



GOVERNMENT OF KERALA

Abstract

Consumer Affairs Department-Monitoring Mechanism for Direct Selling Entities and Direct Sellers in the State of Kerala-Orders issued.

CONSUMER AFFAIRS DEPARTMENT

G.O.(P)No.20/2024/CAD Dated,Thiruvananthapuram, 04-10-2024

- Read 1. Office Memorandum F. No.21/18/2014-IT(Vol-II) dated 9/9/16 received from Department of Consumer Affairs, Government of India.
2. G.O.(P)No. 8/2018/CAD dated 04-06-2018.
3. G.S.R.No.889(E) dated 28/12/2021 of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) Government of India.
4. G.S.R.No.37 (E) dated 21/01/2022 of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) Government of India.
5. G.O.(P) No.6/2023/CAD dated 28-03-2023.
6. G.O.(P) No.19/2024/CAD dated 02-10-2024.

ORDER

As per the Office Memorandum read above, the Government of India have issued model guidelines for the Advisory mechanism on the regulation of Direct Selling Industry and also requested to implement the same in the State and to set up a mechanism to monitor the activities of Direct Selling Entities. Accordingly as per the order read as 2nd above, the Government of Kerala have issued the guidelines on the monitoring mechanism for regulating Multilevel Marketing /Direct Selling in the State.

(2) As per the Notification read as 3rd paper above, the Central Government have issued the Consumer Protection (Direct Selling)

Rules, 2021 in exercise of the powers conferred by Clause (zg) of Sub Section (2) of Section 101 read with Section 94 of the Consumer Protection Act,2019.

(3) In Rule 11 of the Consumer Protection(Direct Selling) Rules, 2021, it has been stipulated that for ensuring compliance of the rules by the Direct Selling Entities and Direct Sellers, every State Government shall set up a mechanism to monitor, regulate and supervise the activities of Direct Selling Entities and Direct Sellers.

(4) The Government of Kerala have examined the matter in detail and are now pleased to issue the monitoring mechanism for monitoring, regulating and supervising the activities of the Direct Selling Entities and Direct Sellers across the State and in supersession of the order read as 2nd paper above, except as respect things done or omitted before such supersession.

(5) The Government of Kerala have examined the views and concerns from the various stake holders viz. the Associations / Federations of Direct Selling Entities, trade union leaders working in this sector, Industry experts, legal and academic experts, representatives of Police Department, State GST Department and Gulati Institute of Finance & Taxation and several suggestions and recommendations were received for further strengthening the existing Monitoring Mechanism formulated as per G.O. read as 5th paper above. On the basis of this, the Government have decided to formulate a new guidelines as appended to this Government Order in order to make the monitoring, regulating and supervising methodology in a robust, fortified and foolproof manner, in supersession of the order read as 5th paper above, except as respect things done or omitted before such supersession.

(6) The Government order read as 6th paper above stands cancelled.

(By order of the Governor)
Ajit Kumar I A S
SECRETARY

To,

The Secretary, Department of Consumer Affairs, Government of India, New Delhi.

The Secretary, Law Department.

The Secretary, Finance Department.

The Secretary, Home Department.

The Secretary, Taxes Department.

The Secretary, Industries Department.

The Commissioner of Civil Supplies & Consumer Affairs, Thiruvananthapuram.

The Secretary & Registrar, State Consumer Disputes Redressal Commission, Thiruvananthapuram

The State Police Chief, Kerala, Thiruvananthapuram.

The Controller of Legal Metrology, Thiruvananthapuram.

The Food Safety Commissioner, Thiruvananthapuram.

The Director, Industries Department, Thiruvananthapuram.

The Commissioner of State Goods and Services Tax, Thiruvananthapuram

The Commissioner of Central Goods and Services Tax, Thiruvananthapuram

All District Collectors.

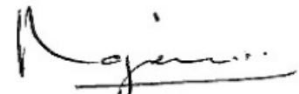
All District Police Chief.

The Director, Gulathi Institute of Finance and Taxation, Thiruvananthapuram

The Director, I&PRD.

Stock file / Office copy.

Forwarded /By order



Section Officer

MONITORING MECHANISM FOR DIRECT SELLING ENTITIES AND DIRECT SELLERS, 2024

1. In exercise of the powers conferred in section 102 of the Consumer Protection Act, 2019 and in compliance with Rule 11 of the Consumer Protection (Direct Selling) Rules, 2021 the Government of Kerala do hereby notify the guidelines namely “State level Monitoring Mechanism for Direct Selling Entities and Direct Sellers in the State of Kerala, 2024” along with the constitution of State Level Monitoring Authority to strengthen the monitoring mechanism on direct selling and / or preventing fraud and / or protecting the legitimate rights and interests of the consumers. The Nodal department to deal with all the matters and the issues concerned is the Department of Civil Supplies & Consumer Affairs, Thiruvananthapuram.

2. State Level Monitoring Authority:

In exercise of the powers conferred in section 102 of the Consumer Protection Act, 2019 and in compliance with Rule 11 of the Consumer Protection (Direct Selling) Rules, 2021 the Government of Kerala do hereby constitute a ‘State level Monitoring Authority’ for monitoring and supervising the activities of the Direct Selling Entities and Direct Sellers across the State of Kerala

3. Composition of Monitoring Authority

The Monitoring Authority shall consist of:-

- 1) The Principal Secretary/Secretary – Department of Consumer affairs as Chairman,
- 2) The Commissioner, Civil supplies and Consumer Affairs as the Nodal Officer & Convener and the following members:-
- 3) The Secretary to Government, Finance Department or any other officer nominated by him not below the rank of Deputy Secretary.

- 4) The Secretary to Government, Law Department or any other officer nominated by him not below the rank of Deputy Secretary.
- 5) The Secretary to Government, Taxes Department or any other officer nominated by him not below the rank of Deputy Secretary.
- 6) The Controller of Legal Metrology or any other officer nominated by him not below the rank of Deputy Controller.
- 7) The Food Safety Commissioner or any other officer nominated by him not below the rank of Joint Commissioner.
- 8) The Commissioner, CGST Department or any other officer nominated by him not below the rank of Joint Commissioner.
- 9) The Commissioner, SGST Department or any other officer nominated by him not below the rank of Joint Commissioner.
- 10) A Higher level officer not below the rank of Deputy Secretary who deals with the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS) in Government.
- 11) An officer in the ADGP rank from the Police Department or any other officer nominated by him dealing with Economic offences.
- 12) One Subject Expert, duly nominated by the Government.
- 13) Judicial member of State Consumer Disputes Redressal Commission.

