



GOVERNMENT OF KERALA

CONSUMER AFFAIRS DEPARTMENT

**GUIDELINES FOR MONITORING MECHANISM AT
STATE LEVEL FOR REGULATING THE ACTIVITIES
OF MULTI-LEVEL MARKETING/DIRECT SELLING
COMPANIES/ENTITIES IN THE STATE
OF KERALA BASED ON CENTRAL
GUIDELINES**

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GUIDELINES**

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<i>(Advisory by the Government of India to all State Governments/Union Territories vide Office Memorandum Vide F. No. 21/18/2014-IT (Vol-II) dated 9th September, 2016 published vide Notification No.G. S. R. 1013(E) dated 26th October, 2016, of Ministry of Consumer Affairs, Food and Public Distribution, Government of India, New Delhi)</i>	
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GOVERNMENT OF KERALA

Abstract

CONSUMER AFFAIRS DEPARTMENT—GUIDELINES ON MONITORING MECHANISM
FOR REGULATING MULTI-LEVEL MARKETING/DIRECT SELLING—ORDERS ISSUED

CONSUMER AFFAIRS DEPARTMENT

G. O. (P) No. 8/2018/CAD.

Dated, Thiruvananthapuram, 4th June, 2018.

- Read:—*1. Office Memorandum F. No. 21/18/2014-IT(Vol-II) dated 9-9-2016 received from Department of Consumer Affairs, Government of India.
2. G. O. (Rt.) No. 303/2017/CAD dated 7-9-2017.
3. Letter No. (CS) CA. 2-2052/17 dated 9-3-2018 of the Director of Civil Supplies, Thiruvananthapuram.

ORDER

As per the Office Memorandum read above, Government of India have issued the model Guidelines for Advisory mechanism on the regulation of Direct Selling Industry and also requested the State Government to implement the same in the State and to set-up a mechanism to monitor the activities of direct selling entity. Accordingly as per the G. O. read above, Government have constituted a committee consisting of, the Secretary to Government, Consumer Affairs Department as the Chairman, the Director of Civil Supplies as the Convenor, the Law Officer, office of the Civil Supplies Commissionerate as the Member Secretary and representatives from Finance Department, Law Department, Home Department, Taxes Department, Industries Department, Industries

Directorate, State Taxes Commissionerate and Gulati Institute of Finance and Taxation (GIFT) as members. The Committee has prepared the draft Guidelines and Monitoring Mechanism in this regard and as per the letter read above the Director of Civil Supplies has submitted the draft Guidelines for the approval of Government after stakeholders consultation and publication of the proposed draft in the portal of the department for public opinion.

Government have examined the matter in detail and are now pleased to issue approval for the Guidelines on Monitoring Mechanism for regulating the activities of Multi-level Marketing/Direct selling entity in the State as appended to this Government Order.

By order of the Governor,
MINI ANTONY,
Secretary to Government.

To

The Secretary, Department of Consumer Affairs, Government of India, New Delhi.

The Director of Civil Supplies, Thiruvananthapuram.

The State Police Chief, Thiruvananthapuram.

The Director, Industries Department, Thiruvananthapuram.

The Commissioner, State Taxes Department, Thiruvananthapuram.

The Director, Gulati Institute of Finance and Taxation, Sreekaryam, Thiruvananthapuram.

The Information and Public Relations Department (Web and New Media—For publishing the G. O. in the Government website).

All District Collectors.

The Finance Department.

The Law Department.

The Home Department.

The Taxes Department.

The Industries Department.

The Stock File/Office Copy.

PART-1

DIRECT SELLING GUIDELINES 2018

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

Clause 1: Definitions

In these Guidelines unless and otherwise required:

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

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

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

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

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

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

8. “Goods” means goods as defined in the Sale of Goods Act, 1930 and “Service” means service as defined in the Consumer Protection Act, 1986.

