

**REPORT OF THE COMMITTEE FOR PREPARATION OF DRAFT BILL TO
CONTROL THE MULTI-LEVEL MARKETING IN THE STATE, CONSTITUTED
UNDER G.O.(MS) NO.3/2013/ID DATED 10.01.2013.**

As per G.O. (MS) No.3/2013/ID dated 10.01.2013, the Government have constituted a Committee headed by the Secretary (Industries), consisting of the representatives of the Law Department, Home Department, Commercial Taxes Department and the Consumer Affairs Department for examining all relevant aspects concerning the direct marketing in the State and for preparing a draft Bill for the consideration of the Government. Accordingly, in the Committee headed by Sri. K.S. Sreenivas, I. A. S, Secretary (Industries), Sri. K.S. Madhusoodanan, Additional Law Secretary, Law Department, Smt. Pushpakumari G., Additional Secretary, Consumers Affairs Department, Sri. J. Jayanath, I. P. S, Superintendent of Police and Smt. T.V. Kamala Bai, Joint Commissioner of Commercial Taxes (Law) were nominated representing the various Departments stated above. After the retirement of Smt. Pushpakumari, Additional Secretary, Sri. K. Chandran, Additional Secretary, Consumer Affairs Department was nominated in her place. After the retirement of Smt.kamala Bai, Sri C.Lalappan, Joint Commissioner of Commercial Taxes(Audit & Inspection) was nominated in her place.

2. The Committee was constituted in the scenario when various legal actions were initiated against the fraudulent activities relating to conduct of money chain schemes in the name of direct marketing. The Government had found that in the name of the so called direct marketing, certain companies had been conducting

different types of money chain schemes which are offences under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (Central Act 43 of 1978). This type of practice on the part of certain companies and institutions, operating their business in the State, has adversely affected those who are running their business in accordance with law. Taking into consideration this situation in the State, the Government had, as per G.O.(Ms) No.184/2011/ID dated 27.08.2011, constituted a Committee consisting of the Chief Secretary, Additional Chief Secretary (Home & Vigilance Department), Additional Chief Secretary (Industries) Department), Secretary (Law Department) and the Director General of Police to submit suggestions so as to prepare effective guide lines to prevent the fraudulent activities relating to money chain schemes and to conduct the genuine direct marketing in the State without any obstruction. The Government, as per G.O.(Ms) No.190/2011/ID dated 12.09.2011, accepted the recommendations of the said Committee and issued the guidelines for proper conduct of the direct marketing in the State.

3. In view of the increasing number of direct marketing companies in the State and for harnessing the fraudulent Direct Marketing Companies operating in the State detrimental to the interest of the consumers and the public at large and in order to safeguard the interest of the consumers and the law-abiding direct marketing companies, the Government have felt the need for enacting a law governing the direct marketing in the State. The present Committee has been constituted accordingly and entrusted with the work to examine all relevant aspects concerning direct marketing in the State and for preparing a draft Bill for the consideration of the Government.

4. The committee has also examined the competence of the state legislature to enact on the subject matter, which mainly falls under entries 26 and 27 in the State List and entry 33 in the Concurrent List of the Constitution of India.

5. The Committee met eleven times and discussed various aspects concerning the so called direct marketing or multi-level marketing and all the members submitted their views relating to the proposed Bill. The Committee examined the relevant provisions of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (Central Act 43 of 1978), the Securities and Exchange Board of India Act, 1992 (Central Act 15 of 1952) and also other enactments such as the Consumer Protection Act, 1986, The Trade Marks Act, 1999, The Sale of Goods Act, 1930, The Companies Act, 1956, The Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011, The Essential Commodities Act, 1955, The Essential Commodities (Special Provisions) Act, 1981, The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, The Indian Contract Act, 1872, The Kerala Value Added Tax Act, 2003 and the new Companies Act, 2013 etc.

6. Relating to the money chain schemes conducted by certain companies and institutions, the Committee has also examined certain relevant case laws based on the interpretation of the provisions of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978. The Committee has gone through the judgments of the Hon'ble Supreme Court in *State of West Bengal & Others Vs. Swapan Kumar Guha & Others* [1982 (1) SCC 561], and *Kuriachan Chacko & Others Vs. State of Kerala*

[2008 (8) SCC 708] and the judgments in *V-Can Network (P) Ltd. Vs. The Home Secretary and Others* [2003 (109) CRLJ 3971 MAD], *M/S. Apple FMCH Marketing (Pvt) Ltd & Another Vs. The Union of India & Others* (CDJ 2005 MHC 574) and *Abdul Arshad & Others Vs. State of Kerala* [2011 (3) KLT 796].

