EASE OF DOING BUSINESS IN INDIA

THE WAY FORWARD FOR THE DIRECT SELLING INDUSTRY



FOREWORD

The Global direct selling industry has demonstrated exceptional economic growth over the years. It is especially appealing to individuals who seek flexible working hours or professional independence without a huge outlay of money up front. Direct Selling is also advantageous on large scale for economies since it reduces transaction costs and disintermediation while also closing the gap between the manufacturing price and retail price. The Direct Selling Industry in India continues to contribute year after year to the economy and the exchequer despite various bottlenecks that the industry faces in terms of regulatory framework etc. The gross sales of the Direct Selling industry stand at INR 8,308.5 crore in 2015-16 as opposed to INR 7,958.3 crore in the previous year. It may be mentioned that during the last eight years, the industry has shown 12.13% CAGR. Thus, India is an optimum forum for the direct selling industry to grow if given the proper regulatory to operate in. To showcase the potential and highlight the opportunities and challenges faced by the DS industry, FICCI organizes its Annual event on Direct Selling 'DIRECT' every year.

In the light of the above circumstances, this report will look at initiatives taken by the government with relation to Ease of Doing Business that will help the Direct Selling Industry in India and analyze the implications of the reforms taken by government for the Indian Direct Selling Industry and recommend a way forward to ease the doing of business so that the industry may reach its full potential and provide self-employment opportunities to millions in the country.

FICCI is hoping that this report can provide insights and actionable recommendation for putting together a conducive legal environment for the industry.



Mr Sanjaya Baru
Secretary General, FICCI

PREFACE

Shri Narendra Modi, the Prime Minister of India on 26th October 2017 said, “Consumers' protection is the government's priority. We are in the process to bring a new law on consumer protection keeping in mind the need of the country and business practices here.” He further added that the rules for consumer protection were being streamlined to solve consumer problems in less time and at less cost. In my view, laws do not change practices but encouraging ethical business brings the tangible difference in customer delight.

India's surge in the latest World Bank report on “the ease of doing business” from the 130th position last year to 100th followed by Moody's decision to upgrade India's credit rating for the first time in more than a decade could not have come at a better time for the government.

Direct Selling has been established globally as one of the most consumer-friendly format to improve accessibility to quality goods and services. However, an efficient complaint redressal mechanism and prompt handling of consumer complaints must become an integral part of the Industry in India.

What is now crucial is the attitude of the 36 States/Union Territories towards Consumer Protection and effective implementation of the laws and regulations in a user-friendly manner. After several rounds of consultations with various stakeholders, India finally notified Model Framework for Guidelines on Direct Selling on 12th September 2016 to differentiate between legitimate and fraudulent pyramid schemes that operate as Direct Selling companies. Unfortunately till date only two states have notified the guidelines. Also the new Consumer Protection Act which has been pending in Parliament for a long time has to be passed immediately in order to further bolster the doing Business environment in the country

A recent report by FICCI-KPMG projected that retail sales in Direct Selling could reach Rs 64,500 crore by 2025 and provide self-employment opportunities to 1.8 crore Indians, 60% of which are women.

Given this huge opportunity, all governments must work together to unlock the potential of this industry by bringing in sector specific reforms to improve business regulation for the industry and ease the doing of business for the legitimate companies undertaking direct selling and the 50 lakh plus direct sellers in India.



Mr Bejon Kumar Misra
Founder, Consumer Online Foundation

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EXECUTIVE SUMMARY

Taking India to the top 50 in the World Bank's Ease of Doing Business Ranking now seems an attainable target before 2020. Having walked the talk on cardinal macro-level reforms, the government of India would need to shift very quickly to sector specific regulatory reforms over the next three years. Such approach will set the tone for a new economic agenda that would enable India to unlock the potential of several industries. First in the order of priority should be industries that encourage entrepreneurship and self-employment, increase income levels at rural / semi-urban areas while addressing income inequality indices, include greater people in formal banking and digital channels, enhance tax revenues, and address the gender gap. The Direct Selling industry fits the bill on these criterion but has been trapped in a quagmire of regulatory uncertainty.

The government of India has progressively liberalized and simplified policies and procedures to conduct business at one hand and regulate and govern business operations on the other. Despite these reforms, a typical direct selling company in India, depending on the nature of products and services, requires compliances to around 10-12 policies and regulations, including state and local laws. Direct Selling companies in general have opined that doing business in India has improved on several fronts. However, the prolonged regulatory uncertainty, arising from the blanket application of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (PCMC) to the industry, poses serious challenges to the growth and investments of the industry. To further add to the problem, five states namely, Chhattisgarh, Sikkim, Meghalaya, Gujarat, Mizoram and Manipur have notified the Draft Money Circulation Scheme (Banning) Rules, 2012 under PCMC Act that not only bans pyramid schemes but also extends the provision of the Act to regulate goods and services without creating a distinction for legitimate direct selling companies. Media reports that these Draft Model Rules (DMR) rules are to be tabled in Bihar and Punjab assembly respectively for notification.

The regulatory issues faced by direct selling first came to light as early as the year 2000. The issue arose due to the wide prevalence of pyramid and Ponzi schemes in certain parts of the country who disguised themselves as legitimate direct selling companies and the absence of a legal framework for law enforcers to objectively distinguish direct selling companies from these fraudulent ones.

The government of India has made several efforts in the past to resolve this regulatory issue. Realizing the need for Inter-Ministerial coordination, it had formed two Inter-Ministerial Committees (IMCs) and two high-level Inter-Ministerial Groups (IMGs) since 2010. As this regulatory uncertainty affects more than 50 lakhs direct sellers in the country, the Parliamentary Standing Committee on Finance and the Parliamentary Standing Committee on Consumer Affairs have taken cognizance of the issue and they have accordingly made their observations and recommendations in their report submitted to Parliament on September 2015 and April 2016 respectively. Given this commitment from the government and based on the deliberations of the IMC, the Department of Consumer Affairs under the Union Ministry of Consumer Affairs, Food & Public Distribution issued a Model Framework for Guidelines on Direct Selling as an advisory to all the states and union territories in September 2016.

The Model Framework for Guidelines on Direct Selling was notified vide the Gazette of India on 26th October 2016. The notification of these guidelines is a significant milestone in ease of doing of business for Direct Selling industry in India as it lays down a framework, for the first time in India, to clearly demarcate a legitimate Direct Selling business from pyramid and Ponzi schemes along with a mechanism to regulate the industry, so that innocent consumers are not affected by its misapplication.

The Government of Chhattisgarh and Government of Sikkim have already notified the Model Framework for Guidelines on Direct Selling on 9th October 2017 and 24th October 2017 respectively.

The immediate way forward is for all states and union territories to notify the same. Our select interviews reveal that Direct Selling is banned in certain districts in Andhra Pradesh, Kerala and Telangana as the law enforcement in these states do not have an objective framework or “smell tests” to differentiate Direct Selling from pyramid schemes as recommended by the Parliamentary Standing Committee on Finance.

A long term solution to the regulatory issue would require that these guidelines be issued under an appropriate legislation or existing law. Finally, all states should conduct appropriate capacity building and issue appropriate manuals enabling law enforcement to investigate complaints against pyramid schemes in line with Clause 1.11 of the Model Direct Selling Guidelines and prevent its misapplication to legitimate Direct Selling companies.

INTRODUCTORY CHAPTER

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Taking India to the top 50 in the World Bank's Ease of Doing Business Ranking now seems an attainable target before 2020. Having walked the talk on cardinal macro-level reforms, the Government of India would need to shift very quickly to sector specific regulatory reforms over the next three years. Such approach will set the tone for a new economic agenda that would enable India to unlock the potential of several industries. First in the order of priority should be industries that encourage entrepreneurship, increase income levels at rural / semi-urban areas while addressing income inequality indices, include greater people in formal banking and digital channels, enhance tax revenues, and address the gender gap. The Direct Selling industry fits the bill on these criterion but has been trapped in a quagmire of regulatory uncertainty.

India's entry into the top 100 in Ease of Doing Business Ranking

India for the first time moved into the top 100 in the World Bank's Ease of Doing Business global ranking. The World Bank's Report states that India's entry into top 100 is on account of a sustained business reforms implemented by the government over the past several years. The Report also recognizes India as one of the top 10 improvers in this year's assessment, having implemented reforms in 8 out of 10 Doing Business indicators.