4. Objectives of State Level Monitoring Authority

The State Level Monitoring Authority will function with the following objectives:-

- 1) To regulate the business of Direct Selling as per the Consumer Protection (Direct Selling) Rules, 2021 to prevent fraud and to

protect the legitimate rights and interests of consumers;

- 2) To prohibit all forms of Pyramid Scheme or enroll/participate any person to such scheme or participate in such arrangement in any manner whatsoever in the garb of doing direct selling business;
- 3) To prohibit all forms of money circulation scheme or enroll /participate any person to such scheme in the garb of doing direct selling business.
- 4) To prohibit all forms of unfair trade practices across all models of direct selling:
- 5) To monitor /supervise the activities of Direct Sellers and Direct Selling Entities in Kerala regarding compliance of The Consumer Protection Act, 2019 and the rules framed there under, viz. The Consumer Protection (Direct Selling) Rules, 2021.

5. Meetings of State Level Monitoring Authority

1. The Chairperson, or in his absence, the Nodal Officer shall preside over the meetings of the Monitoring Authority.
2. A meeting of the State level Monitoring Authority may be called by the Nodal Officer of the Monitoring Authority with the approval of the Chairperson through the issuance of a notice in writing to every member which shall include the place, date and timings of the meeting at least fifteen days before the intended date of the meeting by post, or through e-mail to facilitate speedy communication.
3. The quorum to constitute a meeting of the Monitoring Committee would be one-half of the total number of the Committee and any decision taken should be passed by a majority of not less than two-thirds of the members of that Committee present and voting.

6. Powers of the State level Monitoring Authority

The intention of setting up of Monitoring Authority at State level as per Rule 11 of the Consumer Protection (Direct Selling) Rules, 2021 is to monitor or supervise the activities of direct selling entities and direct sellers. For the effective monitoring of the functioning of the Direct Selling Companies and the Direct Sellers, the Government hereby grant the following powers to the Monitoring Authority.

1. To grant enrolment/ renewal of enrolment to the Direct Selling Entities upon the receipt of application in the prescribed format along with required documents/enclosures of after verification of the veracity of documents submitted along with registration status of the entities with the respective departments such as Income Tax/GST/ROC/Legal Metrology/ FSSA, as the case may be
2. To reject the enrolment application on valid grounds if any violation of the Consumer Protection (Direct selling) Rules 2021 is noted prima facie in the enrolment application or for the non – filing or incomplete filing of required documents/particulars as mandated in the Enrolment Application Form
3. To publish the provisional list of Direct Selling Companies enrolled with the Department of Consumer Affairs under this Monitoring Mechanism in the Public Domain
4. To verify the compliances of Direct Selling Entities in terms of their mandatory maintenance of records, website and their obligations & duties as envisaged in Rule 4,5,6&7 of the Consumer Protection (Direct selling) Rules 2021.
5. To verify the Compliance of Direct Selling Companies in terms of applicable provisions of Consumer Protection (E commerce Rules) 2020 and the rules framed thereunder as provided in Rule 9 of Consumer Protection (Direct Selling Rules)2021, Legal Metrology Act 2009(Act 1 of 2010) and the rules framed thereunder as provided in Rule 5 (4) and Rule 7 (1) (v) of Consumer Protection (Direct Selling Rules)2021, Food Safety and Standards Authority

of India Act 2006 and the rules framed thereunder as provided in Rule 4 (j) of Consumer Protection (Direct Selling Rules)2021, GST Act and proof filing monthly/ annual returns and payment of due taxes, Income Tax Act and proof filing returns and payment due taxes including TDS compliance and Proof of become a Partner in the convergence process of the National Consumer Helpline of the Central Government as provided in Rule 5 (17) of Consumer Protection (Direct Selling Rules)2021.

6. To refer the cases of contravention or violation of the rules framed under Consumer Protection (Direct selling) Rules 2021 to the Central Consumer Protection Authority or such other Authorities as envisaged in chapter III, Sec 10 to 23 of the Consumer Protection Act 2019.
7. To refer the cases of contravention or violation of other laws and rules to the concerned law Enforcement Authorities under the provisions of the such Acts & rules.
8. To notify products & services banned in direct selling (negative List) from time to time
9. To ban the companies which deal with such product and services enlisted in the negative list
10. To prohibit the functioning of those direct selling companies failed to enroll with the Kerala Monitoring Mechanism
11. To take appropriate action against the violations / noncompliance / partial compliance of the directives of Monitoring Mechanism by any Direct Selling Entities/ Direct Sellers either suo-motu or on the basis of any complaint received in this regard from any stake holders in one or more manner as follows :
 - i. To engage one or more persons from any of the enforcement departments within this Monitoring Authority to make an inquiry in

relation to the alleged complaints and affairs of any Direct Selling Entity.

- ii. To call upon the books of accounts, registers, audited statement of Accounts, IT and GST monthly/ annual returns, certified copies of mandatory registration certificates as per the Consumer Protection (Direct Selling) Rules 2021 or such other documents /information from Direct Selling Entities when it is expedient to do so and necessary for scrutiny and verification.
- iii. To issue notice to the Industry Association for bringing notice to their member companies to refrain from doing un-ethical and unfair trade practices, false or misleading advertisements
- iv. To suspend / cancel the enrolment already given or black list those Direct Selling Entities violating the regulations of the monitoring mechanism repeatedly even after issuing show cause notices and warnings by the Monitoring Authority and after giving an opportunity of being heard before passing any such order in this regard.
- v. To issue show cause notice to stop the business on noticing severe non-compliance of this mechanism and the applicable rules and regulations after giving an opportunity of being heard for seeking their explanations before passing such order