7. The Committee has, after preliminary examination of the existing relevant laws and judgments in this subject and also the guidelines already issued by the Government, prepared a draft Bill and a meeting of the leading Companies in the field of Multi-level Marketing was convened on 01.06.2013, wherein the Secretary (Industries) made a power point presentation on the relevant features of the preliminary draft Bill and the companies were given opportunity to submit their views and suggestions on the draft Bill within thirty days. Besides, on 17.07.2013, a meeting of the Committee of the leaders of Trade Unions constituted as per G.O.(Rt) No.663/2013/ID dated 17.05.2013 was also convened. The draft Bill was discussed in the said meeting also and they were requested to submit their suggestions and recommendations for solving the problems being faced by the Multi-level Marketing Companies in the State.

8. The Multi-Level marketing Companies and their representatives or organisations have submitted their suggestions and recommendations and the Trade Unions also submitted certain suggestions to modify the draft Bill. The Committee considered all the suggestions and recommendations received within the stipulated time limit, in detail and the draft Bill has been modified so as not to affect the Central enactments passed by the Parliament.

9. The Committee has found that the so called 'Multi-level marketing' or 'Direct Selling' has not been defined anywhere specifically so as to cover different types of such marketing, particularly so as to exclude the money chain schemes or pyramid schemes. The Committee has considered the various definitions submitted by the Companies and trade unions participated in the above meetings and also the definition given in the guidelines already issued by the Government.

10. The Committee has found that it is necessary to have a separate body, namely, the Multi-level Marketing Regulatory Authority, in the State, with powers to control and supervise the Multi-level Marketing in the State. The Committee considers that the Multi-level Marketing entities may be permitted to appoint or authorize any number of "direct sellers" under them and also to appoint any number of "distributors" by the direct sellers with the permission of such entity. But, the names of all such direct sellers and distributors are to be registered before the Authority. The conditions for registration and its cancellation and the conditions for the conduct of Multi-level Marketing have been incorporated in the draft Bill so as not to come the operation of the business under the provisions of the Prize Chits and Money Circulation (Banning) Act, 1978. The Draft Bill contains ample provisions to protect the interests of the consumers who purchase goods or avail services of a Multi-level Marketing entity. The Bill contains provisions to protect the interests of the direct sellers and distributors also. The distributors, being appointed by the direct sellers with the permission of the entity concerned, to work under the direct sellers for the sale of their goods and services, a provision for the constitution of a Welfare

Fund for the benefit of the distributors has been incorporated in the draft Bill. The draft Bill also contains provision for compounding of certain offences with the permission of the court and the consumer who is affected by any act of a Multi-level Marketing entity.

11. The final draft Bill was approved by the Committee in its last meeting held on 4.12.2013. The Committee has taken steps to incorporate the required provisions for a free and fair conduct of multi-level marketing in the State , particularly to ensure that the business is done without violating the provisions of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (Central Act 43 of 1978). The draft Bill has been annexed to this report. The draft Bill is submitted for the consideration of the Government.

Thiruvananthapuram, Dated this the 4th day of December, 2013.

K.S. Srinivas, I.A.S, (Sd/-)
Secretary (Industries) and Head of the Committee.

J. Jayanth, IPS (Sd/-)
Superintendent of Police (Telecommunications)

C. Lalappan (Sd/-)
Joint Commissioner, Commercial Taxes (Audit & Inspection)

K. Chandran (Sd/-)
Additional Secretary, Food, Civil Supplies & Consumer Affairs

K.S. Madhusoodanan (Sd/-)
Additional Law Secretary

ANNEXURE

(**DRAFT BILL** as approved by the Drafting Committee.)

**THE KERALA STATE MULTI-LEVEL MARKETING
(CONTROL AND REGULATION) BILL, 2013**

A

BILL

to provide for the control and regulation of multi-level marketing and to constitute a regulatory authority for their registration and to monitor and supervise the conduct of multi-level marketing in the State of Kerala and for matters connected there with or incidental thereto.

Preamble.- WHEREAS it is expedient to provide for the control and regulation of multi-level marketing and to constitute a regulatory authority for their registration and to monitor and supervise the conduct of multi-level marketing in the State of Kerala and for matters connected therewith or incidental thereto;

BE it enacted in the Sixty-fourth Year of the Republic of India as follows:-

Chapter I

PRELIMINARY1. Short title and commencement.-

(1) This Act may be called the Kerala State Multi-level Marketing (Control and Regulation) Act, 2013.

