resolution between the parties. However, apart from the subjective satisfaction of the Commission, the consent of the parties in writing will also be required to ensure free will. The mediation is performed through consumer mediation cell, which would be more economical and accessible to a common man and the companies. Usually, intervention is perceived as an expensive but peaceful mechanism opted only by those who have deep pockets. State organized mediation cell is expected to be cheaper and is a welcome move for all stakeholders.
- v. Duration: The period contemplated for redressal of complaint under this new Act is three months from the date of notice to opposite party.
- vi. Deposit: Opposite Party must now deposit 50% of the amount ordered by the District Commission before preferring an appeal to the State Consumer Disputes Redressal Commission in comparison to the earlier ceiling of maximum Rs. 25,000/-.

- vii. Fund for unidentified injured parties: If found guilty, the Commission has the power to order a sum to be paid in respect of unidentified consumers where harm may have been caused to many, but they cannot be identified conveniently. This is a massive step in the direction of effective protection of consumers and prevents future litigations too.

## Compliance By Companies

- i. Direct selling platforms cannot charge a cancellation fee.
- ii. Consumer has the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services (S.2(9))
- iii. Consumer must be assured, wherever possible, access to a variety of goods, products or services at competitive prices
- iv. Direct seller, if using an e-commerce platform, must ensure that the electronic retailer mentions the total price of goods and services offered for sale along with a break-up of other charges on the platform used for displaying/retailing.
- v. Since e-platforms are used to sell direct selling companies' products too, one must note that e-commerce entities are now required to display prominently the details about the 'sellers' who are offering goods and services, including the name of their business, whether registered or not. They must also display sellers' geographic address, customer care number and any rating/feedback about such seller.
- vi. Rule 6 of E-commerce Rules, 2020 applies to all sellers who sell their products on marketplace e-commerce platforms. This will include direct sellers too.
- vii. Rule 6(3) points out that the sellers on such platforms cannot refuse to take back the goods if they are defective, spurious, or where the goods do not carry the features as described/advertised by the seller or are delivered later than the stipulated time ( except due to extraneous circumstances such as lockdown) etc.
- viii. Grievance officers must be appointed to address complaints of the consumers.
- ix. Direct sellers should not indulge in unfair trade practice. They should be informed that providing inaccurate information about the price, description, quality, quantity, etc., would amount to unfair trade practice and should be avoided at all times.
- x. Non-issuance of cash bills/ cash memos/receipt of sold goods amounts to Unfair Trade Practice too.
- xi. Refusing to take back the defective goods after-sale and refusing refund within 30 days would also amount to unfair trade practice. The Rules do not explain as to from what date the 30 days period shall commence.
- xii. Disclosure of confidential information supplied by the Consumer should be avoided since it amounts to a kind of unfair trade practice.
- xiii. Section 84, 85 and 86 are extremely relevant for any direct selling company. Section 84 of the Act lays down in what conditions the product manufacturer will be responsible. One must note that the manufacturer will have strict liability under this section, i.e. intent does not matter. Section 85 points out the conditions in which the service provider will be responsible, and Section 86 establishes the grounds on which product seller will be held accountable.
- xiv. The application of Section 86(d) covers foreign companies/entities whose products are sold by product sellers in India. This is to arrest the activities of those entities that can't be touched by the domestic laws of India.

## Protection To DSA

- i. Going by the definition of "unfair trade practice", any person who falsely claims to be associated with the manufacturer or claims that he is selling under the approval of the manufacturer, it would amount to an unfair trade practice and would be punishable with fine and imprisonment. Drawing from this, if a rogue direct seller/suspended or an unauthorized direct seller attempts, among other persons, to sell a product belonging to the manufacturer who has neither approved nor sponsored the seller to sell or distribute the product nor is that seller affiliated to the DSA, it will amount to unfair trade practice.

- ii. Defences against product liability are available to the product seller in certain cases as provided under Section 87 wherein in timely information, adequate instructions and warnings can save the seller from being held liable for the harm caused to the other party.
- iii. Central government has been empowered to take measures to prevent unfair trade practices in e-commerce & direct selling under Section 94. This is a welcome step for promotion & sustenance of genuine direct selling companies.

## Regulator - Central Consumer Protection Authority

This authority will regulate matters relating to the violation of consumers' rights as provided in the Act, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of the public. It will also promote, protect and enforce the rights of consumers as a class.

Similar to the formation of Competition Commission of India, this regulator will have an investigation wing wherein Director-General will conduct inquiries and investigations when directed by the Authority.

Where the violations affect the consumers as a class, the complaint can be made to the Central Authority or his delegates to initiate the inquiry. If found in violation, the CCPA has the power to:

- i. recall goods or order withdrawal of services which are dangerous, hazardous or unsafe;
- ii. to reimburse prices of goods/services to purchasers of such goods or services;
- iii. order discontinuation of unfair practices that are prejudicial to consumers' interest;
- iv. to discontinue misleading advertisements or order modification;
- v. impose a penalty in this respect;
- vi. ban the endorser from endorsements of any product for a year extending up to 3 years in cases of subsequent violations.

Since its jurisdiction closely overlaps with the Competition Commission of India apart from sector-specific regulators, it is imperative that the provision such as Section 19(2) exists which talks about cooperation to be extended by the CCPA towards other authorities.

## Other Features

Actors who associate themselves with endorsements for goods/products that are misleading in nature are in for trouble. Not only there are provisions for imposition of a penalty when they appear in misleading advertisements, but also, they can be banned from endorsements of any product for a year extending up to 3 years in cases of subsequent violations. The factors of the frequency of advertisements, target audience and gross revenue generated will also be taken into consideration. The only defence available to him is if he had performed due diligence on the good/service that he was endorsing.

## Open questions under the Act:

The Act promises a lot and with proper enforcement, is capable of protecting consumer rights more effectively than under the earlier regime. However, much remains to be said in the times that this enactment is being enforced. Ideally, the consumer rights are protected since they do not possess bargaining power as against the established companies who indulge in the manufacture, distribution and sale of goods. However, with the increasing dependence on electronic platforms for small start-ups, household and cottage businesses, the expenses to meet the rules would go higher and in some cases, uneconomical. For example, a person selling homemade pickles online via his/her online retail platform will now have to show dedicated grievance redressal mechanism, including grievance officer, customer care operation, etc. among other things.

Another challenge that is likely to arise under the new law is the question of extraterritoriality. If a different platform does not comply with the terms and conditions laid down by the current law, what actions can the regulatory authority take to effectuate compliance? If found in violation, how can the administration impose a penalty, would be a beaming question. One cannot apply domestic law on an entity registered in another sovereign state without the coordination and a treaty with that country in this respect, which undoubtedly is a difficult task.

The law has indeed bridged consumer protection in a number of ways and is a beacon of hope for consumers who have been at the receiving end of the deal since last few decades. India, a country that witnesses high consumerism, is moving in the right direction to ensure that its customers continue to enjoy services of the sellers and businesses keep blooming with this surge of consumerism.