

REGULATION OF DIRECT SELLING IN INDIA | KEY PROVISIONS OF THE CONSUMER PROTECTION (DIRECT SELLING) RULES, 2021

1. INTRODUCTION

The need to address the concerns of retail consumers in a post-industrial world dominated by multinational giants led various jurisdictions to legislate specifically for consumer welfare and regard the roman law maxim *caveat emptor* as better suited to parties with similar bargaining power.

India's consumer welfare legislation was largely embodied in the Consumer Protection Act, 1986. Recently, this law was overhauled in order to regulate 21st century retail practices such as direct selling and e-commerce, by the enactment of the Consumer Protection Act, 2019 (the "**Act**")¹. The Act defines 'direct selling' as '*marketing, distribution and sale of goods or provision of services through a network of sellers, other than through a permanent retail location*'² and includes any person who '*purchases any goods or avails any services through direct selling*' within the definition of a 'consumer'³. The Act also provides the Central Government with the power to enact rules for prevention of unfair trade practices in the direct selling and e-commerce industry in furtherance of the provisions of the Act⁴.

Pursuant to this power, the Ministry of Consumer Affairs, Food and Public Distribution (the "**Ministry**"), through the Department of Consumer Affairs (the "**DCA**"), had enacted the Consumer Protection (E-Commerce Rules), 2020 (the "**E-Commerce Rules**") in July 2020. We have discussed the implications of the E-Commerce Rules in our previous Infolex Alert⁵. More recently, after a long wait and much stakeholder discussions, the Consumer Protection (Direct Selling) Rules, 2021 (the "**Direct Selling Rules**") have been notified on December 28, 2021. Given the niche and easily misunderstood nature of direct selling, the rules have been promulgated with the aim to increase transparency and consumer access to information, including by the introduction of the enhanced disclosure requirements for the direct selling entities (the "**DSEs**").

While the Direct Selling Rules have been recently notified and existing DSEs have a 90 (ninety) day period to ensure compliance, this article sets out the key provisions under the Direct Selling Rules which, in conjunction with the Act, intend to provide regulatory certainty, protect the interests of the consumers more efficiently and regulate DSEs and direct sellers.

¹ For an analysis of the key changes brought about by the Act and E-Commerce Rules, please refer to our article [Key Facets of the Consumer Protection Act, 2019 and E-Commerce Rules](#).

² Consumer Protection Act 2019, s. 2 (13).

³ Consumer Protection Act 2019, s. 2 (7) explanation (b).

⁴ Consumer Protection Act 2019, s. 94 and s. 101 (2)(zg).

⁵ Ibid note 1.

2. EVOLUTION OF THE DIRECT SELLING MODEL IN INDIA

The direct selling business model became prominent soon after the era of liberalization commenced in India. Several leading global brands including Amway, Oriflame, Tupperware entered the Indian market during the 1990s. Within India, Eureka Forbes and Modicare were amongst the first few Indian companies to adopt direct selling as a method of marketing and distribution of personal care, home care and other categories of products⁶. With the direct selling industry gaining traction in India, issues on account of lack of regulatory framework became of concern, as India saw a rise in the number of pyramid schemes / money circulation schemes being operated in the guise of direct selling business.

A money circulation scheme or a pyramid scheme, similar to a direct selling business, involves enrolment of members in a scheme. Though, unlike a direct selling business which involves value addition by the members engaged and provision of incentives only on account of sales made by the members, a money circulation scheme or a pyramid scheme thrives primarily on enrolment of new members and the subscription money or deposit received from these new members to incentivise the older members of the scheme.

2.1 JUDICIAL INTERVENTION

With an increase in criminal complaints being filed against direct selling entities for fraud and cheating on account of operating pyramid schemes / money circulation schemes, under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (the “**PCMCS Act**”), the Indian courts applied PCMCS Act not only on bogus companies operating money circulation schemes under the guise of direct selling, but also on legitimate businesses engaged in the business of direct selling.