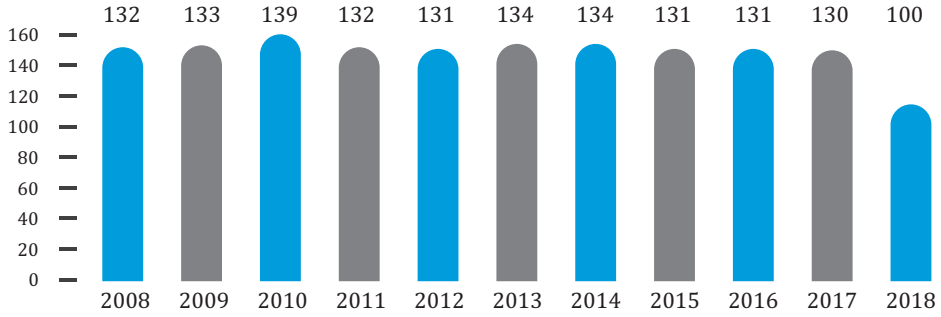
Make in India and Ease of Doing Business

The National Democratic Alliance (NDA) had, on coming to power in 2014, set itself a target of breaking into the top 50 in the World Bank's Ease of Doing Business ranking. India's ranking in 2014 was 142. In fact, ease of doing business became a prominent part of the Prime Minister's 'Make in India' program launched in September 2014.

The Prime Minister launched 'Make in India' as part of a wider set of nation-building initiatives to transform India into a global hub for manufacturing. The program is a call to action to all business leaders to manufacture in India. It represents a change of the government's mind-set towards businesses, and a comprehensive overhaul policies to attract investments into India. Most importantly it represents "Minimum Government, Maximum Governance" approach of the government to business regulation.

This change in mind-set, policy approach to business regulation and the renewed focus of the government on 'Make in India' sets the stage of India's entry into top 100 this year. The World Bank Group considers a reform only when it becomes operational and not when announced. Therefore, India's jump by 30 places this year indicate that the government's efforts to overhaul outdated processes and policies are gradually starting to pay off.

Exhibit 1.1 - India's Ease of Doing Business Rank



In fact, India is the only large country to have achieved such a significant shift. On the "distance to frontier metric," one of the key indicators in the survey, India's score went from 56.05 in Doing Business 2017 to 60.76 this year. This means last year India improved its business regulations in absolute terms – indicating that the country is continuously shifting towards best practice in business regulation.

Key Reforms

The World Bank reported highlighted that India had adopted 37 reforms since 2003 but nearly half of these were implemented in the last three to four years. Some of the key reforms implemented since 2014 include:

Exhibit 1.2 - Categories where India has improved

Category	Ranking in 2017	Ranking in 2018
Paying Taxes	172	119
Resolving Insolvency	136	103
Getting Credit	44	29
Protecting minority investors	13	04
Enforcing Contracts	172	164
Dealing with construction permits	185	181

Exhibit 1.3 - Categories which still require Improvement

Category	Ranking in 2017	Ranking in 2018
Starting a business	155	156
Getting electricity	26	29
Trading across borders	143	146
Registering property	138	154

1. FDI Reforms

FDI reforms undertaken by current government since 2014 include liberalization of conservative sectors like Rail infrastructure, Defence, Medical Devices, and Construction Development. In 2015 the government overhauled FDI policy provisions in sectors such as Construction Development, Broadcasting, Retail Trading, Air Transport, Insurance, and Pension. The introduction of composite caps in the FDI policy and raising the FIPB approval limit were also undertaken in the same year to promote ease of doing business in the country.

The government also permitted 100% FDI in retail trading of food products. This was introduced with an unqualified condition that such food products have to be manufactured and/or produced in India.

Exhibit 1.4 - FDI Reforms

Sector	Then	Now
Defence	49% through approval route for state- of- the-art tech	Automatic route up to 49% and Govt. route beyond 49% wherever it is likely to result in access to modern technology or for other reasons to be recorded.
Airlines	49% in civil aviation through automatic route	49% Automatic route (100% for NRIs and OCIs)
Brownfield Airports	100% FDI; 74% automatic and remaining through approval	100% Automatic
Broadcasting Carriage	100% FDI 49% Automatic and over 49% through approval	100% Automatic
Private Security Agencies	49% FDI under approval route	49% Approval route
Food Items produced in India	100% FDI through approval	100% Automatic
Brownfield Pharma	100% through approval	Automatic up to 74% and Government route beyond 74%
Single Brand Retail	Sourcing from April 1 of the year store opens	Local sourcing norms relaxed for 3 years and further 5 year relaxation for those bringing in "Cutting edge tech" Automatic up to 49%; Government route beyond 49%

Source: FEMA Regulations 2017 notified by the RBI on 07.11.2017

2. The eBiz Project

As part of the government's initiative to improve the business environment and the ease of doing business in the country, the Department of Industrial Policy & Promotion (DIPP), Ministry of Commerce & Industry launched the eBiz portal in January 2013 comprising License and Permits Information Services. The NDA government then took up the project to create an investor centric hub-and-spoke online single window model for providing clearances and filing compliances. Key initiatives by the current government included having a timeline for clearance of applications, de-licensing the manufacturing of many defence products and introduction of e-Biz project for single window clearance. The emphasis of the government has been on simplification and rationalization of the existing rules and introduction of information technology to make governance more efficient, effective, simple and user-friendly.

In order to improve the regulatory business environment, all Central departments and state governments have been requested to take measures on a priority basis such as mandatory filing of all returns on-line through a unified form; no inspection without the approval of the Head of the Department and a system of self-certification for all non-risk, non-hazardous businesses. Furthermore integration with Central government services is being done on highest priority.

This has resulted in radical improvements in ease of doing business by reducing time, efforts and costs taken in obtaining clearances and ensuring compliances.

3. Reforms in Government Expenditures

The government has undertaken major expenditure reforms over the last three years. This includes simplification of appraisal and approval processes and structural changes in the process of budget making. As recommended by several committees in the past, the Plan and Non-plan distinction is being done away with. With these changes the cost-centres would henceforth be treated in an integrated manner, within only the statutory revenue capital framework. 'Outlay' is the amount that is provided for a given scheme or project in the Budget; while 'Output' refers to the direct and measurable product of program activities, often expressed in physical terms or units.

From the year 2017-18 onwards, it has been decided that the output and outcomes of the schemes of 68 Ministries and Departments will be available along with the financial outlays as a part of the Budget documents, so that clearly defined objectives and goals for each scheme can be seen by all. The present Budget, therefore, makes a significant departure from the past and presents (a) the financial outlay for the year 2017-18 along with (b) the output and deliverables and (c) the projected medium term outcomes for each Scheme/Project in a single, consolidated document.

This will significantly enhance transparency, predictability and ease of understanding of the government's development agenda. Through this exercise, the government aims to nurture an open, accountable, pro-active and purposeful style of governance by transitioning from mere outlays to result oriented outputs and outcomes.

4. Business Reform Action Plan for States

The Department of Industrial Policy and Promotion (DIPP) under the Ministry of Commerce and Industry, Government of India has taken up a series of measures to simplify and rationalize the regulatory processes in India. The department, as part of easing the doing business in the country, shared a 98-Point Action Plan for improving the regulatory framework at National Workshop of 'Make in India' held on 29th December 2014.

Subsequently, a report titled “Assessment of State Implementation of Business Reforms” was released in September 2015 to encourage sustain the momentum of the regulatory reform at the states. Furthermore, the assessment, a first of its kind, promoted both competitive and cooperative federalism among the States and Union Territories in India.

With this background, a 340-Point Business Reform Action Plan for States and Union Territories (UTs) was circulated by DIPP to all State/UT Governments in October 2015 for further implementation. The department has also launched an online portal to track real-time rankings of states on the basis of number of reforms. The online portal also aims to provide:

- Details of the good practices to learn and replicate from the experience
- Information on current policies and practices acrossthe States and UT's

Furthermore, DIPP released the Business Reform Action Plan (BRAP) for 2017 in April this year. The action plan included 405 recommendations for reforms on regulatory policies, practices and procedures spread across 12 areas. This include labour regulation enablers; contract enforcement; registering property; inspection reform enablers; single window system; land availability and allotment; construction permit enablers; environmental registration enablers; obtaining utility permits; paying taxes; access to information and transparency enablers and sector specific reforms spanning the lifecycle of a typical business.

5. Digital India and Financial Inclusion

Digital India is an initiative of the government launched in 2015. It seeks to ensure that government services are made available seamlessly to citizens, in electronic form, by improving online infrastructure and increasing internet connectivity. Since then India has witnessed significant steps being taken by the government towards digital empowerment of the people including Financial Inclusion.

