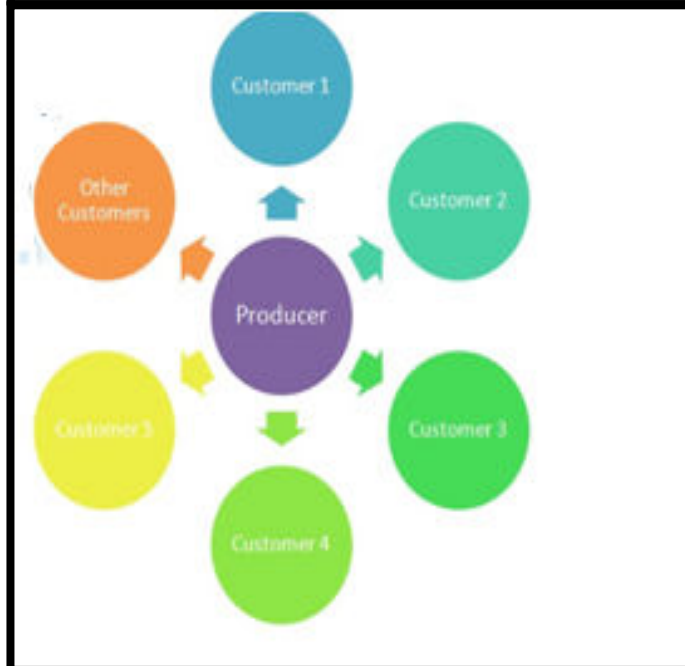


DIRECT SELLING GUIDELINES, 2016:

AN ANALYSIS



PRESENTED BY
RUPENDRA PORWAL
B.Com., FCS, LL.M. (UNIVERSITY OF MANCHESTER, UK)

OVERVIEW:

1. There was long demand of Direct Selling Industry (“DSI”) for enactment of an express legislation to distinguish between the direct selling entity engaged in genuine direct selling activities and those entities involved in illegal operation of money circulation schemes in form of Ponzi and/or Pyramid Schemes.
2. In order to restrict the menace of money circulation schemes, the states like Kerala and Rajasthan issued direct selling guidelines for protection of the consumers.
3. Various state governments arrested officials of direct selling entities under the provisions of Prize Chits and Money Circulation Schemes (Banning) Act, 1978, State’s Depositors Protection Act and Indian Penal Code.
4. Department of Consumer Affairs (Ministry of Consumer Affairs, Food and Public Distribution, GOI) **issued DIRECT SELLING GUIDELINES, 2016**, inter-alia, in order to curb the menace of money circulation schemes and to bring uniformity in regulations and control of the DSI in the country.

Continues to next page..

5. These guidelines are in the nature of advisory to the state governments and union territories for enacting suitable legislation or carrying out amendments in present legislations to bring uniformity for effective regulation and control of DSI.
6. Direct Selling Guidelines, 2016 will remove much of ambiguity looming over genuine direct selling entities often being labelled as entities operating money circulation schemes under characteristics of Multi Level Marketing or Ponzi Schemes.
7. These guidelines will pave the way for development of legitimate direct selling business in the country.
8. The presentation briefly evaluates various aspects of Direct Selling Guidelines, 2016 and also highlight other inter connected elements under the subject matter.



EVOLUTION OF DIRECT SELLING BUSINESS IN INDIA:

- 1. Direct selling is one of the oldest, most traditional and informal way of selling goods and services directly to consumers.**
- 2. The modern direct selling industry is considered to have been originated in the USA with the establishment of Avon in 1886. The direct selling business proved successful due to low investment, no burden of fixed operating cost, lower distribution cost and greater interaction with the customers.**
- 3. In India, the direct selling business module was witnessed in the year 1980, however it remained at very limited scale owing to various reasons. After opening up of economy in the year 1991, many global players started entering in the Indian market. In the year 1995, Amway, one of the leading global direct selling company, entered in India and subsequently other global direct selling companies such as Avon, Oriflame and Tupperware entered in Indian market. Modicare was one of the first Indian company to adopt direct selling module as its primary business module for sale of products.**

Continues to next page..

