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GOVERNMENT OF KERALA

**Taxes (C) Department**

CIRCULAR

No. 1871/C2/2014/TD. Dated, Thiruvananthapuram, 14th September, 2015.

*Sub:*—Guidelines for Regulating the Activities of Multi Level Marketing Companies in the State of Kerala.

*Ref:*—Kerala Finance Bill, 2015.

There was a long standing demand for providing regulatory/legal cover to the “direct selling” activity that provides employment to large number of people in the State. At the same time the Government is also duty bound to protect the people/consumers from unlawful/nefarious activities of number of entities/companies or “fly by night operators” who indulge in money circulation schemes, Pyramid Schemes, Ponzy schemes etc. for making quick and fast money with a false promise of similar fast money making by the people. The consumer rights and legal entitlements of the people as prescribed under various legal enactments should also be protected from such nefarious activities. Therefore, there is a need to differentiate the legally allowed “Direct Selling” activity from that of illegal and dubious money circulation/Pyramid/Ponzy schemes/activities that cheat the gullible people. The legal activity of Direct Selling should also be not subjected to harassment on the hands of law enforcement agencies. Accordingly, the Multi Level Marketing, Direct Selling and related activities have been provided legal existence by introducing the provisions in Kerala Value Added Tax Act through the Kerala Finance Bill, 2015. It is also essential to give detailed guidelines to bring clarity on the subject with twin objectives of enabling for legal direct selling activity by Multi Level Marketing Entities in the State and to provide due protection to the

consumers from the nefarious activities such as money circulation, Pyramid, Ponzy schemes. The guidelines will come into force with immediate effect.

1. *Definitions.*—In these guidelines, unless the context otherwise requires,—

(a) “Consumer” means any person who buys goods or services for personal use and not for any commercial purpose and shall have the same meaning as provided under the Consumer Protection Act, 1986 (68 of 1986);

(b) “Direct Seller” means a person who is authorized by the Direct Selling Entity/Multi Level Marketing Entity, to engage into the business of Direct Selling;

(c) “Direct Selling” means marketing or sales of goods directly to the end user consumer using word of mouth publicity, display and/or demonstrations of the goods/products, and/or distribution of pamphlets;

(d) “Direct Selling Entity”/ “Multi Level Marketing Entity” means a business entity as recognized by law for the time being in force including but not limited to a company duly incorporated under the Companies Act, 1956, Companies Act, 2013, a registered Partnership Firm constituted either under the Indian Partnership Act, 1932 or the Limited Liability Partnership Act, 2008;

(e) “Multi Level Marketing” means marketing and sale of goods of a multi level marketing entity through direct sellers or through direct sellers and distributors, otherwise than through shops, to the customers or consumers, generally in their houses or at their workplace or through demonstration of such goods at a particular place or by mail order sale;

(f) “Sale”, with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration;

(g) “Sales Incentive” incentive means share of profit payable to the Direct Seller for effecting sale of goods as stipulated in the contract between the Direct Seller and the Direct Selling Entity;

(h) “Service” means anything other than goods;

(i) “State” means State of Kerala.

2. *Conditions for Permissible Direct Selling.*—For making the direct selling activity permissible within the State, the following conditions are to be satisfied,—

(i) Every Direct Selling Entity operating within the State should have

(a) Registered under the Kerala General Sales Tax Act, 1963/ Kerala Value Added Tax Act, 2003, Income Tax Act;

(b) Licenses as may be required as per the Laws of the State/Center;

(c) The Partnership deed or Memorandum of Association should clearly state their nature of business;

(ii) The Director Selling Entity should pay sales incentive to Direct Sellers at the agreed rate within the agreed period;

(iii) The Direct Selling Entity should have an official website which should contain the names and identification numbers of their authorized Direct Sellers and provisions for registering complaints by the consumers;

(iv) The Direct Selling Entity should have a consumer grievance cell that should ensure redressal of consumer grievances within seven days from the date of making such complaints.

3. *Appointment/Authorisation of Direct Sellers.*—While appointing or authorising the Direct Sellers, the Direct Selling Entity should conform to the following procedure,—

(i) Appointment/authorisation of Direct Seller should be upon receipt of application form in prescribed format. The application form should contain the details of the person applying to become a Direct Seller and his undertaking that he has understood the nature of business and the terms and conditions of the direct selling. Only after satisfying that the details given in the application form are correct and genuine and with supporting evidences, he/she should be appointed as a Direct Seller.

(ii) No application should be considered unless such application is eligible to enter into a contract under the Indian Contract Act, 1872.

(iii) An agreement recording terms of the appointment as Direct Seller should be executed between the Direct Selling Entity and the Direct Seller.

(iv) Each Direct Seller should be allotted a Unique Identification Number before granting license/permission to start Direct Selling and be given with an identity card.