For instance, in *Amway India Enterprise vs. Union of India*,⁷ the Andhra Pradesh High Court held that the scheme run by Amway (multi-level marketing) falls within the scope of a ‘money circulation scheme’ under the PCMCS Act. However, pursuant to certain legislative initiatives (*as discussed below*), a change in the attitude of the judiciary was prominently visible in the case of *Naresh Balasubramaniam vs. State of Karnataka*,⁸ where the Karnataka High Court held that direct selling involves a multi-layered network of subscribers and legislations such as the PCMCS Act are not applicable to the activities of such multilevel marketing companies. The High Court also referred to the Guidelines (*as defined below*) and stated that “model guidelines clearly indicate that multi-layered network of subscribers to a scheme formed by a direct selling company, which consists of subscribers enrolling one or more further subscribers in order to receive any benefit, directly or indirectly, where the benefit is, as a result of sale of goods or services for such subscribers, is not illegal”.

2.2 PIECEMEAL EFFORTS IN THE PAST

We aim to highlight some key past initiatives (albeit, not concrete) undertaken by the relevant departments for regulating the direct selling sector, below:

⁶ FICCI, *Ease of Business Doing in India- The Way Forward for Direct Selling Industry* (2017), please refer to https://ficci.in/spdocument/22924/Report_Ease-of-Doing-Business.pdf.

⁷ 2007 (4) ALT 808.

⁸ 2017 (3) AKR 825.

Inter-Ministerial Committee: In 2012, an inter-ministerial committee was formed including members from *inter alia* the DCA and Department of Financial Services, Central Intelligence Economic Bureau⁹. The inter-ministerial committee concluded that there was no need to enact a separate legislation and the PCMCS Act should be amended to regulate the direct selling industry¹⁰.

High Level Ministerial Group: The above recommendation of inter-ministerial committee was referred to a High Level Inter-Ministerial Group formed under the Department of Financial Services. Contrary to the observations of the Inter-Ministerial Committee, the ministerial group concluded that a new law should be enacted to regulate the direct selling business as amendment of the PCMCS would not be able to resolve the concerns of the direct selling industry¹¹.

Guidelines issued by the DCA: Pursuant to the above recommendations, the Model Framework for Guidelines on Direct Selling (the “**Guidelines**”) were issued by the Ministry, through the DCA in 2016¹². The Guidelines set out a framework for regulating the direct selling industry in India. However, it is to be noted that the Guidelines were only advisory in nature and did not impose any mandatory obligations. This view has been reinforced by the Delhi High Court in the case of *Amazon Seller Private Limited vs. Amway India Enterprises*¹³. The Guidelines provided a detailed mechanism for regulation of the direct selling industry, including requiring a direct selling entity to be registered as a legal entity and have an office in India, identifying the duties and obligations of DSEs (like maintaining websites, monitoring direct sellers within their network), identifying obligations of direct sellers (like providing accurate information to customers). The Guidelines also specifically prohibited DSEs to promote or participate in any pyramid schemes and/or money circulation schemes (both of which were defined in the Guidelines).

With the uncertainty of the legislative framework regarding direct selling in India and the application of the PCMCS Act to this industry, India saw exits of a few direct selling businesses¹⁴. Therefore, the notification of the Direct Selling Rules stands as both a recognition of the importance of the direct selling industry as well as a clear path forward for compliance.

3. KEY PROVISIONS UNDER THE DIRECT SELLING RULES

In June 2021, the DCA circulated the Draft Consumer Protection (Direct Selling) Rules, 2021 (“**Draft Rules**”), inviting comments from the public and stakeholders. On December 28, 2021, the Direct Selling Rules were notified by the DCA. The Direct Selling Rules have been notified with some notable deviations

⁹ Press Information Bureau, *Inter Ministerial Committee to Consider the Issues Relating to Direct Selling and Multi- Level Marketing* (July 24, 2012), please refer to <https://pib.gov.in/newsite/PrintRelease.aspx?relid=85482>.

¹⁰ DCA, *Report of the Inter-Ministerial Committee on Issues Relating to entities engaged in Direct Selling Network/ Multi-Level Marketing* (June 10, 2014), please refer to <https://dswa.org/pdf/IMC-Report.pdf>.