For instance, India's financial inclusion policy, Pradhan Mantri Jan-DhanYojana has shown qualitative results. The amount of deposits rose to around Rs. 65,697 crore by August 2017. The plan also envisages access to insurance, credit and pension facilities and channeling of all government benefits directly into the beneficiaries' bank accounts. In addition, the RBI has strengthened the Unified Payment Interface (UPI) in order to facilitate digital money transfers. In line with the digital strategy, the government has granted permission to a couple of payment banks, thereby kick-starting the initiative. Thus, digital India and financial inclusion are closely connected and has enabled smoother and faster business transitions. As on August 9, 2017, the total number of account holders stood at 29.48 crore including 17.60 crore account holders from rural and semi-urban branches. In addition, a total of 22.70 crore RuPay cards have been issued by National Payments Corporation of India (NPCI) till August 2017.

6. Goods and Services Tax

The government of India implemented a comprehensive dual Goods and Services Tax (GST) from 1 July 2017 to replace the complex multiple indirect tax structure in the country. The concept of GST was visualized for the first time in 1999. On 8 August 2016, the Constitutional Amendment Bill for the implantation of GST was passed by Parliament. This was immediately followed by the ratification of the Bill by more than 15 states.

The GST Council consisting of representatives from the Central as well as state governments, have met 23 times in the last 12 months and cleared –

- GST Laws and GST Rules
- Tax rate structure including Compensation Cess,
- Classification of goods and services into different rate slabs,
- Exemptions,
- Thresholds,
- Tax Administration

On 12 April 2017, the Central Government enacted four GST Bills, (i) Central GST (CGST), (ii) Integrated GST (IGST), (iii) Union Territory GST (UTGST) and (iv) Bill to Compensate States. In brief, all the states have approved their State GST (SGST) laws in a very short span of time to make India a truly one market country.

Exhibit 1.5 - What is measured in Doing Business?



Sector Focused Reforms needed to take India to top 50

Government's efforts are gradually paying off as reflected in India's jump from 130 to 100 in its ease of doing business ranking. Eight areas in which the World Bank counted reform impact include starting a business, dealing with construction permits, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency. The other two areas are getting electricity and registering property.

"India is closing the gap between international best practices. It is a clear signal that not only has the country been open for business but it is also competing for the preferred place for doing business,"
Annette Dixon, Vice President, South Asia Region, World Bank.

But as is evident from the ranking, India has a long way to go before it marks its entry into the top 50. In order to achieve the same, it is imperative that the government aligns its all-round & multi-sectoral reform push for sector specific reforms.

Sector specific reforms for Direct Selling Industry

Despite many editions of the Ease of Doing Business Report its one focus remains the same – that is promoting regulatory reforms that strengthen the ability of the private sector to create jobs, lift people out of poverty and create more opportunities for the economy to prosper.

In this context, sector specific reforms for direct selling present a huge opportunity for India. By bringing the much needed regulatory clarity for the industry, India will unlock the reforms to create a Rs. 64,500 crore market by 2025 and provide self-employment opportunities to 180 crore Indians, 60% of which are women. This will certainly help India's race towards becoming a high middle income country by 2047.
Moreover, regulatory clarity for the industry will improve India's ranking on 3 of the 5 parameters that the Ease of Doing Business measures, that is it would ease the starting of business and dealing with day-to-day operations for Direct Selling industry and most importantly, it will create a secure business environment for Direct Selling companies to operate.

The Direct Selling industry has the potential to create a significant social and economic impact in India. Our estimates suggest that the industry has the potential to reach a size of Rs. 64,500 crore by 2025, driven by growth in consumer markets and increase in the penetration of Direct Selling to globally comparable levels. This could, however, be contingent on creating an enabling environment for the industry, and mitigation of some of the challenges it is facing today.
FICCI-KPMG Report 2014 "Direct selling - A global industry empowering millions in India"

Doing Business in India – DS Industry's Experience

Doing Business in India – DS Industry's Experience

The government of India has progressively liberalized and simplified policies and procedures to regulate and govern businesses in India. Despite these reforms, a typical direct selling company in India, depending on the nature of products and services, requires compliances to around 10-12 policies and regulations, including state and local laws. DS companies in general have opined that business regulations have improved on several fronts. However, the prolonged regulatory uncertainty, arising from the blanket application of the Prize Chits and Money Circulation Schemes (Banning) Act 1978 to the industry, poses serious challenges to the growth and investments in the industry.

Direct Selling, a global industry with 10.7 crore direct sellers

The global Direct Selling industry generated a retail sales of US$ 18,356 crore in 2016 and provided part-time employment to 10.7 crore direct sellers worldwide. The top 10 direct selling markets are USA, China, Japan, Korea, Brazil, Germany, Mexico, France, Malaysia, and the UK. Together, these markets accounted for 78% of the global direct selling volume, and the largest 23 markets account for 93% of the global market share

Direct Selling in India

Direct Selling has been practiced in India for hundreds of years and continues to be practiced today. But the modern format of direct selling, as we know it today, started in India around mid-1980s. According to the "Model Framework for Guidelines on Direct Selling,"

"Direct Selling" means marketing, distribution and sale of goods or providing of services as a part of network of Direct Selling other than under a pyramid scheme. Provided that such sale of goods or services occurs otherwise than through a "permanent retail location" to the consumers, generally in their houses or at their workplace or through explanation and demonstration of such goods and services at a particular place."

The industry witnessed major growth in the post-liberalization era with many global players entering the Indian market. Amway was one of the first major global direct selling companies to enter India in 1995, which was followed by companies like Avon, Oriflame and Tupperware in 1996. Around the same time Modicare was one the first few Indian companies to adopt this channel of distribution.

Double digit to single digit growth in the last 3 years

Until recently, the industry was the fastest growing non-store retail formats, growing over 20% year on year. However, few unfortunate incidents reported in several states across India where enforcers have confused direct sellers with those who are running ponzi and pyramid schemes has created huge uncertainty for the industry. As a result, the pace of growth in the industry has slowed down in the last five years.

In the light of this unique experience of the Industry, we look at what it means to do business on the following parameters, through a questionnaire based survey coupled with select one-on-one interviews with the industry leaders and key stakeholders.

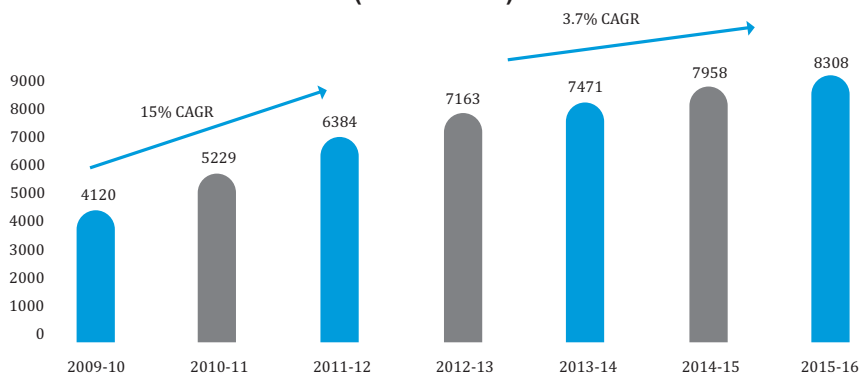
Only 2-3 new Start-Ups in the Industry in the last 3 years

The Direct Selling industry comprises of about 30 companies in the organized sector. While there has been several attempts in the past, the size of the unorganized sector has not been estimated till date. Therefore, our survey covers only the organized sector.

More than 70% of the companies surveyed were incorporated before 2011 and hence, their rating on "Starting a Direct Selling Business" is what they perceive the environment to be in context of the recent reforms undertaken by Government of India, as well as state and local level reforms.

Our respondents have rated "Starting a Direct Selling Business in India" at 3.30 on a scale of 1 to 5 where 1 is extremely poor and 5 is excellent. Despite the better than average ranking, our select one-on-one interviews reveal that only two or three new direct selling companies have been incorporated or started in the last three years. They attribute this slow pace of start-ups in the industry to the lack of regulatory clarity arising from the misapplication of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 to the industry.

Exhibit 2.1 - Industry Growth - Retail Sales (In Rs Crore)



Source: IDSA Annual Survey

India and Asia. Oriflame's 216 products, out of the total 366 products in its Indian portfolio, are manufactured in its own facilities.

- Apart from these facilities, the company has tie ups with 11 sub-contractors/ third-party manufacturers. 90% of the demand in India is sourced through domestically produced goods. 20% of all the goods produced in India are used for exports.

Modicare

- Modicare products are manufactured in over 30 world class GMP / GLP certified facilities and adhere to stringent quality checks and audits.