9. “Saleable” shall mean, with respect to goods and/or services, unused and marketable, which has not expired, and which is not seasonal, discontinued or special promotion goods and/or services.

10. “Cooling-off Period” means the duration of time counted from the date when the direct seller and the direct selling entity enter into an agreement under Clause 4 and ending with date on which the contract is to be performed and within which the direct seller may repudiate the agreement without being subject to penalty for breach of contract.

11. "Pyramid Scheme" means: A multi-layered network of subscribers to a scheme formed by subscribers enrolling one or more subscribers in order to receive any benefit, directly or indirectly, as a result of enrollment, action or performance of additional subscribers to the scheme. The subscribers enrolling further subscriber(s) occupy higher position and the enrolled subscriber(s) lower position, thus, with successive enrollments, they form multi-layered network of subscribers:

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

(a) It has no provision that a Direct Seller will receive remuneration or incentives for the recruitment/enrollment of new participants.

(b) It does not require a participant to purchase goods or services:

- (i) for an amount that exceeds an amount for which such goods or services can be expected to be sold or resold to consumers;
- (ii) for a quantity of goods or services that exceeds an amount that can be expected to be consumed by, or sold or resold to consumers;

(c) It does not require a participant to pay any entry/registration fee, cost of sales demonstration equipment and materials or other fees relating to participation.

(d) It provides a participant with a written contract describing the “material terms” of participation.

(e) It allows or provides for a participant a reasonable cooling-off period to participate or cancel participation in the scheme and receive a refund of any consideration given to participate in the operations.

(f) It allows or provides for a buy-back or repurchases policy for “currently marketable” goods or services sold to the participant at the request of the participant at reasonable terms.

(g) It establishes a grievance redressal mechanism for consumers, more particularly described in Clause 7 herein.

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

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

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

(a) have no provision that a direct seller will receive remuneration from the recruitment to participate in such direct selling;

(b) ensure that direct sellers shall receive remuneration derived from the sale of goods or services;

(c) clearly disclose the method of calculation of remuneration.

14. “State” includes a Union territory.

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

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

It shall

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

Clause 3: Conditions for conduct of Direct Selling Business

Every Direct Selling entity shall comply with the following conditions:

1. It shall be the owner, holder, licensee of a trademark, service mark or any other identification mark which identifies the entity with the goods to be sold or supplied or services to be rendered.

2. It shall issue proper identity document(s) to its Direct Sellers.

3. It shall maintain proper records either manual or electronic of their business dealings, with complete details of their goods, services, terms of contract, price, income plan, details of direct sellers, including but not limited to enrollment, termination, active status, earning etc.

(a) every Direct Selling entity shall maintain a “Register of Direct Sellers” wherein relevant details of each enrolled Direct Seller shall be updated and maintained;

(b) the details of Direct Sellers shall include and not be limited to verified proof of address, proof of identity and PAN;

4. It shall maintain proper and updated website with all relevant details of the entity, contact information, its management, products, product information, product quality certificate, price, complete income plan, terms of contract with direct seller and complaint redressal mechanism for direct sellers and consumers. The website should have space for registering consumer complaints and should ensure that grievances are addressed within 45 days of making such complaints.

5. It shall provide to all direct sellers their periodic account/information concerning, as applicable, sales, purchases, details of earnings, commissions, bonus and other relevant data, in accordance with agreement with the direct sellers. All financial dues shall be paid and any withholding made in a commercially reasonable manner.

6. It shall monitor the value of the purchases of all its Direct Sellers/ Distributors on a monthly basis and once the purchase value crosses the VAT threshold; it must intimate the Direct Seller/Distributor to pay the VAT.