¹¹ FICCI, *Ease of Business Doing in India- The Way Forward for Direct Selling Industry* (2017), please refer to https://ficci.in/spdocument/22924/Report_Ease-of-Doing-Business.pdf.

¹² Ministry of Consumer Affairs, *Advisory to States/Union Territories: Model Framework for Guidelines on Direct Selling*, please refer to https://consumeraffairs.nic.in/sites/default/files/file-uploads/direct-selling/Direct%20Selling%20Guidelines%20Final%20_0.pdf.

¹³ 2020 (81) PTC 399 (Del). An appeal against this judgement of Division Bench of Delhi High Court is pending in the Supreme Court (SLP(C) No. 006460/2021).

¹⁴ The Hindu, *Mark Kay quits India citing regulatory issues, poor sales* (July 24, 2013), please refer to <https://www.thehindubusinessline.com/companies/Mary-Kay-quits-India-citing-regulatory-issues-poor-sales/article20641081.ece>.

from the Draft Rules, including omissions of the definition of 'direct selling network', registration requirements for DSEs and powers of the DSEs to take disciplinary action against direct sellers for any non-compliances under the Draft Rules. A brief description of the key provisions of the Direct Selling Rules has been set out below.

3.1 **Prohibition of Pyramid Schemes / Money Circulation Schemes Under the Direct Selling Rules**

The Direct Selling Rules prohibit DSEs and direct sellers from promoting pyramid schemes and enrolling any person in such arrangement or participating in any money circulation schemes under the garb of direct selling business. DSEs and direct sellers are also prohibited from charging any entry or subscription fees for the enrolment of new participants in the direct selling network and are required to verify the identities of all direct sellers and issue identification cards to each such direct seller.

The Direct Selling Rules have also created some uncertainty in identifying the distinction between the direct selling business model, pyramid schemes and money circulation schemes. The Draft Rules incorporated the definition of "direct selling network" which clearly captured the fundamental nature of the direct selling business model, i.e., a business model based on incentives availed by the direct sellers as a result of sale of goods or services to customers by the direct sellers themselves as well as by new members sponsored by the direct sellers. With the omission of this definition under the Direct Selling Rules, read along with the retained definition of "pyramid schemes" which provides that any benefit provided to the existing direct sellers as a result of enrolment "or action or performance" of new members may be construed as a pyramid scheme, which, as stated above, is prohibited under the Direct Selling Rules. Accordingly, incentives being availed by direct sellers as a result of sale of goods or services by new subscribing direct sellers sponsored by the direct sellers may be interpreted as benefits from "an action or performance" of the new subscribing direct sellers and therefore a "pyramid scheme". Given that this would take away incentive for existing direct sellers to try and expand the direct selling network of the DSE by inducting or sponsoring new members, there appears to be a contradiction in the very nature of the direct selling business model and the legitimacy of the same under the Direct Selling Rules. However, reliance may be placed upon the definition of 'direct selling' under the Act which recognises the concept of a network of sellers read along with the Guidelines which also provide that a network of sellers based upon the benefit being derived from the sale of goods and services does not tantamount to a pyramid scheme or a money circulation scheme.

3.2 **Applicability of the Direct Selling Rules**

It is crucial to note that the applicability of these Direct Selling Rules also extend to DSEs which are not established in India but offer goods and services to consumers in India. However, in contrast to the E-Commerce Rules, the applicability is not limited to an entity 'systematically' offering goods or services to consumers in India. This would mean that the compliance requirements under the Direct Selling Rules would be applicable on foreign DSEs which do not have an organised presence in India but operate a network of direct sellers in India.