(v) No incentive should be paid to any person either for canvassing any person for becoming a Direct Seller or for joining as a Direct Seller.

(vi) The Direct Sellers should undergo training on the do's and don'ts of direct marketing in an approved institution by the Government such as Gulati Institute of Finance and Taxation (GIFT), Sreekaryam, Thiruvananthapuram.

(vii) The Direct Sellers should register under KVAT Act if the Multi Level Company is not opting for compounding provisions of the KVAT Act. If the Multi Level Company has opted for paying the tax at the first point of sale on maximum retail price, the subsequent dealers including direct sellers need not register nor pay the tax.

4. *Activities Prohibited.*—(i) No Direct Selling Entity or Direct Seller should indulge in any Money Circulation Scheme or do any activity barred by the Prize Chits and Money Circulation Scheme (Banning) Act, 1978. (money circulation means any scheme, by whatever name called, *for the making of quick or easy money*, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any event or contingency relative or applicable to the enrolment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions)

(ii) No Direct Selling Entity should pay any incentive, by whatever name called, to any person or Direct Seller except the incentive related to the volume of sales of goods or services effected by them.

(iii) Neither the Direct Selling Entity nor the Direct Sellers should supply or sell goods which are of inferior quality or have exceeded its validity period as per the manufacturer.

(iv) No Direct Selling Entity should create chain of customers as the long and unbroken chain would amount Pyramid Scheme and should be construed to be attempting for making quick or easy money.

(v) No Direct Selling Entity or Direct Seller should be selling goods that does not give value for the money the buyer pays.

(vi) No Direct Selling Entity or Direct Seller should collect service charges, while selling goods.

(vii) Should not commit any act or acts that are punishable under Indian Penal Code.

(viii) Should not do any act or acts in violation of the provisions of Indian Contract Act, 1872.

(ix) Should not do any act or acts in violation of the provisions of the Consumer Protection Act, 1986.

5. *General Conditions.*—(i) The Maximum Retail Price of all goods sold by the Direct Selling Entity or Direct Seller should be visibly displayed on the package of the goods;

(ii) Goods sold by the Direct Selling Entity or Direct Seller should carry guarantee/warranty of the manufacturer;

(iii) Direct Selling Entity should give the consumer the opportunity to exchange/return the goods sold to him if he finds any manufacturing defect or the product purchased is not useful for the purpose it was meant, within 30 days from the date of purchase, provided any seal/protection on the product is kept unbroken; and

(iv) Accounts of individual Direct Sellers shall be maintained properly and should be made available through Web;

(v) Goods sold by the Direct Selling Entity should carry guarantee/warranty of the manufacturer.

6. *Maintenance of Records.*—Direct Selling Entity/Company should maintain the following records,—

- (i) Memorandum of Association, Articles of Association and Certificate of Registration issued by the Registrar of Companies;
- (ii) Copies of TIN, DIN of Directors, TAN and PAN in the case of a Partnership—Partnership Deed duly registered;
- (iii) Registration Certificates under the Kerala General Sales Tax Act, 1963/Value Added Tax Act, 2003, Chapter V of the Finance Act, 1994, and Central Sales Tax Act, 1956;
- (iv) Copies of Sales Tax/Value Added Tax Returns, Service Tax Returns, Income Tax Returns of company filed with respective authorities for three previous Financial years;
- (v) Copies of the Statements of Income Tax Deducted at Source;
- (vi) Register containing the details of all Direct Sellers within the State; and
- (vii) KYC/KBDS (Know Your Customer/Know Your Direct Sellers) as a mandatory process.

7. *Grievance Redressal Mechanism.*—Every Direct Selling Entity must have a Complaint Redressal Forum to address the problems of their Customers/Direct Sellers effectively. Details of such forum should be available on the website of the Direct Selling Entity.

8. *Breach of Guidelines.*—The Direct Selling Entities and the Direct Sellers have to follow the above guidelines meticulously. Direct Selling activity in violation of the guidelines shall be dealt appropriately by the Law Enforcement agencies under the provisions of the appropriate Act such as Prize Chits and Money Circulation Scheme (Banning) Act, 1978, Indian Penal Code, Consumer Protection Act etc.

DR. W. R. REDDY,  
Principal Secretary.

To

Commissioner of Commercial Taxes, Thiruvananthapuram.

State Police Chief, Thiruvananthapuram.

Inspector General of Registration, Thiruvananthapuram.

Registrar, GIFT, Thiruvananthapuram.

Finance Department.

Law Department.

Home Department.

Industries Department.

Information and Public Relations (Web and New Media) Department (For wide publicity through media and for publishing in the official website).

Private Secretary to Chief Minister/M (Fin., Law and Hsg.)/  
M (Home and Vigilance)/M (Industries and Information  
Technology).

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