7. *A Direct Selling entity shall not:*

(a) use misleading, deceptive or unfair recruiting practices, including misrepresentation of actual or potential sales or earnings, in their interaction with prospective or existing direct sellers;

(b) make any factual representation to a prospective direct seller that cannot be verified or make any promise that cannot be fulfilled;

(c) present any advantages of direct selling to any prospective direct seller in a false or deceptive manner;

(d) make or cause, or permit to be made, any representation relating to its direct selling business, including remuneration system and agreement between itself and the direct seller, or to the goods or services being sold by itself or by the direct seller which is false or misleading;

(e) engage in, or cause or permit, any conduct that is misleading or likely to mislead with regard to any material particulars relating to its direct selling business, including remuneration system and agreement between itself and the direct seller, or to the goods or services being sold by itself or by the direct seller;

(f) use, or cause or permit to be used, fraud, coercion, harassment, or unconscionable or unlawful means in promoting its direct selling practice, including remuneration system and agreement between itself and the direct seller, or to the goods or services being sold by itself or by the direct seller;

(g) require its direct sellers to provide any benefit, including entry fees and renewal fees or to purchase any sales demonstration equipment or material in order to participate in its direct selling operations;

(h) provide any benefit to any person for the introduction or recruitment of one or more persons as direct sellers;

(i) require the direct sellers to pay any money by way of minimum monthly subscription or renewal charges.

8. Notwithstanding the distribution system adopted by a direct selling entity, the Direct Selling Entity shall be responsible for compliance of these Guidelines by any member of its network of direct selling, whether such member is appointed directly or indirectly by the Direct Selling Entity.

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

1. Every Direct Selling entity shall execute a contract agreement, whether directly or indirectly, with Direct Sellers before enrolment:

(a) the Agreement shall be provided in a manner consistent with Section 10 of the Indian Contract Act, 1872;

(b) in addition to the rights and obligations of parties to this agreement under these guidelines or any other law in force, parties shall have rights and obligations that are coextensive with rights and obligations of parties under the Indian Contract Act, 1872;

2. The agreement shall be made in writing, describing the material terms of participation and shall:

(a) not compel or induce the direct seller to purchase goods or services in an amount that exceeds an amount that can be expected to be sold to consumers within a reasonable period of time;

(b) allow or provide the direct seller a reasonable cooling-of period in which to cancel participation and receive a refund for goods or services purchased;

(c) allow for the termination of contract, with reasonable notice, in such instances and on such terms where a direct seller is found to have made no sales of goods or services for a period of up to two years since the contract was entered into, or since the date of the last sale made by the direct seller;

(d) allow or provide for a buy-back or repurchase policy for currently marketable goods or services sold to the direct seller at the said direct seller's request at reasonable terms.

Clause 5 : Certain obligations of Direct Sellers

1. Direct Seller engaged in direct selling should carry their identity card and not visit the customer's premises without prior appointment approval.

2. At the initiation of a sales representation, without request, truthfully and clearly identify themselves, the identity of the direct selling entity, the nature of the goods or services sold and the purpose of the solicitation to the prospective consumer.

3. Offer a prospective consumer accurate and complete explanations and demonstrations of goods and services, prices, credit terms, terms of payment, return policies, terms of guarantee, after-sales service.

4. Provide the following information to the prospect/consumers at the time of sale, namely:

(a) name, address, registration number or enrollment number, identity proof and telephone number of the direct seller and details of direct selling entity;

(b) a description of the goods or services to be supplied;

(c) explain to the consumer about the goods return policy of the company in the details before the transaction;

(d) the Order date, the total amount to be paid by the consumer along with the bill and receipt;

(e) time and place for inspection of the sample and delivery of goods;

(f) information of his/her rights to cancel the order and/or to return the product in saleable condition and avail full refund on sums paid;

(g) details regarding the complaint redressal mechanism.