Tupperware

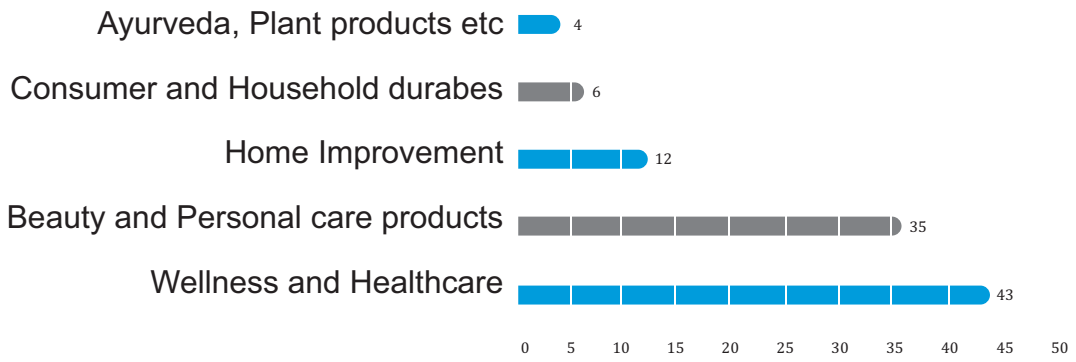
- Tupperware started its operation in India in December 1996, however, it was only in 2010, the company started manufacturing at its Dehradun facility. It also outsources production to its partners in various locations across India, including Hyderabad and Bengaluru.

Retailing in India – number of Direct Sellers have declined from 58 lakhs in 2013 to 40 lakhs in 2016

Good and services of the Direct Selling industry are retailed by the 40 lakh Direct Sellers in India. While some Direct Sellers maybe employees of a Direct Selling company, authorized to act for the company in business matters, most Direct Sellers in India are independent business operators or self-employed. They enjoy the advantage of deciding when and how much time will be devoted in selling the company's products.

Our research reveals that the industry has witnessed a sharp decline in the number of Direct Sellers in India from 58 lakhs in 2013 to 40 lakhs in 2016. This has forced companies to increase their productivity per Direct Seller. While productivity averages around Rs 30,000 per direct seller till 2013, sales per Direct Seller per annum in value terms today stands at Rs 20,608.

Exhibit 2.3 - Product Categories (% of share in total)



Source: IDSA Annual Survey of Industry, 2015-16

Sourcing of raw material from India – potential to reduce cost by 40%

Sourcing of raw material is another prominent strategy of the Direct Selling companies, particularly for those that have set up their manufacturing plants. According to a recent survey of the Industry, wellness and healthcare account for 45% of the products sold by Direct Selling companies, followed by beauty and personal care products at 35%.

As companies manufacture these goods in India, they have also scaled up their sourcing strategies for raw materials. Our research reveals that the localized sourcing of raw material could reduce costs by up to 40%. This means that the so-called premium products could become more affordable for the masses. As a result, product portfolios of companies have grown rapidly and in some instances prices too have fallen. For instance, Modicare launched with 7 products and today has a portfolio of over 350 products across categories like Wellness, Personal Care, Color Cosmetics, Skincare, Home & Laundry Care, Food & Beverages and Agriculture. Avon lipstick that came only in one size and cost Rs 75 in 2000, now costs Rs 50 and is available in varying sizes.

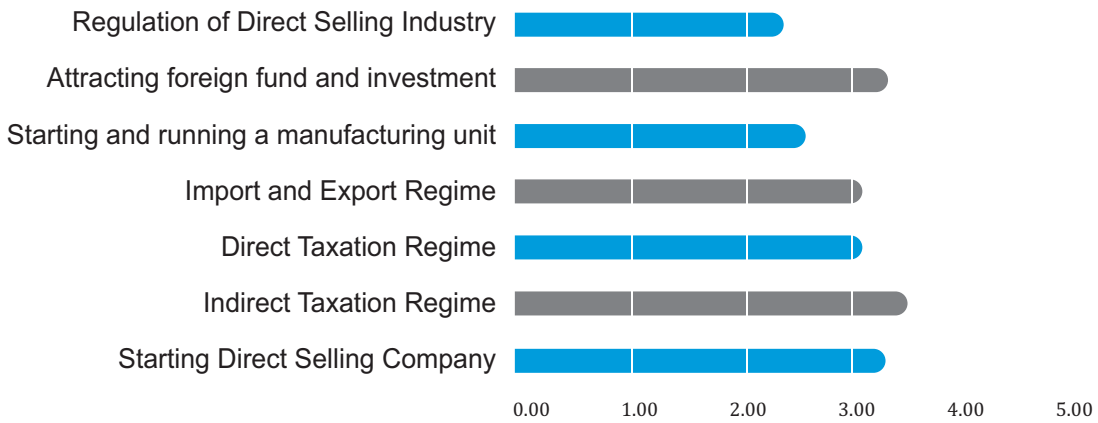
Issue and challenges arising from the blanket application of the Prize Chits & Money Circulation Schemes (Banning) Act, 1978.

Despite the success on many counts, investments into the industry have slowed down due to regulatory uncertainty and unfortunate incidents reported from several states across India where enforcers have confused direct sellers with those who are running ponzi schemes and are booked under the Prize Chits & Money Circulation Schemes (Banning) Act, 1978.

Our select interviews revealed that there are a handful companies that are waiting to invest in India, but are awaiting regulatory clarity from the government. In the meantime, several companies have exited the industry in the last 4 years. Prominent ones among them are Mary Kay and HUL.

Mary Kay Inc. entered India in 2007 and has invested close to US$ 2 crore in its India venture. It launched a number of India-specific products and had nearly 100 stock-keeping units in categories such as skincare, fragrances and cosmetics. The company had about 4,500 direct sellers and four warehouses. Media reports that the company was even

Exhibit 2.2 - Doing Direct Selling India
(Rating on scale of 1 to 5)



Our respondents agree that there are considerable numbers of fraud companies, who in the name of direct selling dupe the innocent customers. In fact, these companies operate either without a product or with a token/sham product and tarnish the industry's image in the country. Justifiably, they agree that an appropriate action must be taken against them. However, they have held back their business plans as they believe regulatory environment is currently not suitable for new investments.

Manufacturing experience in India – rating of 2.6 on a scale of 1 to 5

The Indian Direct Selling market is an oligopolistic market with the top 6 companies controlling over 80% of the market. Most of these companies ventured into India around 1995 and started their businesses by sourcing their products from Micro, Small and Medium Enterprises (MSMEs). Despite a low rating of 2.6 on starting and operating a manufacturing unit in the country from our respondents, most companies have set up their manufacturing plant in India and are planning to invest more into these plants in the coming years to make India their manufacturing hub for exports to its neighbouring countries.

Manufacturing footprint of Direct Selling players in India

Amway

- Amway has opened an INR 550 Crore manufacturing facility in Tamil Nadu in 2015. The plant is spread over 50 acres and has nine production lines for nutrition, cosmetics and oral care products.
- Currently, the unit manufactures goods to fulfill 40% of the total demand in India and 60% still fulfilled through third party contract manufacturers. Amway currently has tie ups with 7 MSMEs. However, the company eventually plans to fulfill 100% of its demand in India from its own manufacturing units.

Avon

- Avon has been operating in India since December 1996. It operates one manufacturing unit in the country in Dehradun, Uttarakhand. It also has 7 Avon beauty zones in 7 cities, namely Delhi, Mumbai, Chandigarh, Chennai, Pune, Bangalore and Kolkata.
- The facility in Dehradun became operational in April 2010 and has an annual production capacity of 50 million units. Avon plans to expand its manufacturing capacity by establishing another facility in Southern India. States like Andhra Pradesh are seen as potential target by the company.
- Avon has 4-5 third party manufacturers who produce few ranges like aerosol products, soaps and bags. They constitute 20% of the goods manufactured and manufacture products in which Avon's core competency does not lie. These products will continue to get manufactured through these third party manufacturers.
- 70% of the demand in India is sourced through domestically manufactured products.

Eureka Forbes

- By 2018, Eureka Forbes plans to produce all its products, including their components, in India. Currently, it imports 50% of its components. It's also introducing the AVF-based water filters in India, manufacturing of which will be done wholly in India.

Federation of Direct Sellers Association (FDSA)

- The FDSA comprises of 8 Indian Direct Selling players.
- Member companies tie-up with MSMEs and act as their marketing arm. All members of FDSA source over 90% of their products from MSMEs.