(2) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. Definitions.-

In this Act, unless the context otherwise requires,-

(a) "Additional Controller" means the Additional Controller of the Authority designated as such under sub-section (4) of section 3;

- (b) “Authority” means the Multi-level Marketing Regulatory Authority constituted under section 3;
- (c) “consumer” means a person who purchased goods, or availed any service, of a multi-level marketing entity from a direct seller or a distributor;
- (d) “Controller” means the Controller of the Authority;
- (e) “customer” means a person who proposes, or to whom an offer is made by a direct seller or a distributor, to purchase any goods, or to avail any service, of a multi-level marketing entity;
- (f) “Direct seller” means a person appointed or authorised by a multi-level marketing entity to engage in direct selling;
- (g) “distributor” means a person appointed or authorized by a direct seller to work under him for the sale of goods and providing services of a multi-level marketing entity as entrusted by him for direct selling;
- (h) “Government” means the Government of Kerala;
- (i) “goods” means every kind of movable property with trade mark or any other identification mark under the Trade Marks Act, 1999(Central Act 47 of 1999) or under any other law for the time being in force;
- (j) “income plan” means the sales and marketing plan of a multi-level marketing entity, illustrating the mode of sharing of profits and other incentives, including financial and non-financial benefits, among the direct sellers and distributors, on a monthly or yearly basis or both, as the case may be;
- (k) “mail order sale” means a mode of direct selling by receiving offer for sale of goods or providing services through contract by mail, whether electronically or otherwise;
- (l) “multi-level marketing” or “direct selling” means marketing and sale of goods or providing services of a multi-level marketing entity through direct sellers or through direct sellers and distributors, otherwise than through shops, to the customers or consumers, generally in their houses or at their workplace or through explanation and demonstration of such goods and services at a particular place or by mail order sale;

- (m) “multi-level marketing entity” means a company registered under the Companies Act, 1956 (Central Act 1 of 1956) or Companies Act,2013 (Central Act of 2013) or any partnership firm registered under the Partnership Act,1932 (Central Act IX of 1932) or under the Limited Liability Partnership Act,2008 (Central Act 6 of 2009) engaged in multi-level marketing;
- (n) “prescribed” means prescribed by rules made under this Act;
- (o) “service” includes service of any description and providing benefits of any kind, other than supply of goods, valid as per any law for the time being in force.

Chapter II

CONSTITUTION OF MULTI-LEVEL MARKETING REGULATORY AUTHORITY

3. Multi-level Marketing Regulatory Authority.-

(1) The Government shall, by notification in the Gazette, constitute a Multi-level Marketing Regulatory Authority for the purposes of registration, control and supervision of multi-level marketing in the State.

(2) The Director of Industries and Commerce shall be the Controller of the Authority.

(3) The Controller shall be the administrative head of the Authority.

(4) The Government may, by notification in the Gazette, designate in each District an officer of the Industries Department or Taxes Department to be the Additional Controller of the Authority to assist the Controller and to perform such other functions as may be prescribed or assigned to him by the Controller.

(5) The Government shall, on deputation from the Government Departments, appoint such number of officers and staff as may be necessary for the efficient discharge of the powers, functions and duties of the Authority.

4. Powers and functions of the Authority.-

(1) The Authority shall mainly exercise the following powers and perform the following functions, namely:-

- (a) to implement the provisions of this Act and the rules made there under;
- (b) to give registration or to refuse registration to multi-level marketing entities;
- (c) to give registration or refuse registration to the direct sellers and distributors under the multi-level marketing entities and to keep registers of such registration;
- (d) to issue identity cards to the direct sellers and distributors;
- (e) to control and supervise the conduct of multi-level marketing in the State;
- (f) to receive returns relating to the business conducted by the multi-level marketing entities and the direct sellers and distributors under them;
- (g) to monitor the tax being paid by the multi-level marketing entities to the Commercial Taxes Department of the Government of Kerala;
- (h) to inspect and call for the records relating to direct marketing from the multi-level marketing entities, direct sellers and distributors;
- (i) to receive complaints from the direct sellers, distributors, customers and consumers against the multi-level marketing entities and to provide for settlement of disputes among them or to give legal advise for taking appropriate legal actions in accordance with the law for the time being in force so as to remedy their grievances;
- (j) to ensure that the consumers are not being cheated by multi-level marketing entities or direct sellers and distributors under them; and
- (k) to perform such other functions and duties as may be prescribed.

(2) The Controller shall call for the meeting of the officers concerned of the Industries, Taxes and Police Departments or of other officers as he may deem fit for the purpose of monitoring the conduct of multi-level marketing being conducted in the State, as and when required, and at least one such meeting shall be held in every year.

(3) The Controller shall perform such other functions and exercise such other powers as may be prescribed.