8. Responsibilities of the Monitoring Authority

- 1) Provide facilities for the enrollment of genuine Direct Selling Entities for carrying out their Direct Selling business in the State of Kerala after collecting necessary fee fixed by the Government from time to time;
- 2) Provide appropriate platform for receiving complaints from the Consumers/Direct Sellers including general public against the violation of Consumer Protection (Direct Selling) Rules, 2021 by

the Direct Selling Entities;

- 3) Inform respective enforcement authorities regarding the unethical and unlawful practice, if any, carried out by direct selling entities/direct sellers including non-compliance of monitoring mechanism (guidelines envisaged in the monitoring mechanism)/evasion of tax laws, noticed by the Monitoring Authority
- 4) Provide Policy inputs to the State and Central Government for appropriate modifications in the Consumer Protection (Direct Selling) Rules, 2021, if warranted, from time to time;
- 5) Provide awareness among law enforcement authorities, consumers, direct sellers and the general public and impart education and training regarding the “Do’s and Don'ts of Direct Selling ” through Training Institutes like Gulati Institute of Finance & Taxation (GIFT), Govt. of Kerala, Thiruvananthapuram or any such Institute recognized for the purpose by Government of Kerala.
- 6) Notify/publish such services and products which are of dubious/spurious nature under classification of “ negative list of goods and services”

9. Enrolment Formalities for carrying out the Direct Selling business in the State of Kerala

No Direct Selling Entity or such other person shall engage in a Direct Selling Business in the State of Kerala unless such entity has enrolled with the State Level Monitoring Authority by filing an application offline /online in the prescribed format given at Annexure I. The Profile of the Company/ Promoters/ Directors/Partners, details of required Permits/ Licenses & tax particulars along with investments and trading particulars of the Applicant Direct Selling Entity shall be furnished in Part A of the Application and a Notary attested Affidavit/Declaration shall be

furnished in the prescribed format given in Part B of the application with all the enclosures stated in the said prescribed Application form along with the Application processing fee of Rs 10,000 (Rupees ten thousand only)

The Commissioner Civil supplies and Consumer affairs may seek the assistance of the following professionals for the scrutiny of enrollment applications to help the concerned employees of Consumer Affairs Department:

- (i) An experienced Accounting Professional, preferably a qualified Chartered Accountant for verifying the Financial statements of the Direct Selling Companies
- (ii) An experienced legal Professional, preferably a practicing lawyer in Consumer matters, Company affairs and Trade & Industry matters
- (iii) Any other Professional if found necessary for the effective scrutiny of Enrollment applications

The Institute of Chartered Accountants of India and Bar Council/ Association of Kerala may be approached for the due nominations of above professionals

Upon receipt of the application in the prescribed format with prescribed application processing fees and the required document /enclosures, the Monitoring Authority after making due verification and scrutiny may –

- 1) Enroll the applicant entity and publish the name of such enrolled company in the website of Consumer Affairs Department, Government of Kerala, or
- 2) Refuse to grant enrollment if any violation of the Consumer Protection (Direct Selling) Rules, 2021 is noted prima facie for the filing of required enclosures / Annexures and in such case the application processing fee collected will be forfeited.

Provided that any time after receiving an application and before it is disposed of, the Regulatory Authority may issue notice, in writing/online, demanding the applicant entity to provide corrected application, additional information/ documents, where the corrected application or any additional information or document required is not provided within the time frame specified in the said notice or any extension thereof granted by the Regulatory Authority, the application shall be summarily rejected.

Provided further that the enrollment process of valid applications shall be completed within 60 days of submission of application, if not such applicant company is deemed to be enrolled provisionally and can commence their operations in the State.

Provided further that the enrollment of a Direct Selling Entity with the Government would be made purely on the basis of the particulars furnished by the applicant in the prescribed Enrollment Application form, which do not confer any legal rights on the enrolled entity to represent themselves as government approved agencies. Rather the purpose of enrollment is for enabling the Monitoring Authority to carry out its objectives in an effective manner.

10. Mandatory Maintenance of Records

Every Direct Selling Entity shall maintain at its registered physical office located in India either manually or electronically, all such documents as are required under any law for the time being in force, as specified in Rule 4 of the Consumer Protection (Direct Selling) Rules, 2021.

11. Mandatory maintenance of Website

As per Rule 5 (d) of the Consumer Protection (Direct Selling) Rules, 2021, every Direct Selling Entity shall maintain proper and updated website with all relevant details of that entity, including the documents or records specified in Rule 4 (a) to 4(1) of the Consumer Protection (Direct selling)Rules,2021 , the self-declaration , contact information

which is current and updated, details of its Nodal Officer, Grievance Redressal Officer, its management, products, product information, price and grievance redressal mechanism for consumers. As per Rule 5(g) the Consumer Protection (Direct Selling) Rules, 2021, every information provided by the Direct Selling Entity on its website shall be duly certified by a Company Secretary. As per Rule 5(16) of the Consumer Protection (Direct selling) Rules, 2021, every direct selling entity shall maintain a record of relevant information allowing for the identification of all direct sellers who have been delisted by the entity and such list shall be publicly shared on its website. Similarly, as per Rule 5(2) of the Consumer Protection (Direct Selling) Rules, 2021, every direct selling entity shall provide the following information on its website/Platform in a clear and accessible manner, which shall be displayed prominently to its users, namely:—

- i. registered name of the direct selling entity;
- ii. registered address of the direct selling entity and of its branches;
- iii. contact details, including e-mail address, fax, land line and mobile numbers of its customer care and Grievance Redressal Officers;
- iv. a ticket number for each complaint lodged through which the complainant can track the status of the complaint;
- v. information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, grievance redressal mechanism and such other information which may be required by the consumers to make informed decisions;
- vi. information on available payment methods, the security of those payment methods, the fees or charges payable by users, the procedure to cancel regular payments under those methods, charge-back options, if any, and the contact information of the relevant payment service provider;
- vii. all mandatory licenses as applicable to the Entity as well as for its

products & services

- viii. total price of any goods or service in single figure, along with its break- up price showing all compulsory and voluntary charges, including delivery charges, postage and handling charges, conveyance charges and the applicable tax;
- ix. provide correct and complete information at pre-purchase stage to enable buyers to make informed purchase decisions, and such information shall, in addition to the mandatory declarations to be provided under the Legal Metrology (Packaged Commodities) Rules, 2011, contain the following information, namely:—
 - i. the name of purchaser and seller;
 - ii. description of goods or services;
 - iii. quantity of goods or services;
 - iv. the estimated delivery date of goods or services;
 - v. the process of refund;
 - vi. guarantees or warranties applicable to such goods or services
 - vii. exchange or replacement of goods in case of it being defective;
 - viii. all contractual information required to be disclosed by or under any law for the time being in force.

