

LAWS IN MAKING

CONSUMER PROTECTION (DIRECT SELLING) DRAFT RULES, 2021

Objectives, Applicability, Compliances, Penalties & Key Highlights

INTRODUCTION

The Consumer Affairs Ministry has introduced the Consumer Protection (Direct Selling) Draft Rules, 2021. The direct selling of goods and services is not properly regulated in India. In the absence of regulatory framework for Direct Selling Entities, there's uncertainty around the legitimacy of their business models.

In a Landmark Judgment Amazon Seller Services Pvt. Ltd. and Ors. v. Amway India Enterprises Pvt. Ltd. and Ors. While handling questions related to sale of products of certain direct selling entities on e-commerce platforms, the Division Bench of the Delhi High Court, has allowed e-commerce platforms like Amazon and Flip kart to sell and advertise products of Amway without obtaining its consent. The judgment finds its basis on three elements:

- Earlier in 2016, the Ministry had issued a set of Direct selling guidelines which were advisory in nature.
- Guidelines were merely intermediaries and not binding in Law as exemption granted from any liability by virtue of Section 79 of the Information Technology Act, 2000
- As per Article 13, if any Guidelines were not notified in Gazette, they do not obtain the status of law in the absence of statutory backdrop.

The Guidelines were notified only in certain states like Orissa, Punjab, Maharashtra and Karnataka, but have not been adopted under Central Legislation. But now the proposed draft rules will have the legal backing and be applicable uniformly across India, and violation of any regulation or provision will attract penalties.

SCOPE AND APPLICABILITY

The Direct selling Entities shall be registered under the Indian Laws which will also help to eliminate the bad elements from the Industry. The Law shall apply to :

- All goods and services bought or sold through direct selling
- All models of direct selling
- All direct selling entities offering goods or services to consumers in India and
- All forms of unfair trade practices across all models of direct selling

KEY DEFINITIONS

- **Direct selling** means marketing, distribution and sale of goods or provision of services through a network of sellers, other than through a permanent retail location
- **Direct selling entity** means an entity, not engaged in a pyramid scheme, and/or money circulation scheme, which sells or offers to sell goods or services through direct sellers
- **Direct selling network** means a network of direct sellers formed by a direct selling entity, and includes a multi layered network of direct sellers in which direct sellers introduce or sponsor further levels of direct sellers and whereupon support them in order to receive any benefit, where such benefit is solely as a result of sale of goods or services
- **Direct seller** means a person appointed or authorized, by a direct selling entity through a legally enforceable written contract with the Principal entity to undertake direct selling business on principal to principal basis

- **Cooling off period** shall mean a period of time during which one can change his mind about an agreement that he/she has made, not resulting in breach of contract and or levy of penalty
- **Pyramid Scheme** means a multi layered network of subscribers to a scheme formed by subscribers enrolling one or more subscribers in order to receive any benefit, directly or indirectly, as a result of enrolment, action or performance of additional subscribers to the scheme and the subscribers enrolling further subscriber(s) occupy higher position and the enrolled subscriber(s) lower position, resulting in a multi- layered network of subscribers with successive enrolments
- **Money Circulation Scheme** means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any event or contingency relative or applicable to the enrolment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions

REGISTRATION OF DIRECT SELLING ENTITIES

- Direct Selling Entity shall obtain a registration number from Department for Promotion of Industry and Internal Trade (DPIIT)
- Direct seller operating in the network of direct selling entity shall also register itself with Department for Promotion of Industry and Internal Trade (DPIIT)

MANDATORY REQUIREMENTS OF DIRECT SELLING ENTITIES

- Incorporation as Company or Partnership Firm or LLP
- At least one Registered office in India physically located
- Trademark holder of goods or services
- Holding any other identification mark identifying the direct selling entity
- Maintain website with all the updates like management, products, product information, price, and grievance Redressal mechanism for consumers
- Issue identity cards and documents to its direct sellers to fulfill KYC verification requirements
- Be liable for grievances arising out of sale of products, services or business opportunities by direct sellers
- All products shall comply with all the declarations to be made under Legal Metrology Act, 2009
- Take appropriate steps to ensure the protection of all personal information provided by a consumer
- Store Personal data within the jurisdiction of India
- Consumer complaint to be addressed within forty- eight working hours by Grievance officer
- Consistent advertisement for marketing of goods or services
- Co-operate the convergence process of the National Consumer Helpline of the Central Government
- Display Registration number on its website
- Ensure to issue invoice for each transaction

KEY HIGHLIGHTS

- Appointment of a Nodal Officer who is citizen and resident of India to fulfill compliances under the Act
- Establish a mechanism for filling complaints through offices, post, email, website, telephone
- Maintenance of records of direct sellers within network who repeatedly offer defective or suspicious goods
- Maintain Identification records of Direct Sellers
- Ensure that all advertisements and material correctly represents the product and authenticity of the product is maintained
- Registration with DPIIT for the DS entity and sellers
- Maintenance of records - MOA, AOA, PAN, TAN, GST returns, Audit Reports

OBLIGATION OF DIRECT SELLER ENTITY & SELLERS

- Clarity for consumer and no ambiguity in terms of Offer
- No misleading communication
- Accurate and complete details on credit, cooling off, after sales, returns, guarantee, grievance mechanism
- Not to over claim especially on warranty
- Remedial actions to be clearly communicated to the consumer
- Correct delivery dates and cancellation policy
- Product description should not contain misleading facts
- Terms of any guarantee or warranty shall be easily available to consumers

CONSENT ON SALE THROUGH E-COMMERCE PLATFORM

- Now it is mandatory to obtain written consent from the Direct Selling Entity on sale, display or offer for sale of any of its product or service
- End of the face off between the direct selling entities and e-commerce marketplaces
- Strict Ban imposed on e-commerce platforms to sell or advertise products of direct selling entities without consent