Chapter III

REGISTRATION

5. Registration of multi-level marketing entities.-

(1) Every multi-level marketing entity carrying on multi-level marketing in the State on the date of commencement of this Act shall, within such date as the Government may, by notification in the Gazette, appoint in this behalf, apply for registration before the Authority and every such entity which intends to carry on multi-level marketing in the State shall apply for registration.

(2) No multi-level marketing entity shall carry on its business by direct selling in the State with out a registration under this Act.

(3) The application for registration of a multi-level marketing entity shall be made to the Controller.

(4) An application for registration shall contain the following documents and information, namely:-

- (i) An authenticated copy each of the Memorandum of Association, Articles of Association and the Certificate of Registration of the company issued by the Registrar of Companies or of the partnership deed, as the case may be.
- (ii) A copy of the latest balance sheet, profit and loss account and reports the auditors or directors of the applicant, if any.
- (iii) Total paid up share capital.
- (iv) Multi- level marketing scheme, including the income plan of the applicant in respect of that business.
- (v) Receipt of payment of registration fee, which shall be paid in such manner as may be prescribed.

(vi) Address and other details of the Directors or Partners, as the case may be, and the number of employees, of the Multi-level marketing entity in the State at the time of application for registration.

(vii) Such other information and documents, as may be prescribed.

(viii) The application shall be made in such form and in such manner as may be prescribed.

6. Consideration of application and issue of registration certificate.-

(1) Every application for registration received by the Controller shall be examined by the Authority and after conducting an enquiry in respect of the multi-level marketing entity, it may fix the terms and conditions to be complied with to conduct the business. If the authority finds that the multi-level marketing intended to be carried on by the applicant will not be prejudicial to the public interest and all other legal aspects have been complied with, it shall, as soon as possible, grant registration to carry on the business in the State subject to such conditions as it may deem fit.

(2) After depositing the security amount fixed under section 7, the Authority shall, with out delay, issue a certificate of registration in such form as may be prescribed.

(3) Any modification or alteration to the nature of the business or change in the management of the multi-level marketing entity after its registration shall be informed to the Authority and such entity shall furnish true copy of all the documents in relation to such modification or change to the Authority.

7. Security deposit.-

(1) Where a registration has been granted by the Authority under sub-section (1) of section 6, it shall require the multi-level marketing entity to deposit an amount as security at such rate as may be prescribed.

(2) The security deposit shall be fixed proportionate to the total turn over of the multi-level marketing entity at the time of the application for its registration, but it shall not exceed three per cent of such total turn over. In the case of the multi-level

marketing entity came into being after the date of commencement of this Act, the security deposit may be fixed based on its paid up share capital. The Government may, considering the paid up capital or total turn over of different types of multi-level marketing entities, prescribe different rates of amount of security deposit in respect of registration of such entities.

(3) The Authority may, in accordance with the principles for fixing the security deposit under sub-section (2), revise the security deposit at the time of renewal of registration and it shall be paid by the multi-level marketing entity forth with.

(4) The security deposit may be made in the form of bank guarantee or in any other manner as may be prescribed.

8. Refusal of registration.-

The Authority may refuse registration of a multi-level marketing entity on the following grounds, namely:-

(a) If the multi-level marketing entity or a person or persons responsible for the conduct of such entity has been convicted under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (Central Act 43 of 1978) or the Securities and Exchange Board of India Act, 1992 (Central Act 15 of 1952) in relation to the conduct of the business by such entity;

(b) If the previous registration certificate has been revoked for any reason;

(c) If the previous registration certificate has been surrendered under section 11 within a period of one year preceding the date of application for registration;

(d) If the applicant fails to furnish sufficient details as required under this Act or the rules made thereunder;

(e) If the proposed multi-level marketing will be prejudicial to public interest:

Provided that no application for registration shall be refused with out giving the applicant an opportunity of being heard:

Provided further that every order refusing to grant registration shall state the specific reasons for such refusal.

9. Validity of registration certificate.-

(1) Every registration certificate granted or renewed, unless revoked, shall be valid for a period of three years from the date of issue of the certificate.

(2) Every multi-level marketing entity shall renew the registration certificate within one month of its expiry:

Provided that the Controller may, if he is satisfied that there were sufficient cause for not renewing the registration certificate within the said period, he may extend the time for applying for renewal of registration after realising such fine not exceeding one thousand rupees for each month of such delay.

(3) No certificate of registration shall be renewed if the multi- level marketing entity has violated any of the provisions of this Act or it has been convicted in relation to its business under the Acts referred to in clause (a) of section 8.

10. Revocation of certificate of registration.-

(1) The Controller may revoke a certificate of registration issued under this Act for the following reasons, namely:-

(a) If the multi-level marketing entity has been convicted, in relation to the conduct of its business, under the Acts stated in clause (a) of section 8.