3.3 **Duties And Obligations of Direct Selling Entities**

The Direct Selling Rules set out a detailed description of the duties and obligations of the entities engaged in direct selling. Considering the complexity of direct selling network structures and the controversy which

has plagued the industry in the past, in certain cases, the burden of compliance of the DSEs is higher as compared to a conventional manufacturer and seller of goods and services operating a brick-and-mortar store. A brief description of the key duties and obligations provided under the Direct Selling Rules are highlighted below:

- (a) Incorporation and registered office: The DSEs should be appropriately incorporated as a company under the (Indian) Companies Act, 2013, or a partnership firm under the Partnership Act, 1932, or a limited liability partnership firm under the Limited Liability Partnership Act, 2008. In addition to this, the DSEs shall also be required to have a minimum of one physical location as their registered office in India. To clarify, this requirement does not indicate the requirement to mandatorily set up physical stores.
- (b) Maintenance of records: Every DSE is mandated to maintain the records of *inter alia* incorporation and constitutional documents, registrations and licenses required to be procured under applicable laws and a register of its direct sellers at its registered office. All such records are required to be maintained by the DSEs in either physical or electronic form. The DSEs are also required to maintain additional records of its direct sellers including records of their identification proof, address proof and contact information. Further, a complete record of direct sellers who have been delisted by the DSE, along with other relevant information allowing for their identification, is required to be displayed by DSEs on their websites. Maintaining such records for the purposes of compliance with the regulatory regime will also benefit the consumers and enable them in identifying delisted direct sellers. However, such record keeping for identification and 'name and shame' purposes can have significant data privacy implications and the interplay of the yet to be enacted Personal Data Privacy Bill and the compliance requirements under the Direct Selling Rules will require considerable navigation. It is important to remember that the vast majority of direct sellers are usually ordinary individuals. As such, a balance must be struck that includes not only their right to livelihood but also their fundamental right to privacy as laid down by a nine-judge bench of the Supreme Court in *Puttaswamy's case*¹⁵.
- (c) Intellectual property license: The DSE should be the owner, holder or licensee of the trademark, service mark or identification mark which identifies the DSE with the goods or services to be sold or supplied. Further, the DSEs should not provide any bonus, commissions, or incentives with respect to any goods or services for which the DSE is not the owner, holder or licensee of the trademark, service mark or identification mark. This seems to require that a DSE must always be either the brand owner or an 'authorised reseller'. While understandable in the context of preventing sale of counterfeit goods, such an un-nuanced approach may erode the doctrine of first sale under section 30(3) of the Trademark Act, upheld by Delhi High Court in *Kapil Wadhwa vs Samsung*¹⁶. The courts have balanced the doctrine with the risk of sale of counterfeit or defective products by unauthorised resellers by inserting guardrails in the interpretation of the Trademark Act. A similarly nuanced approach would allow a lot more people to buy 'branded' goods at a cheaper price thereby boosting consumer power and preference. Consumer welfare should be reflected in the economic consequences and not just be regulation for regulations' sake.
- (d) Informational support to consumers: The Act envisages that the consumer has a right to be informed about the quality, quantity, price of the goods and services so as to protect the consumer against 'unfair trade

¹⁵ *Puttaswamy and Anr. vs Union Of India And Ors*, (2017) 10 SCC 1

¹⁶ 2013 (53) PTC 112 (Del.) (DB)

practice¹⁷. In furtherance of this objective, the Direct Selling Rules require the products offered by DSEs to be in compliance with the Legal Metrology Act, 2009 which mandate various declarations on packaged commodities including affixing name and address of manufacturer, country of origin, net quantity, date of manufacturing and the maximum retail sale price. Additionally, the DSEs are required to maintain a website which should provide all relevant information with respect to the DSEs, including documents in connection with incorporation and operation of DSEs, self-declaration form certifying that the DSE is not involved in any pyramid scheme or money circulation scheme, information regarding their management, products, the price, modes of payment available, details of the return and the refund policy and other mandatory information required to be disclosed under applicable laws. All such information provided on the website of the DSE is required to be certified by a company secretary, which is unusual. The DSEs are also required to provide the consumers, upon their request, all required information of the direct sellers, pursuant to purchase of goods and services by such consumers. This would not only ensure accountability in the operations of direct sellers, but such information will also ensure effective dispute resolution.