4. Unfortunately direct selling industry could not grow at rapid pace due to lack of clear legislative guidelines. Further, fraudulent and malicious money circulation schemes also greatly impacted the development of direct selling industry in the country.
 5. The direct selling business has not progressed in line with the growth of retail including wellness sector in the country. In the F.Y. 2014-2015, the total sale of DSI was Rs. 8000 crore and it achieved CAGR of approximately 18% in previous five years.
 6. South India has largest share in direct selling segment followed by Northern parts of India. Subsequent positions are occupied by Western India and North East India respectively.
 7. There are diverse range of products in direct selling business, however Wellness is the largest direct selling segment capturing more than 40% of market share followed by Cosmetics & Personal Care Products.
- 

CONTRIBUTION BY DIRECT SELLING INDUSTRY IN INDIA:

DSI has contributed immensely for development of entrepreneurship among ordinary people, generation of employment in semi urban and rural areas, growth of Medium, Small and Micro Enterprises (“MSME”) and ancillary industries and contribution to revenue of government(s) in the form of direct and indirect taxes.


Some of the important contributions made by DSI are as:

- 1. Direct selling business module provides an additional income opportunity to a large number of people having limited resources or constraints of the time. This module is very suitable for women direct sellers, who can partly devote their time for direct selling activities and devote rest of time on family, thus they can maintain exemplary balance between their work and personal lives.**

- 2. Direct selling business module promotes micro-entrepreneurship among the ordinary people to commence their business activities with negligible capital. Further this business can be carried out without any burden of fixed operating costs of shop/office.**
- 3. DSI plays a very vital role in development of the MSMEs and ancillary industries in the country as most of the products are outsourced by DSI from the MSMEs. The direct selling entities also invest in MSMEs for effective control, consistent quality and regular supply of the products.**
- 4. The direct selling business module attracts VAT and/or Service Tax on the transactions of sale of goods or services to direct sellers and further from direct sellers to end consumers. The direct selling entity and direct sellers are also liable to pay income tax on their net income arising from operation of direct selling business activities, thus this business module contributes substantially to the government exchequer in the form of direct and indirect taxes.**

OBJECTIVES OF THE DIRECT SELLING GUIDELINES:

The primary and macro objectives of the Direct Selling Guidelines, 2016 is to protect the interest of consumers from money circulating schemes like Ponzi and/or Pyramid Schemes. However guidelines also seek to achieve following other objectives:

1. To lay down road map for effective and uniform legislation for curbing money circulating schemes in the country;
 2. To absolutely curb unreasonable terms and conditions imposed on direct sellers by some of the direct selling entities;
 3. To enable the direct sellers and consumers to differentiate between genuine direct selling entity and entity involved in illegal and fraudulent money circulating schemes;
 4. To bring certainty and clarity in legislation for sustainable growth of DSI sector and thereby spur the growth in direct selling business in the country; and
 5. To provide impetus for development of entrepreneurship and thereby generate employment in the country.
- 

IMPORTANT ELEMENTS OF THE DIRECT SELLING GUIDELINES:

- 1. The Department of Consumer Affairs (Ministry of Consumer Affairs, Food and Public Distribution, GOI) has formulated these model guidelines after deliberation with Inter Ministerial Committee and other stakeholders.**
- 2. The Guidelines have been issued on 12th September, 2016 as guiding principles for State Governments and Union Territories to develop mechanism to supervise/monitor the activities of direct sellers and direct selling entities for effective regulation, control and ensuring compliances, as applicable, under these guidelines.**
- 3. These Guidelines seek to regulate the business of Direct Selling and Multilevel Marketing and strengthen the state machineries for preventing the frauds and thereby protecting the legitimate rights and interest of the consumers.**

4. Every direct selling entity in country shall, within 90 days of issue of these guidelines, submit an undertaking with Department of Consumer Affairs (Ministry of Consumer Affairs, Food and Public Distribution, GOI) confirming that it has complied with these guidelines and also provide details about its incorporation, and, other details/information, as may be notified by Government from time to time.
5. These guidelines set the momentum for regulation of DSI sector in the country, however these guidelines have not yet been notified to provide necessary statutory structure.
6. These guidelines present a progressive move towards a consumer driven regulatory era.



IMPORTANT DEFINITIONS UNDER DIRECT SELLING GUIDELINES:



1. DIRECT SELLER:

“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.

NOTES:

- A. Direct Sellers shall NOT be the AGENT of the Direct Selling Entity.
- B. Agreement shall determine the terms and conditions of the relationship between the parties.
- C. Direct Sellers shall be liable for payment of taxes on their sale and income, as arising from direct selling activities.