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

6. *A direct seller shall not:*

(a) use misleading, deceptive and/or unfair trade practices;

(b) use misleading, false, deceptive, and/or unfair recruiting practices, including misrepresentation of actual or potential sales or earnings and advantages of Direct Selling to any prospective direct seller, in their interaction with prospective direct sellers;

(c) make any factual representation to a prospective direct seller that cannot be verified or make any promise that cannot be fulfilled;

(d) present any advantages of Direct Selling to any prospective direct seller in a false and/or a deceptive manner;

(e) knowingly make, omit, engage, or cause, or permit to be made, any representation relating to the Direct Selling operation, including remuneration system and agreement between the Direct Selling entity and the direct seller, or the goods and/or services being sold by such direct seller which is false and/or misleading;

(f) require or encourage direct sellers recruited by the first mentioned direct seller to purchase goods and/or services in unreasonably large amounts;

(g) provide any literature and/or training material not restricted to collateral issued by the Direct Selling entity, to a prospective and/or existing direct sellers both within and outside the parent Direct Selling entity, which has not been approved by the parent Direct Selling entity;

(h) require prospective or existing direct sellers to purchase any literature or training materials or sales demonstration equipment.

Clause 6: Relationship between Direct Selling Entity and Direct Seller

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

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

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

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

Clause 7: Conduct for the Protection of Consumer

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

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

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

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

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

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

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

(d) all such grievances will be resolved directly by the Direct Selling Entity.

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

(a) the name of the purchaser and seller;

(b) the delivery date of goods or services;

(c) procedures for returning the goods; and

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

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

Clause 8 : Prohibition of Pyramid Scheme and Money Circulation Scheme

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

2. No person or entity will participate in Money Circulation Scheme, as defined in Clause 1(12) in the garb of Direct Selling of Business Opportunities.

Clause 9: Appointment of Monitoring Authority

1. The Nodal department to deal with the issues related to Direct Selling will be Department of Consumer Affairs at the Union and the respective State Governments in the States.

2. The State Governments will also set up a mechanism to monitor/supervise the activities of Direct Sellers, Direct Selling Entity regarding compliance of the guidelines for Direct Selling.

3. Any direct selling entity conducting direct selling activities shall submit an undertaking to the Department of Consumer Affairs, stating that it is in compliance with these guidelines and shall also provide such details of its incorporation and other business details as may be notified from time to time.

DECLARATION BY DIRECT SELLING ENTITIES/COMPANIES

PRO FORMA

PART-A

1	<ul style="list-style-type: none"> (i) Name of the Company (As Registered) (ii) CIN (iii) Name and address of Directors on Board (Enclose details) 	
2	<p>Details of Registration (with Jurisdiction)</p> <ul style="list-style-type: none"> (a) Address of Registered Office (Enclose copy of Registration Certificate) (b) E-mail (c) Telephone Nos. (d) Company Website (e) Details of other registrations (with jurisdiction), if any (Attach copy of Registration Certificate) (f) Type of Entity (Private, Public, Trust, Ltd. Etc.) 	
3	<p>Head Office</p> <ul style="list-style-type: none"> (a) Address (b) E-mail (c) Details of Key Management Personnel as per registration under the Companies Act (d) Details of Regional Offices (e) Nodal Officer for interacting with D/o Consumer Affairs (Name, Designation, Tel. No., E-mail, Fax, Mobile No.) 	

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

PART B

DIRECT SELLING BUSINESS DETAILS

8	Details of Products/Services offered (Give link of websites)	Yes/ No
9	<p>Please confirm the following about your direct selling scheme:</p> <p>(a) It has no provision that a Direct Seller will receive remuneration or incentives for the recruitment/enrolment of new participants and provide that direct sellers will receive remuneration derived only from the sale of goods or services.</p> <p>(b) It does not require a participant to purchase goods or services:</p> <p>(i) for an amount that exceeds an amount for which such goods or services can be expected to be sold or resold to consumers;</p> <p>(ii) for a quantity of goods or services that exceeds an amount that can be expected to be consumed by, or sold or resold to consumers;</p> <p>(c) It does not require a participant to pay any entry/registration fee, cost of sales demonstration equipment and materials or other fees relating to participation;</p> <p>(d) It provides a participant with a written contract describing the “material terms” of participation;</p> <p>(e) It allows or provides for a participant a reasonable cooling-off period to participate or cancel participation in the scheme and receive a refund of any consideration given to participate in the operations;</p>	<p>Yes/ No</p> <p>Yes/ No</p> <p>Yes/ No</p> <p>Yes/ No</p> <p>Yes/ No</p> <p>Yes/ No</p>