- (e) Prohibition of unfair trade practices: In consonance with the Act, the Direct Selling Rules prohibit DSEs from engaging in any unfair trade practices. 'Unfair trade practice' is defined under the Act as any trade practice which adopts unfair or deceptive methods for the purpose of sale of goods or for the provision of services¹⁸. Such practices may include, *inter alia*: (i) indulging in false and misleading representation or fraud, coercion, harassment or use of unlawful means for promotion of business; (ii) conduct that misleads or misrepresents the quality or the features of its goods or services; (iii) engaging in mis-selling i.e., provision of misleading information or omission of key information in respect of goods and services; (iv) refusal to take back defective goods and deficient services and refund the consideration amount; or (v) charging any participation fee from direct sellers.
- (f) Monitoring direct sellers and liability towards goods and services: DSEs should undertake monitoring and create safeguards for ensuring that the methods adopted by the direct sellers are in compliance with the Direct Selling Rules and other applicable laws. This can be done through legally binding contracts with the direct sellers¹⁹. Further, while the Direct Selling Rules do not set out any powers of the DSEs to take disciplinary actions against the direct sellers for any non-compliance with the Direct Selling Rules, stringent contractual remedies such as termination of contract, blacklisting of seller, penalties for breach etc. can be incorporated in the contracts with the direct sellers to disincentivise any non-compliance. DSEs can also consider incorporating appropriate back-to-back indemnity obligations in the contracts executed with the direct sellers to ensure that the DSEs do not have to go out of pocket for any unfair trade practices of the direct sellers. It must be borne in mind that regardless of the contractual remedy put in place by a DSE, most direct sellers will tend to be straw defendants of limited means. Unless DSE's are able to take a security deposit it would be difficult to have recourse against the direct sellers themselves. However, appropriate care should be taken to ensure that such a security deposit is refundable in nature as there is no guarantee that the authorities would not view such deposit as the prohibited 'entry' or 'subscription' fee. Further clarity on the nature of arrangements between DSEs and direct sellers can be expected once the 90 (ninety) day time period for implementation lapses and the application of the Direct Selling Rules are seen in practice.

¹⁷ Consumer Protection Act 2019, s. 2 (9) (ii).

¹⁸ Consumer Protection Act 2019, s. 2 (47).

¹⁹ Details in connection with written contracts are discussed in paragraph 3.3 (h) of this article.

- (g) Storage of personal information of Consumers: The Act prevents a seller of goods and services from disclosing any personal information provided in confidence by the consumer, unless such disclosure was made in accordance with applicable laws. In addition to the confidentiality obligation under the Act, the Direct Selling Rules require DSEs to protect all 'sensitive personal data', as defined under the Information Technology Act, 2000 and the rules made thereunder (the "IT Act") provided by the consumers, and further ensure that all such personal information is stored within India in accordance with the applicable laws. However, it is interesting to note that the Personal Data Protection Bill, 2019 which originally proposed the concept of storage of personal information within India is yet to be notified and currently, there is no other law in India mandating such storage requirements. As mentioned earlier, this provision is unfortunately limited to duty of DSEs towards consumers and is silent on the constitutional right to privacy of the direct sellers themselves.
- (h) Written Contract: As per the Direct Selling Rules, the direct sellers will be required to enter into written contracts with the DSEs, where the material terms of their participation in the direct selling business will be recorded. Given that the terms of these contracts are required to be 'just, fair and equitable' the DSEs should ensure that the contracts executed with the direct sellers are in compliance with this requirement to avoid any enforceability concerns.

3.4 **Obligations of Direct Sellers**

The Direct Selling Rules have set out detailed responsibilities on the direct sellers, specifically towards the consumers. These responsibilities include making disclosures regarding the direct sellers and DSEs' identity and information, provision of full and accurate details with respect to the price, credit terms, return policies and complete demonstrations of goods and services to the consumers. The direct sellers should provide clear and unambiguous terms of sale prior to sale, by way of an order form, to enable consumers to take an informed decision. Any claim or details which are not authorised by the DSEs should be abstained from being made to the consumer. As also set out under the Act, the direct sellers are required to ensure that all sensitive personal information provided by the consumer is protected appropriately. The obligations of DSEs to not to engage in any unfair trade practice also extends to direct sellers. Further, the direct sellers should not make any representation to consumers offering reduction or recovery of price of the goods or services through referral of prospective customers. This aims to prohibit any arrangement of referral selling, where there is no guarantee to the customers that they will actually receive any benefits given that they have no control over the outcome of future sales. For instance, an arrangement where a direct seller advertises a discount of 10% on a future order to a customer, provided that the customer refers four new customers, will now be prohibited.

