

Analysing The Draft Consumer Protection (Direct Selling) Rules, 2021  
written by Rajdev Singh | August 27, 2021



Before 2021, there was a dearth of proper mechanisms or legislation to regulate and keep a check on the system of direct selling. In fact, the term 'direct selling'[1] got material recognition in the Indian law only recently through the enactment of The Consumer Protection Act(Direct selling law in India), 2019. However, the mere introduction of definition was not enough to control the actions of entities involved in it. Hence in 2021, the Central Government introduced The Draft Consumer Protection Direct Selling Law In India, 2021.[2]

These new regulations have played a crucial role in helping draw clear distinctions between different technical terms like 'Pyramid Scheme'[3], 'Money Circulation Scheme'[4] and 'Direct Selling', etc. Earlier, these terms were used wrongfully under a single rubric due to the absence of specific legislation which caused confusion and ultimately paved the way to a worrying number of fraudulent activities in the direct selling network.

The Direct Selling Rules, 2021 largely help in curbing widely prevalent wrongful activities as they specifically list out the duties of Direct Selling Entities and Direct Sellers. This limits the scope of individuals defrauding other unsuspecting or unaware individuals who are lured into wildly ludicrous schemes that promise them quick profits under the name of direct selling. Moreover, these rules aid in protecting consumers at different stages of purchase and aids them in making wise choices.

It is pertinent to mention here that these rules are applicable not only on the Direct Selling Entities established in India but are also applicable to Direct Selling Entities that offer goods or services to the Indian Consumers which are established outside India as well.

**Mandatory Requirements For Direct Selling Entities In India (Direct Selling Law In India)**

The Draft Rules of 2021 have set out certain requirements to be fulfilled by an individual/organisation to be considered as a 'Direct Selling Entity' in India. This is an endeavour by authorities to ensure that only genuine Direct Selling Entities are present in the network.

Every Direct Selling Entity and direct seller willing to operate in India has to register with the Department for Promotion of Industry and Internal Trade (DPIIT) for getting the registration number; the Direct Selling Entity should be properly incorporated as a Company or a Partnership Firm or an LLP

following the respective existing legislation in India; the Direct Selling Entity should have at least one physical location as a registered office within India; the Direct Selling Entity can sell, supply or render services of the goods for which it holds a license of trademark, service mark or any other identification mark and not otherwise.

Moreover, the records of Certificate of Incorporation, MOA & AOA, copy of PAN & TAN, copy of GST, GST Returns, Income Tax Returns, copy Balance Sheet & Audit Report etc., Record of Customers & Direct Sellers and Register of Direct Sellers are to be mandatorily maintained by the Direct Selling Entity at its registered office

#### A System Of Checks And Balances

Blinded by greed, some individuals do not hesitate to indulge in immoral practices. To curb the emergence and growth of such practices in the Direct Selling Network, there has to be a proper system to keep a check on their compliance with rules or legislations. The Draft Rules of 2021 also ensures that any failure to abide by the said rules is to be regarded as unfair trade practice and is punishable under the Companies Act, 2019.

Thus, the Draft Direct Selling Rules, 2021, to ensure the availability of a proper system of checks and balances, have come up with the provision for Direct Selling Entities to mandatorily appoint the following-

- The Chief Compliance Officer: They are to ensure compliance with the legislation as a managerial person and is further liable in any proceedings related to any communication or data concerning the Direct Selling Entity.
- A nodal contact person: A nodal contact person or an alternate senior designated functionary who is a citizen of India and resides in India and is responsible for 24x7 coordination with law enforcement agencies and officers to ensure compliance to their orders or requisitions made under different provisions of law.
- A grievance officer: A grievance officer is to be appointed to look after the consumer's grievance redressal. Further, they are required to acknowledge the receipt of the grievance within 48 hours of receiving the complaint and redress it within a span of 1 month. In case of any delay, they have to specify the reason in writing and inform the complainant about the action taken to address his/her complaint.