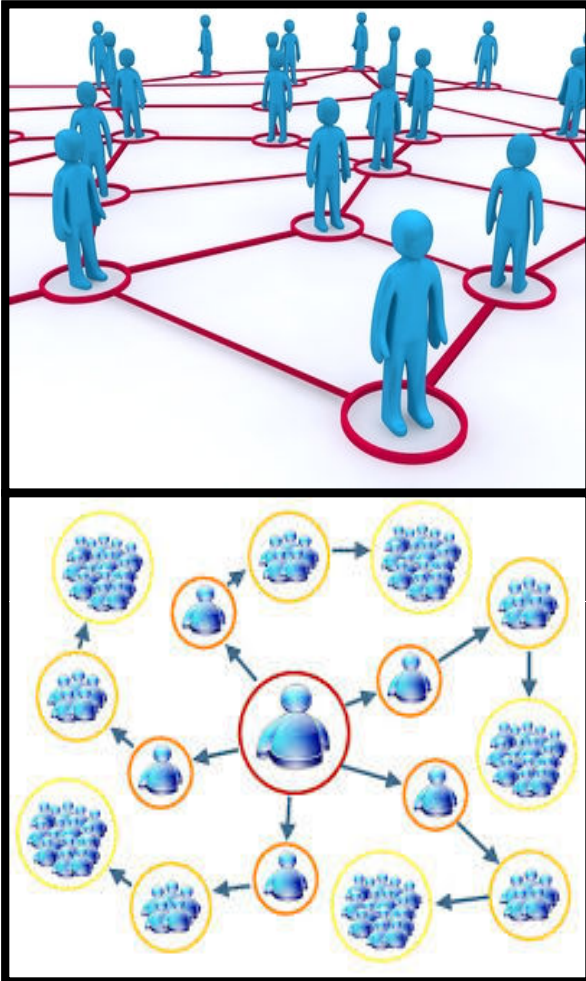
2. NETWORK OF DIRECT SELLING:

“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.

NOTES:

- A. This is a NETWORK of Direct Sellers for distribution and marketing of goods and services to consumers.
- B. The direct selling entity may devise system of distribution (may define hierarchy of Direct Sellers) including multi-level marketing method of distribution.
- C. The NETWORK WILL NOT necessitate or force any direct seller to further recruit direct sellers.



3. PYRAMID SCHEME:

A scheme shall **not** be regarded as Pyramid Scheme, wherein the direct selling entity formulates a scheme for multi layered network of subscribers, where existing subscribers may enroll one or more subscribers in order to receive, direct or indirect, benefits as a result of sale of goods or services by subscribers and the scheme complies with the following terms and conditions:

- i. It does not impose a condition on a direct seller that he will receive remuneration or incentives **ONLY** on recruitment / enrolment of new participants/ subscribers;
- ii. It does not require a participant/ subscriber to purchase goods or services for an amount or quantity that exceeds expected sale, consumption, resale of goods or sale of services to the consumers within a stipulated time;



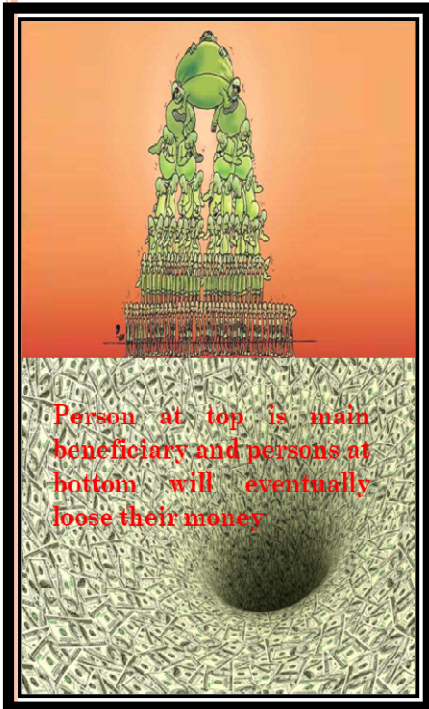
- iii. It does not require a participant/ subscriber to pay any entry/registration fee, cost of demonstration equipments and materials or other fees relating to participation;**
- iv. It shall execute a written contract with direct sellers describing the material terms and conditions of their relationship;**
- v. It allows a reasonable cooling-off period to the direct sellers to decide on participation in direct selling activities or cancel participation and receive refund of consideration, as paid, for engaging in direct selling activities;**
- vi. It allows or provides for a buy-back or has repurchase policy for buying/re-purchasing the presently marketable goods or services, sold to the participants/ subscribers, at the request of the participants/ subscribers, on fair and reasonable terms and conditions; and**
- vii. It establishes a grievance redressal mechanism for protection of the interest of the consumers.**

4. MONEY CIRCULATION SCHEME

“Money Circulation Scheme” has the same meaning as defined under Sec. 2(c) Prize Chits and Money Circulation Schemes(Banning) Act, 1978.