3.5 **Compliance with E-Commerce Rules**

The Direct Selling Rules indicate that DSEs as well as direct sellers may engage in sale or marketing of products of DSEs through e-commerce platforms, subject to compliance with the E-Commerce Rules. Accordingly, for DSEs and direct sellers selling *via* direct sales as well as through e-commerce platforms, there would be an overlap in compliance burden as they will be additionally subject to the E-Commerce Rules.

Further, in the past there has been some confusion on whether e-commerce platforms can sell products of the DSEs on their platform without their consent and this confusion was sought to be addressed under the

Draft Rules by including a mandatory requirement for e-commerce platforms to obtain prior written consent of DSEs to sell, display and offer for sale any products and services of DSEs. However, the Direct Selling Rules have omitted this requirement. To avoid any confusion in this regard, the DSEs can include consent requirements for undertaking any such activities on an e-commerce platform in their contracts with the direct sellers.

4. GRIEVANCE REDRESSAL MECHANISM

A comprehensive mechanism for redressal of consumer grievance has been set out under the Act. Under the Act, dispute redressal commissions have been set up at district, state and national level,²⁰ and the Supreme Court has the final appellate authority over such consumer disputes²¹. The parties also have the right to settle such disputes by undertaking mediation at the appropriate district, state or national level consumer mediation cell²².

In addition to dispute resolution mechanism under the Act, the Direct Selling Rules now propose an additional protection to the consumers by proposing an opportunity for grievance redressal at the DSE level. The Direct Selling Rules require all DSEs to appoint a consumer grievance redressal officer (or more than 1 (one) grievance redressal officer, having regard to the number of grievances ordinarily received) and set-up a grievance redressal mechanism for filing of complaints by the consumers. The consumers can approach the grievance redressal officer including through contact numbers displayed on the website of the DSE and partnerships of the DSEs with a dedicated national helpline. Once a complaint is received, the consumer grievance redressal officer is required to acknowledge the receipt of complaints within 48 (forty-eight) working hours and resolve the grievance with 1 (one) month from the date of receipt of the complaint. In cases of any delay, reason for such delay shall be provided to the complainant along with the details of actions taken by the DSEs. Further, the Direct Selling Rules provide that DSEs should also appoint a nodal officer, who will be responsible for ensuring compliance with the Act and the Direct Selling Rules.

Similar to the provision of dispute resolution under the E-Commerce Rules where disputes may first be addressed by the e-commerce entity or the seller²³, a grievance mechanism at the DSE level will provide consumers a simpler and quicker mechanism to address their complaints, especially for smaller purchases, without having to approach the consumer forums. Interestingly, considering that both the Direct Selling Rules and the E-Commerce Rules provide for an independent grievance redressal mechanism, in the event a DSE or a direct seller is also selling products on an e-commerce platform there might be an overlap in the grievance redressal mechanisms available to the consumer in such case.

5. LIABILITY OF THE DIRECT SELLERS AND THE DIRECT SELLING ENTITIES

- (a) **Return and Refund:** The Direct Selling Rules require the DSEs and the direct sellers to take back any defective goods or deficient services provided to a consumer and refund the appropriate consideration amount to such consumer. This right of return offered by the DSE to every consumer must be in writing. The details with respect to return and refund of the goods or services should be provided on the website

²⁰ Consumer Protection Act 2019, Chapter IV.

²¹ Consumer Protection Act 2019, s. 67.

²² Consumer Protection Act 2019, s. 74.

²³ E-Commerce Rules, rule 4 (4) and 4 (5).

of DSE.