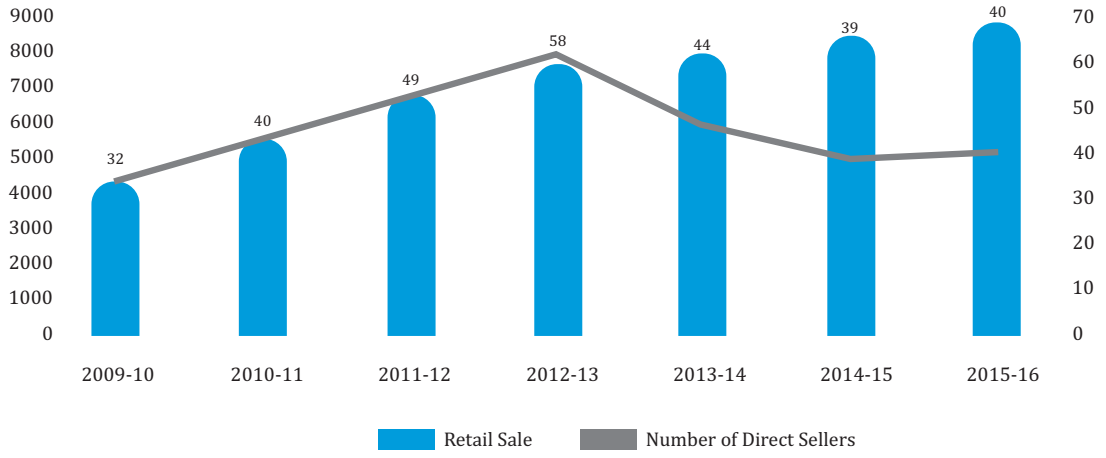
Herbalife

- Herbalife uses third party contractors to produce 100% of its products that are being sold in India. The primary sub contractors function out of 2 factories in Baddi and Paonta Sahib in Himachal Pradesh. Herbalife has strong association with MSMEs. The company sources all it products from the MSME sector and has contributed towards the technological advancements of their partners.

Oriflame

- Oriflame currently has 2 manufacturing units in the country, in Noida and Rourkee. The plant in Noida started operations in December 1996 and has a capacity of producing 8 crore units per year. The second plant in Rourkee, spread over 1.4 acres, was acquired in 2013 in a bid to meet growing demand of wellness products in

Exhibit 2.4 - Number of Independent Direct Sellers in India



thinking of setting up a manufacturing facility in Baddi, Himachal Pradesh.

However, Mary Kay Inc. exited the market in 2013 and in its communication to the distributors, Mary Kay Inc. said:

"We have seen the regulatory environment in India for both direct selling and cosmetics companies dramatically change and change again at an alarming and inconsistent rate, while the country's infrastructure continues to create insurmountable obstacles. Despite significant investments of time and money, our operation in India has not performed as we had hoped and expected. So, we have made the decision to reallocate the company's resources to other international markets."

Similarly, HUL, which launched its Direct Selling venture in 2003 and sold major brands - Aviance (personal care), Ayush (Healthcare) and Lever Home (Home and oral care) – exited the market in 2013. HUL Chairman Harish Manwani, in the company's annual report for 2013-14, said that the year has been extremely challenging for the Direct Selling industry, including HUL, due to ambiguity on acceptable norms for Direct Selling in India.

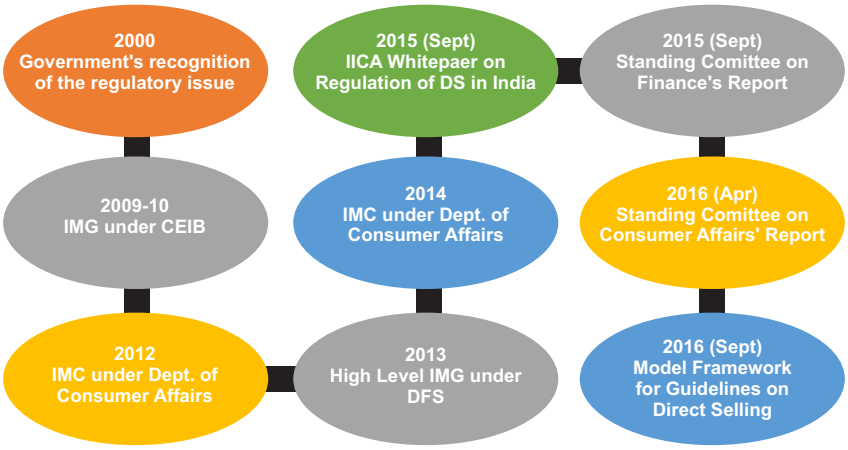
Direct Selling Focused Reforms – Past Efforts

Direct Selling Focused Reforms - Past Efforts

This chapter summarizes the approach, process and efforts made by Government of India to regulate Direct Selling in India over the last 15 years till the notification of the Model Framework for Guidelines on Direct Selling in October 2016.

The regulatory uncertainty further accentuated and the matter was then referred to the Department of Legal Affairs under the Ministry of Law, Justice & Company Affairs in January 2002.

Exhibit 3.1 - Timeline and important events in the Indian Direct Selling Industry's history



The regulatory issues faced by direct selling first came to light as early as the year 2000. The issue, as mentioned in the previous chapter, arose due to the wide prevalence of pyramid and ponzi schemes that operated as Direct Selling companies on the one hand, and the absence of a legal framework for law enforcers to objectively distinguish them from these fraudulent ones on the other hand.

Opinion of select regulators on direct selling

Our research reveals that most Direct Selling companies, before the notification of the Model Framework for Guidelines on Direct Selling, were charging their new direct sellers a registration fee or a joining fee. Similar to the FMCG franchise model, these direct sellers (distributors/retailers) had to shell out a small token money for a "starter kit". The main purpose of these starter kits, as the name suggest, was to assist them to launch their independent retailing business. Consequently, the starter kits included few products samples, literatures and training materials on products and salesmanship.

The financial sector regulators, in particular, the Reserve Bank of India (RBI) came down strongly on this registration fee. It opined that this registration was equivalent to the collection of deposits from investors. However, upon investigation, RBI found that these registration fees were not deposits and clarified that "it does not regulate non-banking/financial companies that trade in product and services" and therefore, the regulation of direct selling was outside its regulatory purview.

The SEBI on the other hand has always maintained that it only regulates the capital markets and collective investment schemes. And if Direct Selling companies do not fall under these two categories, then the regulation of direct selling is outside its regulatory purview.

The Department in its response stated that:

1. If goods and services are sold lawfully then there is no need for a separate legislation as proposed by the industry
2. The functioning of networking marketing does not amount to committing any offence under Prize Chits and Money Circulation Schemes (Banning) Act, 1978
3. The activities and area to be covered are not defined in the proposed legislation and therefore, there is not enough material to support the proposal
4. There are adequate provision in the Sale of Good Act of 1930, Indian Contract Act of 1872, The Consumer Protection Act of 1986 and the Prize Chits and Money Circulation Schemes (Banning) Act, 1978
5. If Direct Selling companies do their activities legally then their activities would not attract provisions Prize Chits and Money Circulation Schemes (Banning) Act, 1978 However, this clarification did not address the industry's issue as it did not provide for objective framework to distinguish direct selling from pyramid. In fact, it seem to have accentuated the problem. Quoting this clarification, several pyramid schemes upon investigation claimed that they were direct selling companies and that the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 did not apply to them and they continue to offer unrealistic high returns and income to their investors. This caused further confusion to the law enforces and tarnished the image of the industry in the eyes of the regulators and the public at large.

The industry opined that the solution to the problem can only come from a separate legislation for direct selling and continued its advocacy through various platforms.

The Prize and Chits Money Circulation (Banning) Act, 1978

The Prize and Chits Money Circulation (Banning) Act, 1978 was enacted nearly 40 years ago to support proper regulation of banking functions and protect the public from fraudulent investment schemes that came in the form of prize chits and money circulation. The Act does not on its face extend to product distribution systems, and there is nothing in the 1975 Report of the Study Group on Non-Banking Companies led by J.S. Raj (the so-called "Raj Report"), to indicate that product schemes were in view when the Act was being drafted and considered. Obviously certain characteristics of the types of fraudulent investment schemes banned by the Act, there is no basis for extending the Act to product distribution businesses.

Government's Inter-Ministerial Approach

The government too soon realized that the regulatory gap can only be solved through and inter-ministerial approach. In the meantime, Central Economic Intelligence Bureau (CEIB), under the Department of Revenue, Ministry of Finance voiced the need for a Central Agency to regulate Direct Selling and its multi-level marketing (MLM) model. Accordingly, it recommended that it would be the most appropriate central agency for this purpose.