Section 2 (c):

“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.



NOTES:

- A. Any scheme which generates or accrues quick and easy money for the participants.
- B. A promise to pay exorbitant interest /consideration for contribution of money in the scheme.
- C. Amount/benefits are contingent upon enrolment of new members.

5. REMUNERATION SYSTEM:

“Remuneration System” means the system followed by the direct selling entity to compensate the direct sellers. The System provides the mode of sharing of incentives, profits and commission, and, including financial and non-financial benefits, by the direct selling entity to the direct sellers, on a monthly or periodic or yearly basis or both, as the case may be.


Under the remuneration system, the direct selling entity shall :

- i. NOT impose condition on the direct sellers that they will receive remuneration ONLY after recruitment of new participants/subscribers;**
- ii. Ensure that direct sellers are paid remuneration as per sale of goods or services;**
- iii. Explicitly disclose the method of calculation of remuneration payable or paid to the direct sellers.**

CONDITIONS FOR SETTING UP DIRECT SELLING BUSINESS (Clause-2):

- A. Every direct selling entity intending to carry out direct selling business shall, within 90 days of publication of notification, comply with the following conditions: The entity engaged in direct selling activities shall/shall be:**
- i. A registered legal entity in India;**
 - ii. Provide orientation session i.e. training to the prospective direct sellers for carrying out direct selling activities;**
 - iii. Provide fair and accurate information on all aspects of direct selling including information concerning the amount of remuneration, opportunities and rights and duties of the entity and the direct sellers;**
 - iv. Make payment of amount due to direct sellers and if any amount is required to be withheld, it shall do so in commercially sound manner;**

Continues to next page..

- v. Advise & provide refund of entire amount or offer buy back guarantee and the option may be exercised by direct sellers within a period of 30 days from the date of distribution of goods or services to the direct sellers;
 - vi. Notify and allow direct sellers to return any good or/and services during the cooling off period;
 - vii. The key managerial personnel or promoters should not have been convicted in last five years for any criminal offences prescribing punishment of imprisonment ; and
 - viii. Establish an office in each state to enable the consumers and direct sellers to acquaint with the price of goods, return and replacement policy of goods and services, effective delivery mechanism and after sales service.
- 

PREREQUISITES FOR CONDUCT OF DIRECT SELLING BUSINESS: (Clause 3)

The direct selling entity shall:

- 1. Be owner, holder or licensee of Trade Marks or Service Marks, in order to enable the direct sellers and consumers to identify or distinguish goods or services of associated/referred direct selling entity.**
- 2. Issue proper identity documents to direct sellers i.e. Identity Card/Letter of Appointment/Engagement Letter in order to enable them to exhibit/show to the consumers while presenting his introduction.**
- 3. Maintain proper records (either manual or electronic) of all business transactions including details of goods or services, terms & conditions of the agreement, price, income plan and complete details of direct sellers.**
- 4. Maintain a proper and updated website providing details of its management, products, products information including quality certifications, services, income plan and contact information etc.**

Continues to next page..

5. **Ensure that website has system to register consumer complaints and it shall ensure that the grievances of the direct sellers and consumers are addressed within 45 days from the date of registration of the complainants.**
6. **Provide periodic account/statement to all direct sellers describing the details of purchases, sales, earnings, commission, bonus and other information as per T&C of the agreement.**
7. **Ensure payment of due amount to direct sellers as per T&C of the agreement and any withholding of amount, if needed, shall be made strictly as per T&C of the agreement in commercially prudent manner.**
8. **Apprise the direct sellers about the applicability of VAT on their sale and intimate them to make payment of VAT, as applicable, to the commercial tax department.**




9. The direct selling entity shall NOT:
- i. Use misleading, unfair and deceptive **recruiting practices** for engaging the direct sellers;
 - ii. Misrepresent about **actual or potential sales or earnings** during meeting with potential and/or existing direct sellers;
 - iii. Make any **tall promise or unverifiable representation** to the direct sellers or make any promise which cannot be fulfilled;
 - iv. Make or permit any false or misleading representations **about direct selling business or its activities, benefits of direct selling, agreement and monetary benefits among the potential and/or existing direct sellers;**
 - v. Indulge, use or permit any method of **fraud, coercion, harassment or apply unlawful means to promote its direct selling business activities;**