- (b) DSE liability for acts of direct sellers: In contrast to the exemption from liability to an e-commerce entity under the E-Commerce Rules for acts of sellers registered on their platforms (if the e-commerce platform is classified as an 'intermediary' under the IT Act) given the nature of the business model, the Direct Selling Rules specifically provide for the liability of DSEs with respect to any grievance arising out of sale of products and services by direct sellers to the consumer²⁴. As suggested above, DSEs may also consider including provisions in their contracts for back-to-back indemnification from the direct sellers, in cases where liability is arising purely from the actions of the direct sellers.
- (c) Product Liability: In 2019, the Act introduced the concept of 'product liability' in India, where the 'product manufacturer', 'product service provider' or 'product seller' were made strictly accountable for any harm caused to the consumer on account of any defective goods and deficient services²⁵. Accordingly, an aggrieved consumer can now also file a product liability action in the appropriate dispute redressal commission, against any of the above for any harm caused due to defective goods or deficient services²⁶. Both DSEs and direct sellers can be classified as either product manufacturers, product service providers or product sellers under the Act depending on how the DSE operates its business. The Direct Selling Rules specifically make reference to the provisions of product liability set out under the Act.
- (d) Penalties: Failure to comply with the Direct Selling Rules will expose the DSEs and the direct sellers to the penalties prescribed under the Act.

6. **INDUSLAW VIEW**

Through the notification of the Act in 2019, the E-Commerce Rules in 2020 and now the Direct Selling Rules in 2021, we can see an overarching trend where the government is taking an active approach to make the Indian market more consumer friendly and curb unfair trade practices. While some obligations imposed on the DSEs and the direct sellers, in the Direct Selling Rules, appear to be onerous, the introduction of these Direct Selling Rules have accelerated the process towards settling a long-standing regulatory gap in India. The Direct Selling Rules have been drafted with the clear intention of protecting the interests of the consumers, building their trust in direct sellers, and also ensuring a smooth governance of the direct selling industry at large. The mandatory disclosure requirements imposed on the DSEs and direct sellers and the prohibition on the payment of any entry or subscription fee by direct sellers, engagement into, and promotion of, pyramid schemes and money circulation schemes will be a check on and a roadblock for unethical players to enter this business. While being strict on the DSEs, the Direct Selling Rules invariably operate as a 'regulatory tax' upon direct sellers many of whom are home makers or small businesses. The cost-benefit of such compliances on the industry will emerge over time and hopefully more streamlining will take place.

However, we note that some of key proposals in the Draft Rules, including the registration requirements for DSEs, were omitted from the final draft causing the Direct Selling Rules to lose some of its teeth. This omission is particularly glaring considering it would have made identification of legitimate DSEs, and

²⁴ Direct Selling Rules, rule 5 (1)(k).

²⁵ Consumer Protection Act 2019, s. 2 (34).

²⁶ Consumer Protection Act 2019, s. 2 (35).

conversely avoiding pyramid schemes and money circulation schemes, much easier for the average consumer.

Additionally, with the introduction of the Direct Selling Rules, the direct selling industry could also potentially witness a growth in the foreign direct investment within this sector. Keeping this in mind, it should be noted that, no distinct categorization with respect to foreign investment in the direct selling business has been provided under the extant foreign exchange regulations of India. Accordingly, determination of permissibility of foreign investment in a direct selling business in India is currently dependent on the mechanism in which a DSE carries out its direct selling business. For instance, a DSE which engages primarily in trading can be categorized under the wholesale cash and carry trading sector or single brand retail or multi brand retail sector. Similarly, if the DSE is engaged in manufacturing operations in India and a sale of its products through wholesale or retail trade, including through e-commerce, it can attract foreign direct investment in the manufacturing sector. Given that the foreign exchange regulations envisage different limits and conditionalities with respect to each of the above-mentioned sectors, a reference to direct selling under the relevant sectors would be a welcome step and provide greater clarity for direct selling businesses looking to attract foreign investment in India.

Authors: Avimukt Dar | Harman Walia | Sanjana Mathur | Tanmaya Negi | Aman Gupta

Practice Areas: Corporate & Commercial | Government & Regulatory

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