IMG under CEIB, 2009-10

The CEIB then took up the issue and the matter was examined by an Inter-Ministerial Group (IMG) consisting of Department of Consumer Affairs, Ministry of Corporate Affairs, RBI, Financial Intelligence Unit and CEIB. The observation of the group was as follows:

- Illegal MLM's main thrust is on recruitment and not on the sale of goods
- State governments must take actions on illegal MLMs
- Department of Consumer Affairs to carry out awareness campaign and to verify if MLMs are the same as Money circulation schemes

The recommendations of the IMG were:

- Legal prohibition under Prize Chits and Money Circulation Schemes (Banning) Act applies to all illegal MLM schemes and that
- individuals can take up complaints to police for investigation
- There should be a central agency to receive all complaints
- The Department of Consumer Affairs to be made the repository of all such complaints

As directed by the IMG the Department of Consumer Affairs became the repository of all complaints and all issues related to DS/Network/MLM operations come directly under the purview of the Department. But the problem persisted.

IMC under Department of Consumer Affairs, 2012

After receiving many representations from Direct Selling companies and complaints from the wide variety of people, the Minister of State (IC), Consumer Affairs, Food and Public Distribution constituted an Inter-Ministerial Committee (IMC) to revisit the issue. The Committee was headed by Secretary, Department of Consumer Affair and its members consisted of representatives of Department of Finance Services, Department of Revenue, Ministry of Corporate Affairs and RBI.

The IMC emphasized that the need of the hour is clarity on the legislations/regulatory framework for Direct Selling/Network/Multilevel Marketing and concluded that "this can be resolved by not enacting a new law but by amending the existing Prize Chits and Money Circulation Schemes (Banning) Act." Therefore, the matter was referred to the Department of Finance Services under the Union Ministry of Finance as it administered the Prize Chits and Money Circulation Schemes (Banning) Act

IMG under Department of Finance Services (DFS), 2013

Subsequent to the IMC's conclusion, the government constituted a high-level Inter-Ministerial Group (IMG) on May 2013, under the purview of Department of Financial Services (DFS), Union Ministry of Finance.

Five months later, the Department vide its Office Memorandum dated 10th October 2014 concluded that the *"problems faced by Direct Selling companies may not be solved by amending the PCMC Act."* It also states that *"even if exception clause were to be added to the PCMC Act to exclude the activities of certain DS companies, such provision is not desirable or acceptable, UNLESS a very strong legal framework of registration, regulation and scheme of penalties for violation of the law on direct selling is put in place"*

With this conclusion, the Secretary, Department of Consumer Affairs proposed for the *"creation of a new law on Direct Selling in consultation with Ministry of Corporate Affairs, Ministry of Commerce and Ministry of Finance."*

IMC under Department of Consumer Affairs, 2012

As proposed, the government constituted another Inter-Ministerial Committee (IMC) on November 2014 under the Department of Consumer Affairs. But this time the mandate of the IMC is to consider "the requirement of separate legislation in respect of Direct Selling / Multi-Level Marketing."

The Terms of Reference of the Inter-Ministerial Committee are:

1. To examine the nature and growth of Direct Selling/MLM companies in the country over last 5 years.
2. To examine the factors/features that distinguishes the above models of business strategy from Pyramid, Money Circulation Schemes.
3. To examine whether or not standalone legislation is now required to regulate the above business models.
4. If so, the possible framework for such legislation based on the existing laws and regulations including that in other countries.
5. Identification of goods, services and operational issues to be covered under the new legislation.
6. The committee will be free to record evidence of other stakeholders such as Industry bodies, Consumer Groups etc.

The IMC was supposed to submit its report in six months. However, in April 2015 the term of the IMC was extended by 6 months till November 2015. It also informed the Industry that it was drafting a Guidelines as legislation would require more time.

it was drafting a Guidelines as legislation would require more time.

The IICA Whitepaper on Direct Selling

In the meantime, the Indian Institute of Corporate Affairs (IICA), an autonomous think-tank under the Ministry of Corporate Affairs, released a Whitepaper on "Regulation of Direct Selling in India" in September 2015. The Whitepaper for the first time included an exposure draft legislation "The Regulation of Direct Selling and Pyramid Schemes (Prohibition) Bill."

The objective of this exposure draft was to develop a framework to clearly demarcate a legitimate Direct Selling business from pyramid schemes and Ponzi schemes. However, at the same time, it also provided for mechanism to regulate the industry, so that innocent consumers are not affected by its misapplication.

The salient features of the Exposure Draft are:

1. The term 'Direct Selling' is a nomenclature used interchangeably with the expression Multi- Level Marketing', 'Network Selling' and other terms to denote door-to-door selling distinct from a sale from a fixed/permanent location.
2. A separate provision has been made to explain pyramid scheme, as under the model draft legislation, a Direct Selling entity is not permitted to issue or continue with a pyramid scheme.
3. The registration for Direct Selling Entity is mandatory.
4. A centralized structure of Controller of Direct Selling is part of model legislation.
5. Elaborate and effective provisions have been made in Chapter VI titled 'Conduct of Business' by Direct Selling entities and Direct Sellers. Both Direct Sellers and Consumers have been protected from unethical conduct of a Direct Selling entity (ies). The various Dos and Don'ts have been explained in plain language. The language used is both simple and certain. Further, in this Chapter a consumer has been protected from both Direct Selling entities and Direct Sellers.
6. For redressal of grievances of direct sellers and consumers, a Direct Selling entity is mandated to constitute an Internal Committee.
7. A workable enforcement mechanism is an important part of the model legislation. Criminal sanction is provided only for those Direct Selling entities conducting business without a valid registration. The quantum of punishment has been left blank as on this a policy decision falls within the domain of the concerned Ministry/Department responsible for initiating legislation including the preparation of Cabinet Note.

Observation(s) of the Standing Committee on Finance and Consumer Affairs

The Parliamentary Standing Committee took note of the key features of the exposure draft of the IICA Whitepaper and in its 21st report on "Efficacy of Regulation of Collective Investment Schemes (CIS), Chit Funds, Etc." recommended as follows:

"Given that there is considerable ambiguity in identifying Ponzi/pyramid schemes and distinguishing them from legitimate Direct Selling businesses, there is merit in considering the findings of the "Whitepaper on Regulation of Direct Selling in India" by IICA. Most importantly, the exposure draft in the IICA Whitepaper proposes a statutory provision under Section 5 of the draft that defines a Pyramid Scheme. This definition seems to provide, as evidenced from their legal research on Indian and international jurisprudence, an objective 'smell test' for law enforcement agencies to apply at the time of investigation. It is hoped that this will lead to more timely detection and efficacious investigations. The Committee would recommend that the Ministry of Finance, Ministry of Corporate Affairs and Ministry of Consumer Affairs consider the IICA Whitepaper and more specifically, the exposure draft and establish a regulatory framework and compulsory registration process for all Direct Selling businesses in order to provide an oversight mechanism as to whether they are legitimate direct selling businesses or Ponzi/pyramid schemes."

The Parliamentary Standing Committee on Consumer Affairs also advocated the same.

The Model Framework for Guidelines on Direct Selling, September 2016

The Department of Consumer Affairs issued "The Model Framework for Guidelines on Direct Selling" as an Advisory to all the states.

The Model Framework for Guidelines on Direct Selling published in Gazette of India in its 9th report dated April 2016 on Consumer Protection Bill 2015 made the following observations:

"The Committee note that E-Commerce, Direct selling and Multi-level marketing are on the rise and consumer complaints are also on the rise. At present there is a vacuum in the area of regulation in these sectors. Since Department of Consumer Affairs is concerned with 'Internal Trade', the Committee desire that the Department may be vested with the powers to make regulations on these subjects also. The Committee further feel that CCPA may be vested with the necessary powers to make regulations for its functioning in an effective manner. The Committee, accordingly, urge that the Department of Consumer Affairs may, in order to give effect to the above recommendations, take necessary steps to make consequential changes wherever required, including in the definitions with adequate justifications."

Model Framework for Guidelines on Direct Selling, September 2016

With these recommendations, observations and the deliberations of the IMC, the Department of Consumer Affairs drafted the "Model Framework for Guidelines on Direct Selling" and issued it as Advisory to all the States and Union Territories.

It is envisaged in the guidelines that the State Governments will set up a mechanism to monitor/supervise the activities of Direct Sellers, Direct Selling Entities regarding compliance of the guidelines for Direct Selling. Furthermore, any direct selling entity, conducting direct selling activities, shall submit an undertaking to the Department of Consumer Affairs by 9th December, 2016 stating that it is in compliance with these guidelines and shall also provide details of its incorporation. Being enforcement agencies, the State Governments & Union Territories were advised to take the necessary action to implement these guidelines.

The Advisory was notified vide the Gazette of India on 26th October 2016.