	(f) It allows or provides for a buy-back or repurchase policy for “currently marketable” goods or services sold to the participant at the request of the participant at reasonable terms;	Yes/ No
	<i>Note:</i> —1. Give details in regard to the above in an enclosure. 2. In case any of the answers in this para is ‘No’, please provide full details with reasons in an enclosure.	
10	(a) Whether proper identity document(s) to all the Direct Sellers are issued. (b) Whether you maintain “Register of Direct Sellers” wherein relevant details of each enrolled Direct Seller is updated and maintained with details including verifiable proof of address, proof of identity and PAN as per the Income Tax Act. (c) What is the mechanism for payment of VAT? Give details.	Yes/ No Yes/ No
11	(a) The website is proper and updated regularly with all relevant details, contact information, details pertaining to management, products, product information and complaint redressal mechanism for direct sellers and consumers. (b) There are arrangements for registering consumer complaints online or otherwise and grievances are resolved within 45 days of date of making such complaints. Details to be provided.	Yes/ No Yes/ No
12	Notes/Remarks, if any.	

PART-C
UNDERTAKING

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

(a) We do not promote a Pyramid Scheme, as defined in Clause 1(11) or enroll any person to such arrangement in any manner whatsoever in the garb of doing Direct Selling business.

(b) We do not participate in Money Circulation Scheme, as defined in Clause 1(12) in the garb of Direct Selling of Business Opportunities.

(c) We are compliant with all the remaining aspects mentioned in the guidelines issued vide F. No. 21/18/2014-IT (Vol-II) dated 9th September, 2016 by the Department of Consumers, Ministry of Consumer Affairs, Food and Public Distribution and shall also provide such details as may be notified from time to time.

(Sd.)

Name.....

Designation.....

Place :

Tel. No.

Date :

E-mail :.....

List of documents to be provided:

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

GUIDELINES FOR THE DIRECT SELLING ENTITIES

FAQs

1. Clause 1.4

“Direct Seller” means a person appointed or authorized, directly or indirectly, by a Direct Selling Entity through a legally enforceable written contract to undertake direct selling business on principal to principal basis.”

How shall digital and e-contracts be treated?

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

2. Clause 1.6 (Proviso)

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

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

3. Clause 2.2

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

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

4. Clause 2.8

“It shall have an office with identified jurisdiction of its operation in the State to enable the consumers and direct seller to acquaint themselves with price of products, return or replacement of products and efficient delivery of goods and services, and post-sale redressal of grievances”. **Whether an office in one State can be designated as focal point for jurisdiction of two or more states?**

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

5. Clause 3.3 (b)

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

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

6. Clause 3.8

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

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

7. Clause 4.2(c)

“Allow for the termination of contract, with reasonable notice, in such instances and on such terms where a direct seller is found to have made no sales of goods or services for a period of up to two years since the contract was entered into, or since the date of the last sale made by the Direct Seller”. **When can the contract between Direct Selling Entity and Direct Seller be terminated?**

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

8. Clause 6.2

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

9. Clause 6.3

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

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

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

10. Clause 7.5

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

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

PART-2

MONITORING MECHANISM FOR IMPLEMENTING THE
CENTRAL GUIDELINES**1. Objectives of the Monitoring Authority**

The Monitoring Authority will function with the following objectives:

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

2. Composition of Monitoring Authority

(a) *The Monitoring Authority shall consist of:—*

- (1) The Secretary/Principal Secretary—Department of Consumer Affairs as the Chairman;
- (2) Director of Food, Civil Supplies and Consumer Affairs as the Nodal Officer and Convener and the following members;
- (3) The Secretary to Govt., Finance Dept. or any other Officer nominated by him not below the rank of Deputy Secretary;
- (4) The Secretary to Govt., Law Dept. or any other Officer nominated by him not below the rank of Deputy Secretary;
- (5) The Secretary to Govt., Taxes Dept. or any other Officer nominated by him not below the rank of Deputy Secretary;

- (6) Commissioner, CGST Department, Kerala;
- (7) Commissioner, SGST Department, Kerala;
- (8) ADGP rank officer from the Police Department dealing with Economic Offences;
- (9) One Subject Expert, duly nominated by the Government.

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

3. Responsibilities of the Monitoring Authority

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

(ii) Provide appropriate platform for receiving complaints from the Consumers/Direct Sellers including general public against the violation of Central guidelines by the Direct Selling Entities;

(iii) Inform respective enforcement authorities regarding the unethical and unlawful practice, if any, carried out by direct selling entities/direct sellers including non-compliance/evasion of tax laws, noticed by the Monitoring Authority;

(iv) Provide Policy inputs to the Central Government for appropriate modifications in the Central Guidelines, if warranted, from time to time;

(v) Provide awareness among law enforcement authorities, consumers, direct sellers and the general Public and impart education and training regarding the “Do’s and Don’ts of Multi-level Marketing/Direct Selling” through Training Institutes like Gulati Institute of Finance & Taxation (GIFT), Govt. of Kerala, Thiruvananthapuram or any such Institute recognized for the purpose by State Government.

4. Enrollment formalities for carrying out the Direct Selling/Multi-Level Marketing business in the State of Kerala

(1) No Direct Selling Entity or such other person shall engage in a Direct Selling/Multi-Level Marketing business in the State of Kerala unless such entity or other person has enrolled with the Monitoring Authority by filing an application in the format given at annexure.

(2) *The application for such enrollment shall contain/supported by the following particulars/enclosures:—*

(a) Copy of the Undertaking/Declaration (Part A, B &C) filed by the Entity with the Department of Consumer Affairs, Government of India along with the following documents:—

(i) Certificate of Registration/Bye-laws/Memorandum of Association.

(ii) List of Board of Directors, with contact details.

(iii) Brief details of direct selling scheme and compensation plan.

(iv) Sample of contract with direct sellers/distributors.

(b) Place of office within the State of Kerala for ensuring easy access to the Direct Sellers/Consumers;

(c) Authorized contact person and details within the State of Kerala;

(d) Total number of direct sellers within the State of Kerala;

(e) Copy of GSTIN PAN and TAN or such other registrations necessary for the lawful conduct of the business undertaken by the Direct Selling Entity;

(f) A copy of the VAT/GST/Service Tax/Central Excise Returns including TDS returns for the last two assessment years prior to the enrollment in the State as applicable;

(g) Such other information or documents, if any, as may be specified for the purposes of determining the applicant's suitability.

(3) *Upon receipt of the application in the prescribed format with the required enclosures/annexures, the Monitoring Authority may—*

(i) Enroll the applicant entity in the register maintained by it and publish the same in the website of Consumer Affairs Department, Kerala, or

(ii) refuse to grant enrollment if any violation of the Central Guidelines is noted *prima facie* or for the non-filing of required enclosures/Annexures:

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

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

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

5. Action against violations of the Central Guidelines

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

(a) Issue show cause notice to those companies violating the Central Guidelines, and to companies which failed to enroll with the Monitoring Authority;

(b) Call for information from Direct Selling Entities when it is expedient to do so;

(c) Engage one or more persons to make an inquiry in relation to the affairs of any Direct Selling Entity;

(d) Call upon the books of accounts, registers, certified copies of mandatory registration certificates as per the Central Guidelines or other documents for necessary verification and examination in such circumstances as required by the Monitoring Authority;

(e) Direct the Direct Selling Entity to take corrective steps, if violation of Central Guidelines are committed by entity itself or by their duly appointed Direct Sellers;

(f) Cancel the enrollment or black list those Direct Selling Entities violating the Central Guidelines repeatedly even after show cause notices and warnings by the Monitoring Authority;

(g) Such other responsibilities as may be specified by the State/Central Government in accordance with the Central Guidelines.