- vi. Charge or claim **ANY ENTRY OR ADMISSION FEE** from the direct sellers for participating in direct selling activities or charge any **Renewal Fee** on periodic renewals;
 - vii. Compel or Require any direct seller including potential direct sellers to purchase **SALES DEMONSTRATION KIT OR GOODS/MATERIALS** for carrying our direct selling business activities;
 - viii. Provide any **monitory or otherwise benefits** to any person including the Direct Sellers consequential to the **introduction or recruitment of new direct sellers.**
 - ix. Require the Direct Sellers to pay **MINIMUM MONTHLY SUBSCRIPTION OR RENEWALS.**
 - x. Impose unreasonable and imprudent conditions on direct sellers .
10. The direct selling entity shall be responsible for compliance of these guidelines by the Direct Sellers.

IMPORTANT ELEMENTS OF AGREEMENT BETWEEN DIRECT SELLING ENTITY AND DIRECT SELLERS:(Clause 4)

- 1. The Direct Selling entity shall execute a WRITTEN, VALID AND LEGALLY ENFORCEABLE agreement with each of Direct Sellers before enrolment.**
 - 2. The agreement shall explicitly define the rights and obligations of the parties.**
 - 3. The agreement shall, inter alia, cover the following important elements. The Direct Selling Entity shall:**
 - i. Not compel, coerce or induce the direct sellers to purchase goods or services for value in excess to usual sale within a reasonable period of time;**
 - ii. Provide a reasonable cooling-off period to the direct sellers to terminate the agreement and receive refund for goods or services returned or surrendered ;**
 - iii. Allow easy exit to the non performer direct sellers; and**
 - iv. Lay down a buy-back or repurchase policy for currently marketable goods or services at reasonable terms and conditions.**
- 

OBLIGATIONS OF DIRECT SELLERS (Clause 5)

- 1. A Direct Seller shall:**
 - i. Always carry and display the Identity Card;**
 - ii. Not visit the customer without prior appointment;**
 - iii. Truthfully, from his initiatives, apprise his personal details, 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; and**
 - iv. Provide accurate and complete explanations and demonstrations of goods and services, prices, credit terms, terms of payment, return policy, terms of guarantee and after-sales service.**



Continues to next page..

2. At the time of sale, the direct seller shall provide the following information to the prospective and / or existing consumers:
 - i. Name, address, registration number, identity proof and contact number;
 - ii. Complete description of the goods or services to be supplied;
 - iii. The return policy of the direct selling entity;
 - iv. The order date and the total amount to be paid by the consumer for the transaction;
 - v. Time and place for inspection of the sample and delivery of products;
 - vi. Rights to cancel the order and to return the products in saleable condition and avail full refund of paid amount; and
 - vii. Complaint redressal mechanism for redressal of grievances.
3. A direct seller shall maintain proper records of all transactions and pay taxes, as per applicable laws.

Continues to next page..

4. A direct seller shall **NOT**:
- i. Indulge in misleading, deceptive and / or unfair trade practices;
 - ii. Use misleading, false, deceptive, and / or unfair means to recruit prospective direct sellers;
 - iii. Falsely or deceptively represent about benefits of direct selling activities among the prospective direct sellers;
 - iv. Make any unverifiable representation or make any tall promise before the prospective direct sellers;
 - v. Make or permit any false and / or misleading representation relating to the direct selling operation, including remuneration system, agreement between the direct selling entity and the direct sellers, or the goods and / or services being sold ;



Continues to next page..

- vi. Require or encourage direct sellers recruited by him to purchase goods and / or services in unreasonably large quantity or value;
- vii. Provide or distribute any UNAPPROVED brochure, literature and / or training materials to a prospective and / or existing direct sellers of direct selling entity and to the other persons;
- viii. Require prospective and / or existing direct sellers to purchase any literature or training materials or sales demonstration equipments for carrying out business activities.