The Model Framework for Guidelines on Direct Selling

The Model Framework for Guidelines on Direct Selling

The notification of the Model Framework for Guidelines on Direct Selling in October 2016 is a significant milestone in easing the doing of business for Direct Selling industry in India. While the guidelines is yet to be implemented in several states across the country, however, for the first time, it prepared a framework to clearly demarcate a legitimate Direct Selling business from pyramid schemes and Ponzi schemes along with a mechanism to regulate the industry, so that innocent consumers are not affected by its misapplication

The Department of Consumer Affairs under the Union Ministry of Consumer Affairs, Food & Public Distribution based on the deliberations of the Inter-Ministerial Committee and consultations with the Stakeholders issued Model Framework for Guidelines on Direct Selling on September 2016 as an Advisory to every States and Union Territories.

This is a significant step in the ease of doing business for the Direct selling industry. After several years of efforts and constitution of Inter-Ministerial Committees and Inter-Ministerial Group one after the other, finally a framework to clearly demarcate a legitimate Direct Selling business from pyramid schemes and Ponzi schemes was in place.

The advisory mandated the State Governments to set up a mechanism to monitor/supervise the activities of Direct Sellers and Direct Selling Entities regarding compliance of the guidelines for Direct Selling. Furthermore, it mandated all direct selling entities conducting direct selling activities to submit an undertaking to the Department of Consumer Affairs stating that it is in compliance with these guidelines along with details of its incorporation. For enforcement agencies, the Model Framework envisaged that State Governments and Union Territories to take necessary action to implement these guidelines.

Definition of Direct Selling

The guidelines defines "direct selling" as follows:

"Direct selling" means marketing, distribution and sale of goods or providing of services as a part of network of Direct Selling other than under a pyramid scheme. Provided that such sale of goods or services occurs otherwise than through a "permanent retail location" to the consumers, generally in their houses or at their workplace or through explanation and demonstration of such goods and services at a particular place.

Framework to demarcate a legitimate Direct Selling business from pyramid schemes and Ponzi schemes

The Advisory lays down a clear set of objective identifiers to distinguish genuine direct selling businesses from pyramid schemes by defining pyramid schemes in clear terms, which are as follows:

"Pyramid Scheme" means a multi layered network of subscribers to a scheme formed by subscribers enrolling one or more subscribers in order to receive any benefit, directly or indirectly, as a result of enrolment, action or performance of additional subscribers to the scheme. The subscribers enrolling further subscriber(s) occupy higher position and the enrolled subscriber(s) lower position, thus, with successive enrolments, 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:

Exhibit 4.1 - Key features of the Model Framework for Guidelines on Direct Selling are as follows:



a) It has no provision that a Direct Seller will receive remuneration or incentives for the recruitment / enrolment of new participants.
b) It does not require a participant to purchase goods or services:
   I. for an amount that exceeds an amount for which such goods or services can be expected to be sold or resold toconsumers;
   ii. 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;
c) 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;
d) It provides a participant with a written contract describing the "material terms" of participation;
e) 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;
f) It allows or provides for a buy-back or repurchase policy for "currently marketable" goods or services sold to the participant at the request of the participant at reasonable terms;
g) It establishes a grievance redressal mechanism for consumers.

Safeguards for consumer protection

The guidelines also places important consumer protection safeguards on direct selling entities and independent direct sellers. The guidelines prohibit the unfair trade practices in the recruitment of direct sellers, misrepresentation of potential sale earnings and making unverified statements.

Furthermore, all direct selling entities are required to establish a consumer grievance redressal mechanism in order to resolve complaints from consumers in a time-bound manner and enter into written contracts with direct sellers.

Prohibition of Pyramid Scheme & Money Circulation Scheme

The guidelines prohibits the promotion a Pyramid Scheme, as defined in Clause 1(11) or enroll any person to such scheme or participate in such arrangement in any manner whatsoever in the garb of doing Direct Selling business. It also prohibits the promotion and participation Money Circulation Scheme, as defined in Clause 1(12) in the garb of Direct Selling of Business Opportunities.

Appointment of Monitoring Authority

The Advisory envisages a system of oversight wherein the "nodal department to deal with the issues related to Direct Selling will be Department of Consumer Affairs at the Union and the respective State Governments in the States". The Advisory requires Direct Selling entities to be compliant with the Guidelines provided in the Advisory and State Governments will also "set up a mechanism to monitor/supervise the activities of Direct Sellers, Direct Selling entity regarding compliance of the guidelines for Direct Selling."

A proforma of the undertaking of compliance has been provided as part of the Advisory that requires direct selling entities to submit relevant information pertaining to their business, including information relating to the details of their key managerial personnel, sample distributor/direct seller contract, products/services offered and remuneration and compensation system.

Exhibit 4.2 - Other clauses in the guidelines are:



The Way Forward

The Way Forward

The immediate way forward for the Direct Selling industry in India is for State Governments to set up a monitoring mechanism to implement the Model Framework for Guidelines on Direct Selling. This could be followed by the constitution of a National Coordination Committee on Direct Selling that will function as a central nodal agency to coordinate all issues related to Direct Selling. Among other measures, the National Coordination Committee on Direct Selling must set up National Consumer Redressal Committee along with a National Fund for Consumer Awareness on Direct Selling.

The Way Forward for Model Framework for Guidelines on Direct Selling

Government of Chhattisgarh and Government of Sikkim have already notified the Model Framework for Guidelines on Direct Selling on 9th October 2017 and 24th October 2017.

The immediate way forward is for all the remaining States and Union Territories to notify the same. Our select interview reveals that Direct Selling is banned in certain districts in Andhra Pradesh, Kerala and Telangana as the law enforcement in these states do not have objective framework or "smell tests" to differentiate Direct Selling from pyramid schemes as recommended by the Parliamentary Standing Committee.

1. Guidelines adopted as a rule under central legislations – that is, the central government for uniformity of the regulatory framework for the industry adopt these guidelines as a rule or regulation under a central act or legislation.

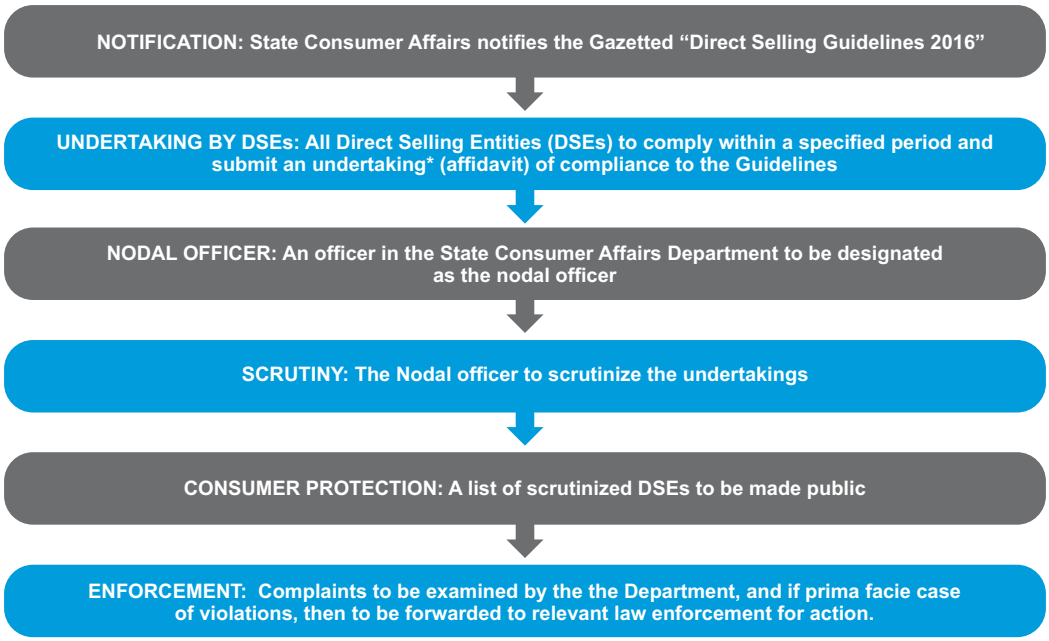
2. State governments adopt these guidelines as a rule under state legislations – that is, state government adopts these guidelines as a rule or regulation under their existing legislation. For instance the guidelines could be issued as a rule under each states Protection of Interest of Depositors Act (PID) Act.

Finally, all states should conduct appropriate capacity building and issue appropriate manuals enabling law enforcement to investigate complaints against pyramid schemes in line with Clause 1.11 of the Model Direct Selling Guidelines and prevent misapplication to legitimate Direct Selling companies as below:

a) It has no provision that a Direct Seller will receive remuneration or incentives for the recruitment / enrolment of new participants;

b) It does not require a participant to purchase goods or services:

Exhibit 4.3



The notification of these guidelines via clause 1.11, will provide the monitoring authority and the law enforcement at the states an objective framework to clearly demarcate Direct Selling Businesses and Direct Sellers from product-based pyramid schemes that disguise themselves as Direct Selling.