(b) If the Authority found that the multi-level marketing entity has engaged in the promotion of prize chit or money circulation scheme as defined in the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (Central Act 43 of 1978).

(c) If the multi-level marketing entity has failed to comply with any of the conditions specified under this Act or the rules made thereunder in relation to the conduct of its business.

(d) If the multi-level marketing entity has failed to comply with the conditions imposed as per the certificate of registration.

(e) If it is found that any material information in relation to the multi-level marketing entity was not disclosed at the time of registration or renewal of the

certificate of registration and the certificate of registration was obtained stating false, misleading or inaccurate information or on mis-representation.

(f) If a number of complaints affecting the interest of the consumers or direct sellers or distributors working under the multi-level marketing entity have been received in the Government or to the Controller, against such entity.

(g) If the multi-level marketing entity has ceased to carry on the business for which the registration certificate has been obtained.

(2) No certificate of registration under this Act shall be revoked without conducting an enquiry by the Controller and the parties shall be given an opportunity of being heard before taking a decision:

Provided that if the proceedings for revocation has been initiated as per clause (a) or (b) of sub-section (1), the Controller may, after analysing the materials available before him, suspend the registration forth with.

11. Surrender of certificate of registration.-

(1) A multi-level marketing entity may surrender its certificate of registration at any time after giving one month's written notice to the Authority and a public notice in its web-site and in four daily news papers having wide publicity in the State.

(2) On receipt of a notice under sub-section(1), the Controller shall make an enquiry within fifteen days of such notice and he shall ascertain as to whether all the payments and other benefits lawfully due to the consumers, direct sellers and distributors from the multi-level marketing entity has been paid or remitted and he shall fix the amount, if any, and pass orders to pay such amount due to the consumers, direct sellers and distributors,.

(3) Where the amount payable as per the decision of the Controller under sub-section (2) is not paid or remitted within the time allowed by the Controller, he shall order to pay such amount from the security deposit of the multi-level marketing entity deposited with the Authority at the time of registration.

(4) Where the amount of security deposit is not sufficient to pay the amount fixed under sub-section (2), it shall be recovered from the assets of such multi-level

marketing entity as if it is an arrear of land revenue due and in case there is balance amount of security deposit after payment of the amount fixed under sub-section (1), such amount shall be repaid to the multi-level marketing entity concerned.

12. Registration of direct sellers.-

(1) Every direct seller of a multi-level marketing entity shall register his or its name with the Authority and get enrolled in the roll of direct sellers kept in the Authority and obtain a certificate of such enrollment in the manner and in such form as may be prescribed.

(2) No person or other entity, other than a distributor, shall engage in direct selling on behalf of a multi-level marketing entity unless he or it has enrolled as a direct seller under sub-section (1).

(3) No direct seller shall appoint or entrust another person, other than a distributor appointed by him, to do the business on behalf of himself or the multi-level marketing entity concerned.

(4) An application for enrollment as a direct seller shall, if the business is intended to be carried out in more than one District, be made to Controller and if it is for one District alone, to the Additional Controller of the District concerned, with such fee and in such form as may be prescribed. The application shall contain the registration number and other details of the multi-level marketing entity, true copy of the marketing contract with that entity and such other details and documents as may be prescribed.

(5) The Authority shall, after conducting such enquiry as may be necessary, issue a certificate of enrollment to the applicant within fifteen days from the date of receipt of such application.

(6) If a person has registered and enrolled as a direct seller under sub-section (3), the Authority shall issue a photo identity card to the direct seller in the prescribed form.

(7) No person or other entity shall be eligible to get registered, or continue, as a direct seller if he is,-

- (a) convicted of an offence involving moral turpitude;
- (b) declared as an insolvent as per the provisions of any law for the time being in force;
- (c) not mentally fit to deal with the customers or consumers;
- (d) not permitted by any other law applicable to him;
- (e) having such disqualifications or not having such other qualifications, as may be prescribed.

13. Registration of distributors.-

(1) Every person who is appointed or authorised as a distributor of a multi-level marketing entity by a direct seller shall, by himself or through his direct seller, with the general or special permission of such multi-level marketing entity, apply to the Additional Controller of the District concerned where the business is intended to be carried out and get registered and enrolled in the roll of distributors kept in the District Office of the Authority.

(2) No distributor shall engage in the business on behalf of a direct seller without an enrollment under sub-section (1) and he shall not act on behalf of any multi-level marketing entity.

(3) No distributor shall appoint or entrust any person to do the business on behalf of himself or a direct seller or a multi-level marketing entity.

(4) An application for enrollment shall be made to the Additional Controller concerned of the Authority with such fee and in such form and in such manner as may be prescribed.