6. Filing of Periodical Reports before the Monitoring Authority

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

A. Yearly Basis

(i) Details of training imparted to the Direct Sellers as per clause 2.2 of the Central Guidelines.

(ii) Individual wise particulars maintained by the Direct Selling Entity in respect of their direct sellers including but not limited to enrollment, termination, active status, purchase value, remuneration paid in the last financial year.

(iii) Copy of GST returns, Income Tax returns including TDS returns of the last year.

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

B. Quarterly Basis

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

(ii) Total number of complaints received from Direct Sellers within the State and the total numbers redressed and pending status in the last quarter.

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

7. Procedure for disposal of complaints

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

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

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

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

(v) Where the contents of the non-compliance report received from the designated officer against Direct Selling Entity or a Direct Seller or any other person who is part of the network of Direct Selling/ Multi-level Marketing, is found to be genuine and true, the Monitoring Authority may take such action as the Monitoring Authority deems appropriate as mentioned in clause 5 above including due intimation to the enforcement authorities for their appropriate action as per the applicable provisions of the relevant Acts as provided in clause 9 below.

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

8. Maintenance of Records

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

(1) Certificate issued by Registrar of Companies, Memorandum of Association (MoA), Articles of Association (AoA);

(2) Copies of Taxpayer Identification Number (TIN), Director Identification Number (DIN) of Directors, Tax Deduction Account Number (TAN) and Permanent Account Number (PAN);

(3) Copies of Licenses/Permits required for the trading of goods/ services issued by the local authority or any other authority as the case may be;

(4) Certificate of Sales Tax, Service Tax and CST Registrations (Earlier years);

(5) Sales Tax/VAT Returns filed with the authorities; (Earlier years)

(6) Service Tax Returns filed with the authorities (Earlier years);

(7) GST Returns filed with the authorities (Current Year);

(8) IT Returns of the company filed with the authorities;

(9) Tax Deducted at Source (TDS) Statements of Distributors and respective challans paid;

(10) Copy of the latest balance sheet, profit and loss account and reports of the auditors or directors of the applicant;

(11) Records of Know Your Customer (KYC) and Know Your Direct Sellers (KYDS), the formats of which should be available on the company website; (Password protected);

(12) Register of Direct Sellers (State Wise);

(13) Grievance Redressal Register;

(14) Copies of Product/Services marketing Brochure;

(15) Copies of Enrollment Application for new members/Direct Sellers along with the Agreement;

(16) Copy of duly filled Undertaking in the prescribed format filed with the Central Consumers Affairs Department along with copy of acknowledgment of receipt of application by the Central Consumers Affairs Department.

9. Application of other laws

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

(1) Violation relating to product/services to be filed before the appropriate Consumer Forum having jurisdiction under Consumer Protection Act, 1986.

(2) Violation relating to any activity leading to money circulation or pyramid/ponzy schemes to be dealt with under Prize Chits and Money Circulation Scheme (Banning) Act, 1978, including criminal case under Indian Penal Code.

(3) Violation relating to taxation laws to be dealt with by the respective Taxation Authorities under the respective Taxation Statutes.

(4) Violation of any other applicable laws to be dealt with by the respective Authorities under such respective Statutes.

(5) Civil remedies for breach of contract.