A long term solution to the regulatory issue would require that these guidelines be issued under appropriate legislation or existing law. Our research reveals that governments have two workable options to achieve this end:

   I. for an amount that exceeds an amount for which such goods or services can be expected to be sold or resold to consumers;
   ii. 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;

c) 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;

Exhibit 4.4



d) It provides a participant with a written contract describing the "material terms" of participation;
e) 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;
f) It allows or provides for a buy-back or repurchase policy for "currently marketable" goods or services sold to the participant at the request of the participant at reasonable terms;
g) It establishes a grievance redressal mechanism for consumers.

Such proactive reforms from the central and state governments will further ease the doing of direct selling business and unlock the potential for the industry that is projected to grow to Rs 64,500 crores by 2025 and provide self-employment opportunities to 180 crore Indians, 60% whom are women.

Direct selling is in India's DNA. It has a potential of growing from the current INR 8,308 crore to INR 64,500 by 2025, should the right regulatory environment be established. This process has surely started – the long-awaited guidelines was just the right antidote for the direct selling industry. These guidelines need to be taken forward by State Governments in letter and spirit. Direct sellers will have to do lot of spade work on the platform so created by the Government of India. Direct selling model is temporarily challenged or simply going through what might be one of its best transformations.

Each company has its own process and methodology as to how they position their products/services and opportunity. The business model itself has been determined by this assessment to be the industry's best strength. The potential to earn money, along with ease of entry—and the offer of "privacy of consultation" regarding products, services and the business opportunity—are the industry's most unique features. This strength of direct selling industry is a distinct asset and is not found in any other tried and proven business model anywhere in the world.

Mr Hem Pande, IAS (Retired),
Former Secretary, Government of India

Direct Selling Industry in India is faced with problems of plenty due to its misrepresentation with the illegal Multi-Level-Marketing (MLM) / Pyramid Schemes. One of the major reasons for this misrepresentation was absence of any clear guidelines to differentiate between the legal business model and an illegal Ponzi scheme. The magnitude of the problem increased with the fact that we have a diverse and large population in the country which is illiterate (financially) and is not able to differentiate between the legal and camouflaged schemes. We had worked in this area and suggested a legislative framework, subsequent to which Department of Consumer Affairs (DCA) came up with the 'Direct Selling Guidelines' in September 2016. Though Guidelines are in place, there is a need for more advocacy and mandatory literacy programs for not only the public at large but also for the law enforcement officials who often trip while distinguishing a genuine direct selling company with a Ponzi/pyramid. DCA has published a provisional list of 126 Direct Selling Entities in India who have given declaration in terms of the Guidelines; however, it appears that there are many who have not chosen to come under the scanner of DCA. This should not be the case of Collective Investment Schemes wherein we have more than 100 orders passed by SEBI against illegal CIS, but only one entity legitimately registered CIS. A robust enforcement of Guidelines, at least in the initial period, would be the key to root out illegal schemes and establish a culture of compliance. To quote NITI Aayog CEO, Shri. Amitabh Kant during Direct 2016, "direct selling will have to be given a great thrust as it empowers women, MSMEs and promotes manufacturing in India". The potential of this sector has been recognized by one and all, what is required is education and instilling culture of compliance by effective enforcement. We also need more whistleblowers from the industry itself who would support the enforcement machinery becoming their "eyes and ears."

Dr. Vijay Kumar Singh, Associate Professor &
Head, School of Corporate Law, IICA

Acknowledgments

We thank Dr. Sanjaya Baru, Secretary General, FICCI for his stewardship and constant support to the FICCI Direct Selling Taskforce. This report could not have been prepared without the immense help and assistance received from Mr. Rajat Banerji, Chairman, FICCI Direct Selling Taskforce, Ms. Leena Jaisani, Assistant Secretary General and Head, Retail, FMCG and Direct Selling, FICCI, Mr. Ankit Mishra, Assistant Director, FICCI, who have guided and facilitated the making of this report.

As knowledge partners for the FICCI Retail Sector, the team at PLR Chambers that has contributed the content present in this report consists of Mr. Suhaan Mukerji, Managing Partner, Mr. Aditya Prakash Rao, Partner, Mr. John Khiangte, Director and Mr. Guhan Baalaji, Associate.

We would like to thank all members of the FICCI Direct Selling Taskforce, members of the Indian Direct Selling Association (IDSA) and members of Federation of Direct Selling Association (FDSA) for providing invaluable time and responses to our survey and information which has helped in shaping the content of the report.

We would also like to extend a special thanks to Dr. Vijay Kumar Singh, Associate Professor and Head, School of Corporate Law who has played a significant role in the preparation of exposure draft of the IICA's “Whitepaper on Regulation of Direct Selling in India” and his continued support through his technical expertise on the subject. A special thanks is also extended to Mr. Bejon Mishra, Founder, Consumer Online Foundation, for his guidance to the Industry on alleviating consumer grievances and enhancing consumer protection for citizen-consumers.

About FICCI

Established in 1927, FICCI is the largest and oldest apex business organization in India. Its history is closely interwoven with India's struggle for independence, its industrialization, and its emergence as one of the most rapidly growing global economies.

A non-government, not-for-profit organization, FICCI is the voice of India's business and industry. From influencing policy to encouraging debate, engaging with policy makers and civil society, FICCI articulates the views and concerns of industry. It serves its members from the Indian private and public corporate sectors and multinational companies, drawing its strength from diverse regional chambers of commerce and industry across states, reaching out to over 2,50,000 companies.

FICCI provides a platform for networking and consensus building within and across sectors and is the first port of call for Indian industry, policy makers and the international business community.

About Direct Selling Task Force – FICCI

The FICCI FMCG Division has been relentlessly working on various issues which are critical for the industry. We have been actively involved in the policy & strategy, capacity building and global recognition for the Indian FMCG industry. We have formed a Task Force on Direct Selling industry which works on the similar issues with the Government.

Direct Selling is a very obvious distribution channel for FMCG industry and has gained huge importance in the times when demand is further driven by convenience at their door step. Direct Selling, as well understand is a sales and distribution channel/system whereby, on the basis of certain well defined rules direct sellers can derive income not only from personal sales but also from ongoing sales and consumption by people whom they, directly or indirectly have introduced to the direct selling company and for whom they provide ongoing motivation and training.

We, at Direct Selling Sub Committee, give expert insight to the issues pertaining to this labor intensive Direct Selling industry. We interact with various ministries – to name a few – Ministry of Consumer Affairs, Ministry of Corporate Affairs, Ministry of Finance etc. to bring legitimacy to Direct Selling Sector. The Sub Committee, within itself, has an advisory board of judgement neutral and intellectual people. In addition, the Committee has coordinated the think tank which deliberates issues and concerns of the DS industry on regular basis. The Committee has also undertaken several events and initiatives to clearly bring out distinction between scams and Multi-level marketing.

About PLR Chambers

PLR Chambers (the Firm) is a boutique law firm specializing in rendering legal advice through the framework of policy and regulation. The name 'PLR' stands for 'Policy, Law and Regulation' and signifies our focus on all facets of legal and regulatory framework applicable to our clients, whether short-term transactional advisory, mid-term compliance or long term policy advisory and advocacy.

Currently, the Firm is headquartered at New Delhi and works across all states in India serving clients. Under the aegis of Suhaan Mukerji, the Firm has developed into a law firm that offers much more than legal opinions.

The Firm has extensive experience in advising and representing clients, both public and private, through tailored legal support including legal risk assessment and mitigation, policy and regulatory briefs, and crisis management, as well as representing the for-profit and the not- for- profit sector and industry associations before administrative authorities of the government.

As specialists in legislative drafting and public policy research, the Firm continues to assist various government instrumentalities at both Central and State level to develop statutory frameworks that reduce administrative & compliance costs, prevent legal ambiguity & complexity, encourage good governance, increase state revenue earnings and enhance private investments. In addition to its government experience, the Firm advises MNCs and not-for-profit organizations on organizational entity identification, incorporation/registration, structuring of functions, Indian and foreign funding, and regulatory-interface facilitation, including on a pro-bono basis.

Specific to employment and labor related matters, the Firm has vast experience in mapping regulatory compliances, installing institutional risk mitigation strategies, codifying and reviewing global best practices, framing internal policies and codes, assisting in retrenchment, retainers, ingress/egress of expatriate employees etc.

For its work, the Firm has also won various accolades including the 'Best Firm – Policy & Regulation' (2014, 2015 & 2016) at the India Business Law Journal Awards, Hong Kong and the 'Policy & Regulation Law Firm of the Year' (2016 & 2017) at the Legal Era Awards, India.

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