(5) A person shall not be entitled to get enrolled as a distributor for the same reasons as specified in sub-section (6) of section 12.

(6) On receipt of an application under sub-section (3), the Additional Controller may make such enquiry as he may deem fit, including the character of the applicant.

(7) If the application has been allowed and the person is enrolled as a distributor, the the Additional Controller shall issue a photo identity card stating the

enrollment number and such other details in such form as may be prescribed.

14. Appeal.-

(1) Any person aggrieved by an order of the Controller under sections 6 to 12 or under sub-section (2) of this section may appeal to the Government, within such time and with such fee and in the manner, as may be prescribed.

(2) Any person aggrieved by an order of an Additional Controller under sub-section (4) of section 12 or under section 13 may appeal to the Controller within such time and with such fee and in the manner, as may be prescribed.

(3) In deciding all matters under this Act, the Controller shall have the power to regulate his own procedures and for the purpose of making any enquiry or investigation under this Act, he shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) while trying a suit in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) discovery and production of any document or other material object producible as evidence;
- (c) reception of evidence on affidavits;
- (d) issue of commissions for examination of witnesses.

(4) Any enquiry or investigation before the Controller shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Central Act 45 of 1860) and the Controller shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

Chapter IV

CONDITIONS FOR DIRECT SELLING

15. Conditions for direct selling by multi-level marketing entities.-

Every multi-level marketing entity shall comply with the following conditions in respect of their business, namely:-

- (a) It shall be a legal entity authorised to conduct business in India in accordance with the provisions of the laws in force.
- (b) It shall have a registered trademark which identifies the entity, the goods or services to be supplied.
- (c) It shall maintain records both manual as well as electronic, with complete details of their goods, services, terms of services, price, income plan, details of direct sellers under it and all relevant information about the company and business. The websites of a multi-level entity shall be updated regularly.
- (d) It shall not require a direct seller or distributor to purchase any goods or service or to pay any membership fee as a condition precedent for registration or enrollment of direct sellers or distributors.
- (e) It shall not require the direct sellers or distributors to pay any money by way of minimum monthly subscription or renewal charges.
- (f) It shall ensure full refund of the price of any goods returned by its consumers on the ground of any defect or inferior quality as against the information given by it regarding such goods, within thirty days of purchase.
- (g) The income plan of a multi-level marketing entity shall not be based on the number of new direct sellers registered or distributors enrolled. The benefits received by any multi-level marketing entity, direct seller or distributor shall be only as a result of selling goods or providing services and shall not be in connection with the number of registration of direct sellers or enrollment of distributors.
- (h) It shall not require the direct sellers to enroll a minimum number of distributors for the purpose of receiving any type of commission, incentive or other benefits.
- (i) It shall require the direct sellers and distributors under it to provide the following informations to the consumers at the time of sale, namely:-

- (i) Name, address, register number or enrollment number and telephone number of the direct seller, distributor, as the case may be, and of the multi-level marketing entity concerned;
- (ii) A description of the goods or services to be supplied;
- (iii) The Order date, the total amount to be paid by the consumer along with the bill and receipt;
- (iv) Time and place for inspection of the sample and delivery of goods;
- (v) A notice to the consumer of the consumer's rights to cancel the order and to receive a full refund of sums paid;
- (vi) Details regarding the complaint redressal mechanism of the multi-level marketing entity;
- (vii) The direct sellers and their distributors shall at all times carry identity card issued by the Authority.

16. Conditions for negotiating door to door sale.-

(1) No direct seller or distributor shall call at any premises for the purpose of negotiating door to door sale in a forcible manner or without the permission of the owner or occupier of such premises or of the customer and shall discontinue the marketing activity and leave the premises immediately upon the request of the customer or any person acting with the authority of the customer.

(2) Any person negotiating a door to door sale with a person shall inform him of the following details, namely:-

- (i) Name, address, registration number and telephone number of the direct seller or of the distributor, as the case may be, and of the multi-level marketing entity concerned;
- (ii) The proof of identity of the direct seller or distributor, as the case may be, and their companies along with the photo identity card issued by the Authority;
- (iii) A description of goods or services supplied by him.

17. Mail order sales.-

(1) No person shall supply or advertise for the supply of any goods or services by mail order in contravention of the provisions of this Act and the rules made thereunder.

(2) An advertisement by any multi-level marketing entity or direct seller or distributor for supply of goods or services by mail order shall contain,-

- (a) the name and address of such multi-level marketing entity or direct seller;
- (b) the registration number, telephone number or mobile phone number of multi-level entity or direct seller, as the case may be;
- (c) a detailed description of the goods or services offered;
- (d) the places and times where a sample of the goods may be inspected.