10. Miscellaneous

(1) *Orientation Session/Training.*—Every Direct Selling Company/MLM Company shall conduct a mandatory Orientation Session for all of its members/Direct Sellers/Independent Representatives providing precise and accurate information on all aspects of direct selling operations, including the remuneration system and mode of its disbursements. The Direct Selling Guidelines, 2016 released by the Department of Consumer Affairs, Government of India shall be incorporated in the training curriculum of Orientation Session conducted by all Direct Selling/MLM Companies as mandatory Session.

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

ANNEXURE

APPLICATION FOR ENROLLMENT

**DECLARATION BY DIRECT SELLING ENTITIES/COMPANIES
PRO FORMA**

PART-A

Company Profile

- | | |
|----|---|
| 1. | (1) Name of the Company (As Registered) |
| | (2) CIN/Reg. No. |
| | (3) Principal place of business |
| | (4) Name and address of top executives/officials of the Company (Enclose details) |
| | (5) Name and address of authorized contact person within the State |

- | | |
|----|--|
| 2. | <p><i>Address for Communication</i></p> <p>(A) Head Office</p> <p style="padding-left: 40px;">(With PIN Code, e-mail, Telephone with STD code and Company Website)</p> |
| | <p>(B) Branch Office in Kerala</p> <p style="padding-left: 40px;">(With PIN Code, e-mail, Telephone with STD code and Company Website)</p> |

3.	<p><i>Tax Particulars of Company</i> (Enclose Copies as Applicable)</p> <p>(1) Income Tax Registration No. (PAN)</p> <p>(2) Income Tax TDS Registration No. (TAN)</p> <p>(3) Service Tax Registration No. (Service Tax Code—STC)</p> <p>(4) Central Excise Registration No.</p> <p>(5) VAT Registration No. (TIN)</p> <p>(6) GST Registration No. (GSTIN)</p>
4.	<p><i>Details of Consumer Grievance Redressal Committee as per guidelines:</i></p> <p>(A) Head Office</p> <p>Member—1 Name of the Contact Person</p> <p>Phone No. (with STD Code)</p> <p>E-mail :</p> <p>Member—2 Name of the Contact Person</p> <p>Phone No. (with STD Code)</p> <p>E-mail :</p> <p>Member—3 Name of the Contact Person</p> <p>Phone No. (with STD Code)</p> <p>E-mail :</p>

	(B) Branch Office in Kerala (as applicable)
	Member—1 Name of the Contact Person
	Phone No. (with STD Code)
	E-mail :
	Member—2 Name of the Contact Person
	Phone No. (with STD Code)
	E-mail :
	Member—3 Name of the Contact Person
	Phone No. (with STD Code)
	E-mail :
5.	<i>Total number of Direct Sellers working within the State</i>

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

PART-C
UNDERTAKING

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

1. We do not promote a Pyramid Scheme, as defined in Clause 1 (11) or enroll any person to such scheme or participate in such arrangement in any manner whatsoever in the garb of doing Direct Selling business.

2. We do not participate in Money Circulation Scheme, as defined in Clause 1(12) in the garb of Direct Selling of Business Opportunities.

3. We are compliant with all the remaining aspects mentioned in the guidelines issued vide F. No. 21/18/2014-IT (Vol-II) dated 9th September, 2016 by the Department of Consumers, Ministry of Consumer Affairs, Food and Public Distribution and shall also provide such details as may be notified from time to time.

4. We are compliant with all the provisions mentioned in the Monitoring Mechanism Guidelines of the Government of Kerala as may be notified from time to time

Place :

(Sd.)

(Seal of the Company)

Name.....

Designation.....

Tel. No.

E-mail.....

LIST OF ENCLOSURES

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

LIST OF DOCUMENTS TO BE APPENDED

Copy of the Undertaking/Declaration (Part A, B and C) filed by the Entity with the Department of Consumer Affairs, Government of India along with the following documents:—

Appendix I—Certificate of Registration/Bye-laws/Memorandum of Association.

Appendix II—List of Board of Directors, with contact details.

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

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