Certification by a practicing Company Secretary as per Rule 5(g) the Consumer Protection (Direct Selling) Rules, 2021 along with **notary attested affidavit –cum-self declaration** as per part B of the enrollment application form shall also be uploaded in the website by every Direct Selling Entity and the same shall be displayed prominently along with other mandatory disclosures

12. Filing of compliance Reports

12.1 Yearly Basis

Every Direct Selling Entity, after enrollment, should submit compliance reports with the following information and upload the same in the Website of the respective Direct Selling Entity within 45 days from the end of each such financial year;

- i. Compliance of applicable provisions of Consumer Protection (E commerce Act) 2020 and the rules framed thereunder as provided in Rule 9 of Consumer Protection (Direct Selling Rules) 2021.
- ii. Compliance of applicable provisions of the Legal Metrology Act 2009(Act 1 of 2010) and the rules framed thereunder as provided in Rule 5 (4) and Rule 7 (1) (v) of Consumer Protection (Direct Selling Rules)2021.
- iii. Compliance of applicable provisions of the Food Safety and Standards Authority of India Act 2006 and the rules framed thereunder as provided in Rule 4 (j) of Consumer Protection (Direct Selling Rules) 2021.
- iv. Compliance of applicable provisions of Bureau of Indian Standard(BIS) Act, 2016 .
- v. Compliance of applicable provisions of the Drugs and Cosmetics Act, 1940 (23 of 1940) for the purposes of manufacture or sale of drugs, including Ayurvedic, Siddha and Unani drugs and Homoeopathic Medicines;
- vi. Compliance of applicable provisions of GST Act and proof filing monthly/ annual returns and payment of due taxes
- vii. Compliance of applicable provisions of Income Tax Act and proof filing returns and payment due taxes including TDS

compliance

- viii. Proof of become a Partner in the convergence process of the National Consumer Helpline of the Central Government as provided in Rule 5 (17) of Consumer Protection (Direct Selling Rules)2021.
- ix. Any other compliances as and when found necessary by the Monitoring Authority

12.2 Quarterly Basis

Every Direct Selling Entity, after enrollment, should submit compliance reports with the following information and upload the same in the Website of the respective Direct Selling Entity within 45 days from the end of each such quarter;

- i. Copy of monthly/quarterly GST returns GSTR -1 and GSTR 3 B) as applicable to the entity
- ii. Total number of complaints received from customers and other stake holders including direct sellers within the State and the total numbers redressed & pending status in the last quarter;
- iii. Details relating to return, refund, exchange, after sale services of products carried out by the Entity, if any during the last quarter;
- iv. Any other particulars as and when required by the Monitoring Authority

12.3 Real Time Basis

Every Direct Selling Entity, after enrollment, should submit compliance reports with the following information and upload the same in the Website of the respective Direct Selling Entity on real time basis;

- i. If any changes in business constitution/Management/ directors/ partners/ Key Personnel such as Chief Executive/operative Officer/

Nodal Officer/Grievance Redressal etc. and their contact/communication details etc.

- ii. If any changes in business models/marketing plan
- iii. If any additions /deletions in products or services
- iv. If any changes in compensation /remuneration plan
- v. If any other material changes /deviations in the activities reported in the enrollment form

13. Procedure of disposal of complaints:

The direct complaints from a direct seller or a consumer or any member of the general public will be entertained only if such complaint is not resolved in the grievance redressal mechanism of the Direct Selling Company in the manner as envisaged in Rule 5 (7) of the Consumer Protection (Direct Selling) Rules, 2021. In order to resolve such complaints / grievances, the Government shall designate officers at district level to receive such un-resolved complaints. The designated officer who receives such a complaint shall forward the same to the Direct Selling Entity with a direction to redress the complaint within 30 days of its receipt and to intimate the complaint redressal report to the designated officer immediately. If the designated officers do not receive the complaint redressal report within 30 days of its receipt by the Direct Selling Entity, he shall file non-compliance report before the Monitoring Authority. Where the contents of the non-compliance report received from the designated officer against Direct Selling entity or a Direct Seller or any other person who is part of the network of Direct Selling is found to be genuine and true, the Monitoring Authority may take such action as the Monitoring Authority deems appropriate as mentioned in clause 6 above including due intimation to the enforcement authorities for their appropriate action as per the applicable provisions of the relevant Acts as provided in clause 17 below. However, any complaint/s relating to violation of consumer rights or unfair trade practices or false

or misleading advertisements which are prejudicial to the interests of consumers as a class, may be forwarded either in writing or in electronic mode, to any one of the authorities, namely, the District Collector or the Commissioner of regional office or the Central Authority as provided in Section 17 to 23 of the Consumer Protection Act, 2019.

14. Prohibitions / Restrictions in Direct Selling

(Prohibition of Pyramid Scheme, Money Circulation Schemes and Unfair Trade Practices)

14.(i) No direct selling entity or direct seller shall promote or indulge in a Pyramid Scheme or enroll any person to such scheme or participate in such arrangement in any manner whatsoever in the garb of doing direct selling business with or without products or services as per Rule 10(a) r.w Rule 3 (i) of the Consumer Protection (Direct selling) Rules 2021. Therefore, no direct selling entity or direct seller shall enter into a scheme or package or opportunity or participate in such arrangement in any manner for sharing the benefits by means of enrollment or recruitment of further subscribers to such scheme thereby occupying a higher position for the purpose of earning more benefits or for making quick or easy money out of such higher position and continue with such successive enrollments or recruitments for sharing the income / benefits out of such successive enrollments or recruitments and finally resulting in a multi-layered network of subscribers in the garb of doing direct selling business with a sole intention for sharing the benefits out of such successive enrolments or recruitments irrespective of the sales volume of products / services. Under Pyramid Scheme, the substantial benefit or income is derived mainly on the basis of such enrollments or recruitments and not on the basis of sale of products or services even if the products or services are bundled in such schemes and packages for the purpose of name sake.