ADDITIONAL OBLIGATION OF DIRECT SELLER

- Clear Identification of Direct Selling Entity to the consumer during the sales representation
- Offer adequate explanations, demonstration of goods and services and all the terms and conditions
- Offer accurate return policies, terms of guaranty and after sales service
- Offer an order form to the consumer prior to initial sale which identified the direct selling entity and the direct sale and has adequate contact details and description of products
- Protection of private information provided by a consumer
- Shall not visit a consumer premises without an Id card or prior appointment
- Not give any literature if not approved by the parent company
- Not make any claim if not authorized by company

PYRAMID AND MONEY CIRCULATION SCHEME

Pyramid scheme may be a business model that recruits members via a promise of payments or services for enrolling others into the scheme, rather than sale of products or services. Direct selling entity or direct seller shall not do the following:

- Promote a Pyramid Scheme or enrol any person to such scheme or
- Participate in Scheme arrangement in any manner whatsoever in the garb of doing direct selling business
- Participate in Money Circulation Scheme to garb direct selling business.

APPOINTMENT OF CHIEF COMPLIANCE OFFICER

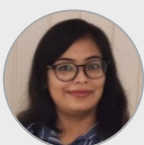
- Appoint a Chief Compliance Officer from managerial personnel or such other senior employee of an direct selling entity who is resident in India
- Chief Compliance officer shall comply with all the compliances of Consumer Protection Act
- Be liable in any proceedings concerning any data or communication with reference to direct selling entity

REDRESSAL MECHANISM

- Establish an adequate Grievance Redressal Mechanism having reference to the amount of grievances ordinarily received
- Appoint a Grievance officer for consumer grievance Redressal
- Display the contact details and designation of Grievance officer on its website
- URL of the website to be printed on product information sheet or pamphlet
- Ensure that the Grievance Officer acknowledges the receipt of any consumer complaint within forty- eight working hours
- Redresses the complaint normally within a period of 1 month from the date of receipt of the complaint
- inform the complainants of the action taken
- Inform the reasons of delay in responding complaints in case of delay of more than a month.

PENALTIES

- Whoever fails to comply with any direction of the Central Authority, shall be punished with 6 months imprisonment or with up to twenty lakh rupees, or both
- Any manufacturer or service provider causing misleading advertisement shall be punished with 2 years imprisonment or fine upto ten lakh rupees
- Punishment for manufacturing for sale or storing, selling or distributing or importing products containing adulterant or spurious good is imprisonment for life and with fine not be less than ten lakh rupees if product results in the death of a consumer,
- Court may also suspend any license for a period up to two years or cancel the license in violence of compliances.



AUTHOR: MONIKA TAPARIA

- Team Lead Regulatory Intelligence
- LLB, LLM, 7+ years experience;
- Expert in Establishment, Factories, Industrial, EHS & IPR Laws



CO-AUTHOR: ASHISH CHAUHAN

- Team Lead Regulatory Updates
- A lawyer by profession, and
- Expert in Companies, Tax Laws

ABOUT US

Regulatory Risks are amongst **"Top 3 Business Risks"** globally as there are multiple laws applicable which are changing frequently, difficult to understand and Compliance to these is everyone's responsibility. We offer RegTech & Lextech solutions for Enterprises, Audit & Compliance Professionals globally.

- *Our decade of experience in creating Global Regulatory Intelligence and understanding real-life challenges of managing them have helped us create innovative, best in class solutions that are scalable & easy to implement.*
- *Our solutions integrate Regulatory Intelligence across laws for 70+ countries with technology, making it easy for users to understand compliance obligations and be informed of the Regulatory changes.*
- *Our Legal Network comprises 1000's of legal experts from 100's of Legal, CPA & Consulting Firms across 70+ countries having domain and territory expertise across areas of law.*

OUR SOLUTION PORTFOLIO

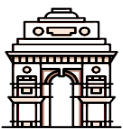
ENTERPRISE SOLUTIONS

- [Global Compliance Management](#)
- [Legal Matter Management](#)
- [Enterprise Risk & Controls Management](#)

PROFESSIONAL SOLUTIONS

- [Compliance Audit Management Solution](#)
- [Compliance Service Management Solution](#)
- [Litigation Management Solution](#)

OUR LOCATIONS



DELHI / NCR (CORPORATE OFFICE)

865-A, Tower - B1, Spaze I-Tech Park | Sector 49, Gurgaon - 122002



JAIPUR (KNOWLEDGE CENTRE)

32, Gopal Tower, Dadu Marg, GopalBari, Jaipur, Rajasthan - 302001



MUMBAI

WeWork Chromium, JVLR, Opp. L&T Business Park, Andheri, Mumbai - 400076



AHMEDABAD

A2/512, Palladium Complex, Corporate Rd, Prahladnagar, Ahmedabad, Gujarat - 380015

PARTNER LOCATIONS

INDIA: Bengaluru | Chennai | Hyderabad | Pune

GLOBAL: Dar-E-Salaam, Tanzania

GET IN TOUCH WITH US



+91-9560-83-4141



info@lawrbit.com



www.lawrbit.com



Scan QR code to know more

Copyright © 2020 Lawrbit Lextech India Private Limited, all rights reserved. Lawrbit makes every effort to use reliable and comprehensive information, but Lawrbit does not represent that the contents of the report are accurate or complete. This document has been prepared without regard to the objectives or opinions of those who may receive it. Opinions expressed herein are entirely those of author(s) & the document is being furnished to you for your information only.

Lawrbit is registered in India having Corporate Identity Number or CIN : U74995RJ2018PTC062060.