Relationship between Direct Selling Entity & Direct Sellers (Clause 6):

1. The relationship between direct selling entity and direct sellers shall be determined as per the terms and conditions of written agreement executed between them. The agreement shall explicitly define the rights and obligations of the parties including the terms and conditions for carrying out direct selling activities;
2. The relationship between direct selling entity and direct sellers shall be on **Principal to Principal basis** i.e. activities of each direct seller shall be treated as separate business unit for all purposes and direct sellers shall **not be regarded as an agents** of the direct selling entity.
3. The direct selling entity will be directly responsible for redressal of grievances of the consumers, as may be arising on direct selling activities conducted by the direct sellers; and
4. Direct selling entity shall be responsible for monitoring **and** control of the practices and methods adopted by the direct sellers in carrying out their business activities.

Responsibilities of direct sellers and direct selling entity for protection of interest of consumers (Clause 7):

1. Direct sellers and direct selling entity shall initiate steps for protection of the private information of the consumers.
2. Direct sellers and direct selling entity shall be governed by the provision of the Consumer Protection Act 1986, Consumer Protection Rules, 1987 and Regulations made there under.
3. All complaints received over phone, email, website, post and walk-in shall be given a complaint number for tracking the status of complaints and also to assess the time taken for redressal of the complaints.
4. Direct selling entity shall constitute a **Grievance Redressal Committee** for redressal of all grievances:
 - i. Grievance Redressal Committee shall comprise at least three members and who shall be officers of the entity;
 - ii. Grievance Redressal Committee shall address/settle the complaints and intimate the complainants about the steps taken


- iii. Complaints may be made by any member of the general public against the direct sellers, direct selling entity, employees and officers of the direct selling entity; and
 - iv. Direct selling entity shall be solely responsible for redressal of all grievances/complaints i.e. it can not delegate or evade any complaint, arising in relation to direct selling activities.
5. The direct selling entity, on purchase of products or service, shall provide the following information to the consumers:
- i. Details of the direct selling entity and the consumer;
 - ii. Delivery date of goods or services;
 - iii. Procedure for returning the goods; and
 - iv. Conditions of warranty and replacement/exchange policy of the direct selling entity.
6. Any person engaged in direct selling activities or intend to sell goods or services in any mode or form including e-commerce or market place must have prior written permission of the direct selling entity in order to undertake activities of direct selling.

PROHIBITION ON PYRAMID SCHEMES AND MONEY CIRCULATION :(Clause 8)

- 1. Pyramid Schemes or Money Circulation Schemes are strictly prohibited by the Direct Selling Guidelines, 2016.**
- 2. No person or entity shall promote, enrol or participate in pyramid schemes or money circulation schemes in the disguised or camouflaged structure of direct selling business activities.**



Appointment of Monitoring Authority (Clause 9)

- 1. The Nodal Departments of Department of Consumer Affairs (GOI) and the respective State Governments & Union Territories shall deal with the issues related to direct selling .**
 - 2. The State Governments & Union Territories shall also set up a mechanism to monitor/supervise the activities of direct sellers and direct selling entities to ensure compliances 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 (GOI), stating that it is in compliance with these guidelines and shall also provide such details of its incorporation and other business related information, as may be notified from time to time.**
- 

CONCLUSION:

- 1. These guidelines offer unique opportunities to the direct selling entities to structure their present business module in line with these guidelines.**
- 2. These guidelines reflect the mindset of Government that it desires to regulate direct selling business activities and call upon the entities to carry out business in transparent and judicious manner.**
- 3. The Government will come down heavily on unscrupulous entities involved in illegal money circulation schemes in a camouflaged structure of direct selling.**
- 4. These guidelines provide clear message to Direct Selling Industry that its all activities shall be governed by Consumer Protection Act, 1986, thus paving the way for critical judicial scrutiny of business module and activities of direct selling entities and direct sellers.**
- 5. These guidelines provide clear definitions of genuine money circulation schemes in order to determine criminal culpability of unscrupulous entities involved in illegal money circulation schemes.**
- 6. Lay down a roadmap for establishment, development and growth of direct selling industry in the country.**

THANKING YOU

RALLYMARK LEGAL

ADVOCATES & LEGAL CONSULTANTS

4th Floor, Premier Car Sales Building

(Opp. St. Francis College) Shahnajaf Road, Lucknow- 226001-India

E Mails: porwal_acs@yahoo.com, rupendra.porwal@gmail.com

M-+91 9838597775

Website: www.rallymarklegal.com

© 2016- RallyMark Legal (“RallyMark Legal”). All rights reserved

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. RallyMark Legal shall not be liable for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, advice should be sought from appropriate consultant.