(3) A multi-level marketing entity or direct seller or distributor who supplies goods by mail order shall make available a sample of such goods for the inspection of the public at such places and at such times as may be specified in the advertisement.

18. Terms and conditions of sale between a direct seller or distributor and the customer.-

(1) On receiving payments with respect to sale of goods or services as agreed by both the parties, the direct seller or the distributor, as the case may be, shall issue a signed receipt to the customer concerned in accordance with provisions of the Indian Stamp Act, 1899 (Central Act 2 of 1899) in such form as may be prescribed, which shall contain the grounds for cancellation of the transactions and such other terms and conditions in respect of the sale of goods or services concerned.

(2) A customer may rescind a direct sales contract with a direct seller or a distributor, at any time within thirty days from the date of such direct sales contract, by serving on the direct seller or distributor, as the case may be, a notice in such form as may be prescribed.

19. Issue of Cash Bill to the consumer and keeping registers.-

(1) Every direct seller and distributor who sells goods to a consumer shall issue a cash bill to such consumer in accordance with the provisions of the law for the time being in force in this respect.

(2) Every direct seller and distributor shall keep such register or registers stating the details of the products, price, tax and the quantity and such other details in respect of the goods sold by him, in such form as may be prescribed.

(3) The Authority and the officers concerned of the Commercial Taxes Department shall be competent to call for such registers for any purpose in accordance with the provisions of any law for the time being in force.

(4) Notwithstanding anything contained in this Act, every direct seller and distributor shall comply with the provisions of the Kerala Value Added Tax Act, 2003(30 of 2004).

Chapter V

WELFARE FUND

20. Welfare Fund.-

(1) Notwithstanding anything contrary contained in this Act or in the Kerala Shops and Commercial Establishments Worker's Welfare Fund Act, 2006 (24 of 2006), the provisions of the latter Act shall also be applicable to every multi-level marketing entity, direct sellers and distributors for the purposes of that Act and every multi-level marketing entity and direct seller shall be an 'employer' within the meaning of clause (d) of section 2 of the said Act and every distributor shall be a 'worker' within the meaning of clause(g) of the said section.

(2) Any distributor may become a member of the Kerala Shops and Commercial Establishments Worker's Welfare Fund constituted under section 3 of the said Act and thereupon he shall be eligible for all the benefits under the Kerala Shops and Commercial Establishments Worker's Welfare Fund Scheme on payment of the contribution applicable to him under that Act.

(3) Every multi-level marketing entity and direct seller shall be liable to pay contribution to the Fund and such contribution may be paid by the multi-level marketing entity or the direct seller or by both in accordance with the terms and conditions in this respect as agreed to between them.

(4) No distributor can become a member of the said Fund if he is a member of any other statutory Welfare Fund.

(5) The membership of a distributor in the said Fund shall cease when he ceases to be a distributor.

Chapter VI

RELATIONSHIP OF AGENCY

21. Relationship among direct-level marketing entity, direct seller, distributor, and consumer or customer.-

Without prejudice to the other provisions of this Act, the relationship among the direct-level marketing entity, direct seller, distributor and consumer or customer shall be that of among the principal, agent, sub-agent and third parties, respectively, under the provisions of the Indian Contract Act, 1872 (Central Act IX of 1872) and their rights, duties and liabilities shall be fixed accordingly.

Chapter VII

PENALTIES

22. Penalty for contravention of the provisions relating to registration and enrollment.-

(1) Any multi-level marketing entity which contravenes the provisions of section 5 shall, on conviction, be punished with simple imprisonment which may extend to six months or with fine which may extend to one lakh rupees or with both:

Provided that in the case of continuing contravention of the provisions of section 5, it shall be liable to be punished with a further fine which may extend to five thousand rupees for every day during which the contravention is continued after the first conviction.

(2) Any direct seller who contravenes the provisions of section 12 shall, on conviction, be punished with simple imprisonment which may extend to three months or with fine which may extend to fifty thousand rupees or with both:

Provided that in the case of continuing contravention of the provisions of section 11, he shall be liable to be punished with a further fine which may extend to one thousand rupees for every day during which the contravention is continued after the first conviction.

(3) Every distributor who contravenes the provisions of section 13 shall, on conviction, be punished with simple imprisonment which may extend to one month or with fine which may extend to five thousand rupees or with both:

Provided that in the case of continuing contravention of the provisions of section 13, he shall be liable to be punished with a further fine which may extend to five hundred rupees for every day during which the contravention is continued after the first conviction.