#### Mandatory Duties And Obligations Of Direct Selling Entities

The Draft Direct Selling Rules have specifically mentioned the duties and obligations of the Direct Selling Entities as well as Direct Sellers, which can potentially restrict the involvement of fraudulent activities during the course. Further, a convicted person, a bankrupt person or a person of unsound mind cannot be engaged in the business of direct selling. The regulations thus narrow down the scope for wrongdoers to take the defence of the non-availability of clearly framed legislation on the matter.

No unfair trade practices should be adopted by the Direct Selling Entities during the course of business and should abide by the law of the land. Also, no money shall be charged by anyone in the name of subscription fee or entry fee. The Direct Selling Entities need to have a properly maintained and updated website which provides information such as legal name, geographical address, contact details, products, prices, and grievance redressal mechanism for the aggrieved consumers.

The Direct Selling Entity also must maintain records of information of all the direct sellers. Along with it, a separate record containing the

information of any direct seller who has failed to provide appropriate services has to be maintained by it. Moreover, information of such a direct seller is to be displayed on the respective website as well as office premises.

The Direct Selling Entity is also required to monitor the practices adopted by any direct seller or other members of its network and it is to be ensured that the prescribed rules are followed through a legally binding contract. In case of failure to abide by such rules on part of the direct seller, disciplinary action can be taken against him.

The terms of the offer should always be unambiguous. Further, misleading, unfair, and deceptive sales practices should not be used. The DSE shall be liable for any action relating to the authenticity of the goods and services provided by it if there has been explicit affirmation on the part of the Direct Selling Entity about the authenticity of the goods or services provided by it.

The Direct Selling Entity shall be liable for grievances that may arise due to the sale of products, services or business opportunities provided by its direct seller. Moreover, during direct selling, the protection of the personal information of the consumer is the prime duty of the entity and such information shall remain within the jurisdiction of India.

The delivery of goods or services to the consumer shall be made within the said delivery date and in case of any delay, the same shall be informed to the consumer, unless otherwise is mentioned in the offer. In case of delay, the cancellation request of the consumer is to be granted irrespective of the fact that they were informed of the delay or not and the money shall be refunded as per the cancellation clause proposed during purchase. If it's not possible to prevent the delivery, the consumer should be informed about the procedure to return the goods.

The consumer should also be informed about their right to return in writing. In addition, direct sellers or the Direct Selling Entities cannot refuse to take back the defective goods or deficient services and the consideration amount paid for those goods or services is also to be refunded.

Certain other specific things that a direct seller should not do include visiting the premises of the consumer without

an identity card and prior appointment; providing any information or literature to the prospect consumer which is not approved by the Direct Selling Entity; asking the prospective buyer to purchase any sales demonstration equipment or related literature (such as pamphlets etc.); in order to sell a good or service, claiming something inconsistent or not authorised by the Direct Selling Entity.

#### Limiting The Scope Of Confusion

The concept of direct selling is often confused with fraudulent concepts such as the Pyramid Scheme or the Money Circulation Scheme. Consequently, this tarnishes the core essence of a direct selling network by allowing the unethical agents in the market space to trick gullible individuals into thinking they can earn unrealistic profits. Hence, the Draft Direct Selling Rules, 2021 has explicitly provided that the Direct Selling Entity or direct seller should not promote or engage in Pyramid Scheme and/or Money Circulation Scheme or any other such arrangements in the name of direct selling.

## Conclusion

The Draft Direct Selling Rules, 2021 can be perceived as a much-required step by the Central Government towards filling the vacuum created by lacunae of proper rules or legislation to regulate the Direct Selling Network. These rules not only provide a framework for the Direct Selling Entities and Direct Sellers but also strive to protect the rights and interests of the customers as well as other participants. With the enactment of these rules, the Direct Selling Network ought to get proper recognition and the chances of effective progress as an industry will also increase.

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- [1] Section 2(13) of the Consumer Protection Act, 2019 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] The Draft Consumer Protection (Direct Selling Law in India), 2021([Click here](#))
  - [3] Detailed explanation of Pyramid Scheme ([Click here](#))
  - [4] Detailed explanation of Money Circulation Scheme ([Click here](#))

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