14(ii) No direct selling entity or direct seller shall promote or indulge in a money circulation scheme or enroll any person to such scheme or participate in such arrangement in any manner whatsoever in the

garb of doing direct selling business without products or services as per Rule 10 (b) r.w Rule 3 (f) of the Consumer Protection (Direct selling) Rules 2021. As per Sec. 2 (c) of the THE PRIZE CHITS AND MONEY CIRCULATION SCHEMES (BANNING) ACT, 1978, "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 enrollment 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 "The intention of promoting this scheme is to make of quick or easy money through successive enrollments or recruitments. As per the Rule 10(b) of the Consumer Protection (Direct selling) Rules 2021, no direct selling entity or direct seller shall participate in money circulation scheme in the garb of doing direct selling business. Therefore, no direct selling entity or direct seller shall enter into a money circulation scheme or package or participate in such arrangement in any manner for sharing the benefits by means of enrollment or recruitment of further subscribers to such scheme and continue with such successive enrollments or recruitments for sharing the income / benefits out of such successive enrollments or recruitments and finally resulting in a multilayered network of subscribers in the garb of doing direct selling business with a sole intention for sharing the benefits out of such successive enrollments or recruitments without any sale of products/ services. Under money circulation scheme, the entire benefit or income is generated or derived or out of the amount collected through the successive enrollments or recruitments and finally share the benefits among the subscribers simply on account of participation in such schemes.

14(iii) No direct selling entity or direct seller shall promote or indulge in any misleading, deceptive or unfair trade practices or participate in such arrangement/schemes/trades in any manner whatsoever in the garb of doing direct selling business across all models of direct selling for the purpose of earning more benefits or

for making quick or easy money out of such practices/schemes. As per the Rule 5(3) r.w. Rule 2 (1) (d) of the Consumer Protection (Direct selling) Rules 2021, no direct selling entity or direct seller shall adopt any unfair trade practice in the course of its business or otherwise participate in such arrangement/schemes/trades in any manner whatsoever in the garb of doing direct selling business across all models of direct selling. As per Rule 2 (47) of the Consumer Protection Act, 2019, "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:-

- (i) falsely represents that the goods/services are of a particular standard, quality, quantity, grade, composition, style or model where such goods or services do not have such grade /quality/quantity /style/standard
- (ii) dealing second-hand, renovated, reconditioned, old goods as new goods;
- (iii) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
- (iv) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:
- (v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have etc.

14(iv) As per Rule 7 (ii) Consumer Protection (Direct selling) Rules 2021, no direct selling entity or direct seller shall-

- i. indulge in fraudulent activities or sales and shall take reasonable steps to ensure that participants do not indulge in false or

misleading representations or any other form of fraud, coercion, harassment, or unconscionable or unlawful means;

- ii. engage in, or cause or permit, any conduct that is misleading or likely to mislead with regard to any material particulars relating to its direct selling business, or to the goods or services being sold by itself or by the direct seller;
- iii. indulge in mis-selling of products or services to consumers;
- iv. use, or cause or permit to be used, any fraudulent, coercive, unconscionable or unlawful means, or cause harassment, for promoting its direct selling business, or for sale of its goods or services;
- v. refuse to take back spurious goods or deficient services and refund the consideration paid for goods and services provided;
- vi. charge any entry fee or subscription fee/ entry fee /renewal fee.

14(v) No direct selling entity or direct seller shall promote / deal / market/ trade in any products or services which are of spurious /dubious or duplicate in nature including virtual/ digital currencies not approved by RBI as valid & legal tender exchanged as valets, crypto currencies or in any other nomenclature. or otherwise participate in such marketing plans/ arrangements/schemes/trades in any manner whatsoever in the garb of doing direct selling business across all models of direct selling.

It is hoped that the introduction of above prohibitions/ restrictions would be helpful to the consumers and general public to differentiate between legitimate business and Ponzi schemes.

15. Scope & meaning of Direct Selling (Mode of marketing, disbursement of profits, product restrictions etc.)

As per Sec. 2(13) of the Consumer Protection Act 2019, “direct selling” means marketing, distribution and sale of goods or provision of services directly through a ‘network of sellers’, other than through a permanent retail location As per rule 3 (1) (c) of Consumer Protection (Direct Selling) Rules 2021 “direct seller” means a person authorized by a direct selling entity through a legally enforceable written contract to undertake direct selling business on principal to principal basis. As per rule 3 (1)(d) of Consumer Protection (Direct Selling) Rules 2021 “direct selling entity” means the principal entity which sells or offers to sell goods or services through network of direct sellers but does not include an entity which is engaged in a pyramid scheme or money circulation scheme. As per rule 3 (1) (ga) of Consumer Protection (Direct Selling) Rules 2021 “network of sellers” means a network of direct sellers formed by a direct selling entity to sell goods or services for the purpose of receiving consideration solely from such sale. As per Rule 2.1 (a) & (b) of Consumer Protection (Direct Selling) Rules 2021, these rules are applicable to all goods and services bought or sold through direct selling and it is applicable to all models of direct selling.