23. Penalty for violation of conditions specified under this Act.-

(1) Any multi-level marketing entity which contravenes the provisions and conditions specified in section 15 shall, on conviction, be punished with simple imprisonment which may extend to three months or with fine which may extend to fifty thousand rupees or with both:

Provided that in the case of continuing contravention of the provisions and conditions specified under section 15, he shall be liable to be punished with a further fine which may extend to ten thousand rupees for every day during which such contravention is continued after the first conviction.

(2) Any direct seller or distributor who contravenes the provisions of sub-sections (1) or (2) of section 16 shall be punishable with a fine which may extend to one thousand rupees.

(3) Any distributor who contravenes the provisions of sub-section (3) of section 16 shall, on conviction, be punished with simple imprisonment which may

extend to three months or with fine which may extend to two thousand rupees or with both:

Provided that in the case of continuing contravention of the provisions of sub-section (3) of section 16, he shall be liable to be punished with a further fine which may extend to five thousand rupees for every day during which such contravention is continued after the first conviction.

24. Penalty for contravention of any other provisions.-

Where no penalty is provided in respect of any contravention of the provisions of this Act, any person contravenes such provision shall be punishable with fine which may extend to one thousand rupees.

25. Punishment not to be in derogation of the provisions of any other law.-

The penalties under this Act shall not be in derogation of the provisions of any other law for the time being in force and any conviction under this Act shall not affect the power of the Authority to cancel the registration under this Act.

26. Offences by companies.-

Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any

neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purpose of this section,-

(a) "Company" means a company incorporated under the provisions of the Companies Act, 1956(Central Act 2 of 1956) and includes a firm under the Partnership Act, 1932 (Central Act IX of 1932) and a firm under the Limited Liability Partnership Act, 2008 (Central Act 6 of 2009).

(b) "Officer" of the company includes the office bearers of a firm also.

(c) "Director" in relation to a firm means a partner of that firm.

27. Compounding of offences.-

(1) The court may, for good and sufficient reasons recorded, permit an accused to compound any offence under this Act by accepting from the accused a sum of money not exceeding rupees one lakh which shall be paid to the Authority.

(2) Where any contravention of the provisions of this Act affecting a customer or consumer is possible to be settled with the consent of such customer or consumer, the Controller may, on a joint application made in this respect by the parties, settle the matter on such terms and conditions agreed up on by such customer or consumer and a multi-level marketing entity or direct seller or a distributor, as the case may be.

28. Cognizance of offences.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), a court of the Judicial Magistrate of the First Class having jurisdiction over the area concerned shall have jurisdiction to try all offences under this Act and to sentence the accused to imprisonment and fine provided for such offences.

(2) No court shall take cognizance of any offence punishable under this Act, except on a report in writing of facts constituting such offence, made by the Controller or a District Officer of the Authority authorised by him.

Chapter VIII

MISCELLANEOUS

29. Exemptions.-

(1) Nothing contained in this Act shall apply to a Government company or a public sector undertaking, under the Central Government or a State Government or under the administration of a Union Territory or to a Banking Company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (Central Act 2 of 1949).

(2) The Government may, in public interest, by notification in the Gazette, exempt any goods or service from the provisions of this Act.

30. Protection of acts done in good faith.-

No suit or other legal proceeding shall lie against the Controller or any other officers of the Government acting under them for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

31. Bar of jurisdiction of Civil Court.-

No Civil Court shall have jurisdiction to settle, decide or deal with any question or any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Government or the Authority or any officer authorised by the Government or the Authority.

32. Act not to override other laws.-

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

33. Power to make rules.-

(1) The Government may, by notification in the official Gazette, make rules, either prospectively or retrospectively, for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the forgoing powers, such rules may provide for all or any of the following matters, namely:-

(a) the terms, conditions and restrictions to which registration certificates and their renewals are to be subject;

(b) the rates of fee payable up on application for registration certificate and renewal of registration certificate of multi-level marketing entities and for registration of direct sellers and distributors;

(c) any other fee required to be paid under this Act;

(d) the amount of security to be deposited by the multi-level; marketing entities at the time of registration;

(e) the forms which shall be used under this Act and rules;

(f) any other matter which is required to be, or may be, prescribed.

(3) The Government may prescribe different rates of fees for the registration of direct sellers and distributors based on their area of operation of the business applied for.

(4) Every rule made under this Act, shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly make any modifications in the rule or decide that the rule should not be made, the Rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(Drafting Committee)

The last date for accepting suggestions from the public/ stakeholders is 15.02.2014 (till 5.15 PM). The following are the email and postal address for sending suggestions to Government.

Email id: industriesbdepartment@gmail.com
Postal Address: **The Principal Secretary to Government,
Industries (B) Department
Government Secretariat
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