Similarly, as per sec.2 (7) of the Consumer Protection Act 2019, a “consumer” means any person who buys goods or avails any services for a consideration and it includes offline or online transactions through electronic means or by teleshopping or direct selling or multi -level marketing. Therefore, the intention of the legislation is to protect the consumers from all models of sales and marketing and as such the Direct Selling Entities can adopt Multi-level Marketing (MLM) techniques and practices for the marketing, distribution and sale of its goods and services through its Direct Sellers and they can disburse share of profits/commissions/incentives /bonus to all such direct sellers in the network formed by them. However, such disbursements shall be strictly on the basis of the sales/ turnover achieved by the Direct Sellers at different levels and not on the basis of mere recruitments. However, for the better understanding of direct selling operations, a combined reading of the relevant provisions in the Consumer Protection Act and the relevant Rules in the Consumer Protection (Direct Selling) Rules 2021

explained above are warranted which envisages that the direct selling is the marketing, distribution and sale of goods/ services through ‘network of sellers’ under any models of direct selling/marketing which includes multi- level marketing, network marketing, referral marketing etc. However, mere network marketing, referral marketing, affiliate marketing and multi- level marketing companies may not all times direct selling companies as per rule 5 (1) (e) of the Consumer Protection (Direct Selling) Rules 2021 which stipulates that every direct selling entity shall own, hold or be the licensee of trademark, service mark or any other identification mark which identifies that entity with the sale goods or services to be sold or supplied and this rule further provides that an entity shall not give commissions, bonus or incentives on sale of goods or services of which it is not the owner, holder or licensee of trademark, service mark or other identification marks.

Certain important definitions, clauses and explanations in the Direct Selling Guidelines, 2016 published by Ministry of Consumer Affairs, Government of India vide File No.21/18/2014-IT(Vol.II) dated 08/09/2016 leading to the enactment of Consumer Protection (Direct Selling) Rules, 2021 are also considered here as part and parcel of the this monitoring mechanism as guiding principles for regulating the business of Direct Selling and also for protecting the legitimate rights and interest of consumers.

The key areas of direct selling which are mentioned in the present enactment/rules such as “Network of Direct Selling”, “Cooling -off period”, “Pyramid Scheme”, “Remuneration System” etc. were well detailed/explained in the earlier Central Guidelines. Though these guidelines were more of an advisory in nature, monitoring authorities may refer the relevant portion of this document for interpreting the provisions and rules wherever the present enactment /rules are silent or not clear which are reproduced hereunder for better understanding and clarity:

15(i) “Network of Direct Selling” *(Read with the amended position of*

the Consumer Protection (Direct Selling) Amendment Rules 2023)

Network of Direct Selling means a network of direct sellers formed by a Direct Selling Entity at different levels of distribution, who may recruit or introduce or sponsor or engage further levels of direct sellers to sell the goods or services for the purpose of receiving consideration solely from such sales generated by the efforts of such network of direct sellers :

Explanation: “network of direct selling” shall mean any mode 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. However in multi –level mode of marketing under direct selling, the direct sellers may be recruited at various levels only to generate further sales through the power of such multi-layered network of direct sellers and thereby receiving consideration/remuneration /incentives solely from the volume of such network sales.

15(ii) “Cooling-off Period” means the duration of time counted from the date when the direct seller and the direct selling entity enter into an agreement and ending with date on which the contract is to be performed and within which the direct seller may repudiate the agreement without being subject to penalty for breach of contract;

15(iii) “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 enrollment, action or performance of additional subscribers to the scheme. The subscribers enrolling further subscriber(s) occupy higher position and the enrolled subscriber(s) lower position, thus, with successive enrollments, they form multi-layered network of subscribers.

Provided that the above definition of a “Pyramid Scheme” shall not

apply to a multi layered network of subscribers to a scheme formed by a Direct Selling Entity, which consists of subscribers enrolling one or more subscribers in order to receive any benefit, directly or indirectly, where the benefit is as a result of sale of goods or services by subscribers and the scheme/financial arrangement complies with all of the following:

- i. It has no provision that a Direct Seller will receive remuneration or incentives for the recruitment / enrollment of new participants.
- ii. It does not require a participant to purchase goods or services:
 1. for an amount that exceeds an amount for which such goods or services can be expected to be sold or resold to consumers;
 2. for a quantity of goods or services that exceeds an amount that can be expected to be consumed by, or sold or resold to consumers;
- iii. It does not require a participant to pay any entry/registration fee, cost of sales demonstration equipment and materials or other fees relating to participation;
- iv. It provides a participant with a written contract describing the “material terms”¹ of participation;
- v. It allows or provides for a participant a reasonable cooling-off period to participate or cancel participation in the scheme and receive a refund of any consideration given to participate in the operations;
- vi. It allows or provides for a buy-back or re-purchase policy for “currently marketable” goods or services sold to the participant at the request of the participant at reasonable terms;
- vii. It establishes a grievance redressal mechanism for consumers, more particularly described in Clause 7 herein.

Explanation 1– For the purposes of this proviso the term “material terms” shall mean buy-back or repurchase policy, cooling-off period, warranty and refund policy

15(iv) “Remuneration System” means the system followed by the direct selling entity to compensate the direct seller which illustrates the mode of sharing of incentives, profits and commission, including financial and non-financial benefits, paid by the direct selling entity to the direct sellers, on a monthly or periodic or yearly basis or both, as the case may be. This system, for every Direct Selling entity, shall:-

- a) Have no provision that a direct seller will receive remuneration from the recruitment to participate in such direct selling;
- b) ensure that direct sellers shall receive remuneration derived from the sale of goods or services;
- c) Clearly disclose the method of calculation of remuneration.

The remuneration plan, percentage of commission, incentives including all packages offered by the Direct Selling entities shall be subject to thorough scrutiny by the Authority on the basis of the audited financial statements and in any case, the bundling of heavy and unreasonable profits for disbursements without assuring the quality of products and services shall not be permitted. Every Direct Selling Entity shall ensure that the remuneration/ commission/ incentives including all packages shall be payable to the direct sellers only on the basis of sales turnover achieved through the network formed by them and not on any other basis. Similarly, the companies having nominal paid up capital and less management stake in business will also be restricted. For the time being, the newly incorporated Direct Selling Entity shall have a minimum paid up capital of Rs.10 lakhs other than Government approved agencies/entities such as Kudumbasree and such other Government accredited agencies/entities duly notified by the State level Monitoring Authority from time to time. In the case of other companies, the investments in business and their reserves & surplus position shall be

subject to scrutiny by the State level Monitoring Authority to ascertain the management stake in business.

16. Action against violations/non-compliance of the directives of Monitoring Authority

The violations / non-compliance / partial compliance of the directives of Monitoring Authority / the Completion Authority by any Direct Selling Entities/ Direct Sellers will be treated seriously. The Monitoring Authority, in such cases, either suo-motu or on the basis of any complaint received in this regard from any stake holders, may suggest to:-

- a. Engage one or more persons from any of the enforcement departments within this Monitoring Authority to make an inquiry in relation to the alleged complaints and affairs of any Direct Selling Entity.
- b. Call upon the books of accounts, registers, audited statement of Accounts, IT and GST monthly/ annual returns, certified copies of mandatory registration certificates as per the Consumer Protection (Direct selling) Rules, 2021 or such other documents necessary for scrutiny and verification.
- c. Proposed to cancel such enrollment or black list those Direct Selling Entities violating the regulations of the monitoring mechanism repeatedly even after show cause notices and warnings by the competent Authority concerned.
- d. Proposed to issue show cause notice to stop the business of such non-compliances with immediate effect
- e. Refer the matter to the Central Consumer Protection Authority or such other Authorities as envisaged in Sec 17 to 23 of the Consumer Protection Act, 2019

The Monitoring Authority may, before initiating the actions proposed

in item No. (iii) & (iv) above, may issue notice to the Direct Selling Entity or give them an opportunity of being heard for seeking their explanation to the actions so proposed.

17. Miscellaneous

17.1 Stakeholders meeting

The stakeholders of Direct Selling sector such as Industry Associations, Trade Unions, Consumer Forums & Associations, Direct Selling Professionals and Consultants had contributed a lot in formulating this Monitoring Mechanism. Considering their contributions, Stakeholders meeting would be convened at frequent intervals for seeking their suggestions, feedback and field level information for improving the Monitoring Mechanism in an effective manner.

17.2. Welfare of Direct Sellers

It is noticed that large number of Direct Sellers are working in this Direct Selling Industry. After collecting the data base of Direct Sellers through the enrollment process, appropriate welfare/insurance schemes would be initiated subject to the approval of Government for the wellbeing and welfare of the direct sellers. The funds for the formulation of this Welfare Fund may be mobilised by way of registration fee from the enrolled direct sellers and also from the Consumer Welfare fund available for the welfare of the consumers at the Consumer Affairs Department, Government of India.

17.3 Collection of Technology Support Fund from Direct Selling Companies

In addition to the application process fee, it was opined by the stakeholders to collect the required fund from Direct Selling Companies, which may be utilized by the Nodal Department for meeting the expenses towards the monitoring of enrolled companies including the cost towards the development of Application Software for providing on line services to the companies and also for the development of dynamic Website for

ensuring MIS reports to all stakeholders. Government had examined this matter and decided to collect a onetime non-refundable fund of Rs 1,00,000 (Rupees one lakh only) each from all enrolled Direct Selling Companies as **Technology Support Fund** for providing the above mentioned services to the Direct Selling Companies as well to all the stake holders.

The amount collected on account of ‘Application process fees’ and ‘Technology support fund’ shall be kept in a separate bank/treasury account for ensuring its effective monitoring by the State level Monitoring Authority.

ANNEXURE-1

APPLICATION FOR ENROLMENT

PART A

Sl No	Particulars	To be filled by Direct Selling Entity
	Part A : Company Profile	
1	Name of the Direct Selling Entity (As Registered)	
2	CIN No: / Reg. No.	
3	Principal place of business	
4	Date of Incorporation of the Entity	
5	Date of Commencement of Business	
7	A D D R E S S F O R C O M M U N I C A T I O N i. Head Office: (With PIN Code, email id, Telephone with STD code and Company Website)	
	ii. Branch Office in Kerala	

	(With PIN Code, e-mail, Telephone with STD code and Company Website)	
8	TAX PARTICULARS OF COMPANY	
	i. Income Tax Registration. No. (PAN)	
	ii. Income Tax TDS Registration. No. (TAN)	
	iii. GST Registration No. (GSTIN)	
9	Name and Contact details	
	i. Name and contact address of the Directors/ Partners of the Entity (With PIN Code, Aadhar No, email id, mobile phone No. &Telephone with code)	
	ii. Name and contact address of Key Management Personnel with their Aadhar No, email id & mobile phone No	
	iii. Name and contact address of Nodal Officer responsible for monitoring the compliance of Direct Selling Rules 2021 (With PIN Code, Aadhar No, email id, mobile phone No. e-mail &Telephone with STD code)	
	iv. Name and address of Grievance Redressal Officer responsible for redressing the complaints (With PIN Code, Aadhar No, email i , mobile phone No. &Telephone with code)	
	v. Name and address of the	

	Software Developer of Website & Network Application (With PIN Code, email id, mobile phone No. & Telephone with code)	
10	Details of Consumer Grievance Redressal mechanism as per the consumer Protection (direct selling) Rules 2021:	Enclose Separately
11	Total number of Direct Sellers working within the State (as on 01.04.2022 or 31.3.2024)	Enclose Separately
12	Whether KYC documents were collected from Direct Sellers and ID cards were issued to all the Direct Sellers	YES/ NO
13	Details of Products/ Services offered (enclose product brochure with price break-up) i. Details of own products or services with Trade Mark or Service Mark as the case may be	Enclose Separately
	ii. Details of products or services dealt in the capacity of holder or license of a trademark or service mark or other identification marks which identifies the company and its products	Enclose Separately
	iii. Details of Compensation/ Remuneration Plan adopted	Enclose Separately
	iv. Whether E-commerce Platform	YES/ NO

	adopted	
14	Investment in business and trading particulars as per latest audited accounts available, ie on 31 March 2024	(Rupees in absolute figures)
	i. Capital & Reserves	
	ii. Current liabilities & Payables	
	iii. Investment in Fixed Assets	
	iv. Investment in Current Assets	
	v. Total Sales Turnover	
	vi. Total Purchase Turnover	
	vii. Total Commission / Incentives to Direct Sellers (including Payables)	
	viii. Gross Profit	
	ix. Net Profit	
15	Association with any Industry Association, if any (If Yes, Specify the name of the Association)	

Part - B

(NOTARY ATTESTED AFFIDAVIT –CUM- SELF DECLARATION)

I / We,..... in the capacity of of he
..... company / firm declare that we, ,shall compliant
with the following:

(A) Mandatory Declarations

1. I/We shall compliant all the provisions of Consumer Protection (Direct Selling Rules) 2021 notified by the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi, vide Notification No. GSR 889(E) dated 28/12/2021
2. I/We shall compliant the applicable provisions of GST Act and proof filing monthly/ annual returns and the payment of due taxes .
3. I/We shall compliant the applicable provisions of Income Tax Act and proof filing returns and payment of due taxes .
4. I/We shall compliant all the orders, circulars , notifications as may be notified by the Department of Consumer Affairs, Government of India /or by the Department of Consumer Affairs, Government of Kerala from time to time
5. I/We shall set up an authorized office declared in Kerala and shall maintain its office, either manually or electronically, all such documents/registers/ books of accounts as are required under any law for the time being in force, will be kept under this office as may be applicable for verification of the enforcement authorities under this monitoring mechanism, in addition to its maintenance of such records at its registered office as required as per Rule No. 4 of Consumer Protection (Direct selling) Rules 2021
6. I/We shall become a Partner in the convergence process of the National Consumer Helpline of the Central Government as provided in Rule 5 (17) of Consumer Protection (Direct Selling Rules)2021
7. I/We shall not promote a Pyramid Scheme or enroll any person to such scheme or participate in such arrangement in any manner whatsoever in the garb of doing direct selling business as provided in Rule 10 (a) of Consumer Protection (Direct Selling

Rules) 2021

8. I/We shall not participate in money circulation or investment scheme in the garb of doing direct selling business as provided in Rule 10 (b) of Consumer Protection (Direct Selling Rules) 2021 ;
9. I/We shall not promote any misleading, deceptive or unfair trade practices or participate in such arrangement/schemes/trades or such other activities which attracts the relevant provisions of PCMC Act, BUDS Act etc in any manner whatsoever in the garb of doing direct selling business across all models of direct selling as provided in Rule 5(3) r.w. Rule 2 (1) (d) of the Consumer Protection (Direct selling) Rules 2021
10. I/We shall not promote / deal / market/ trade in any products or services which are of spurious /dubious or duplicate in nature including virtual/ digital currencies not approved by RBI as valid & legal tender exchanged as valets, crypto currencies or in any other nomenclature
11. In addition to the Consumer Protection Act 2019 , I/We shall also abide by the relevant provisions contained in (i) The Companies Act 2013, The Indian Contract Act 1872, The Patent Act 1970, The Legal Metrology Act 2009, The Sale of Goods Act 1930, The Central Goods & Services Act 2017 , The State Goods & Services Act 2017, The Income Tax Act 2022, The Information Technology Act 2000 and such other Act made applicable to the Direct Selling business from time to time

(B) Optional Declarations (Mandatory, if applicable)

1. I/We shall compliant all the relevant provisions of Consumer Protection (E commerce Act) 2020 and the rules framed thereunder as provided in Rule 9 of Consumer Protection (Direct Selling Rules)2021
2. I/We shall compliant all the relevant provisions of

the Legal Metrology Act 2009(Act 1 of 2010) and the rules framed thereunder as provided in Rule 5 (4) and Rule 7 (1) (v) of Consumer Protection (Direct Selling Rules) 2021

3. I/We shall compliant all the relevant provisions of the Drugs & Cosmetics Act,1940
4. I/We shall compliant all the relevant provisions of the Bureau of Indian Standards (BIS) Act, 2016
5. We shall compliant all the relevant provisions of the Food Safety and Standards Authority of India Act 2006 and the rules framed thereunder as provided in Rule 4 (j) of Consumer Protection (Direct Selling Rules) 2021

Deponent

VERIFCATION

The contents disclosed in Part A Enrollment Application form and Part B Affidavit cum Declaration furnished above are true and correct and nothing material has been concealed by me/us there from.

Verified by me/us at on this day of

Deponent

Place: Zeal of the Company

Date:

Name.....

Designation

Tel No.....

E-mail.....

List of documents to be appended to the Enrolment Application form:

(A) Mandatory Documents

1. Certification made by a practicing Company Secretary regarding the veracity and validity of documents uploaded in the Website such as certificates , licenses , policies, declarations and other documents required for the proper conduct of Direct Selling business as per the Consumer Protection (Direct Selling Rules)2021
2. Copy of the latest Audited financial statements (Balance Sheet and Profit & Loss A/c with schedules)(Financial year 2022-23)
3. Copy of (i) Certificate of incorporation,(ii) Memorandum of Association& (iii) Article of Association of the Entity
4. Copy of Certificate of Registration of Trademark.
5. List of Board of Directors/ Partners /owners of the Entity with contact address with their Aadhar No., email & mobile phone No.
6. List of Key Management Personnel with their contact address with their Aadhar No, email id & mobile phone No.
7. Brief details of direct selling scheme and compensation plan
8. Copy of Product Brochure with price break –up as required under Rule 5 (2) (g) of Consumer Protection (Direct Selling Rules)2021
9. Copy of prior written contract to be executed with direct sellers as required under Rule 6(1) (a) of Consumer Protection (Direct

Selling Rules)2021

10. Copy of GSTIN ,PAN and TAN or such other registrations necessary for the lawful conduct of the business undertaken by the Direct Selling Entity
11. Copy of Income Tax and GST returns for the latest year (Financial Year 2022-23)

(B)Optional Documents (Mandatory ,if applicable)

1. Copy of acknowledgment from received from the On-line Portal of Dept. of Consumer Affairs during the course of previous registration (applicable to previously on-line registered Entities under earlier Monitoring Mechanism , Consumer Affairs Department , Govt. of Kerala)
2. Certificate of Importer-Exporter code (in case of imported goods)
- 3 . Copy of license issued under the Food Safety and Standards Authority of India Act 2006.(If applicable)
- 4 . Copy of License and Registration certificate issued under the Drugs and Cosmetics Act 1940 (If applicable)
- 5 . Copy of operating License under Bureau of Indian Standards (BIS) Act, 2016 (If applicable)
- 6 . Copy of Mandatory declarations under the Legal Metrology (Packed Commodities) Rules 2011 (If applicable)
7. Such other information or documents, if any, as may be demanded from time to time