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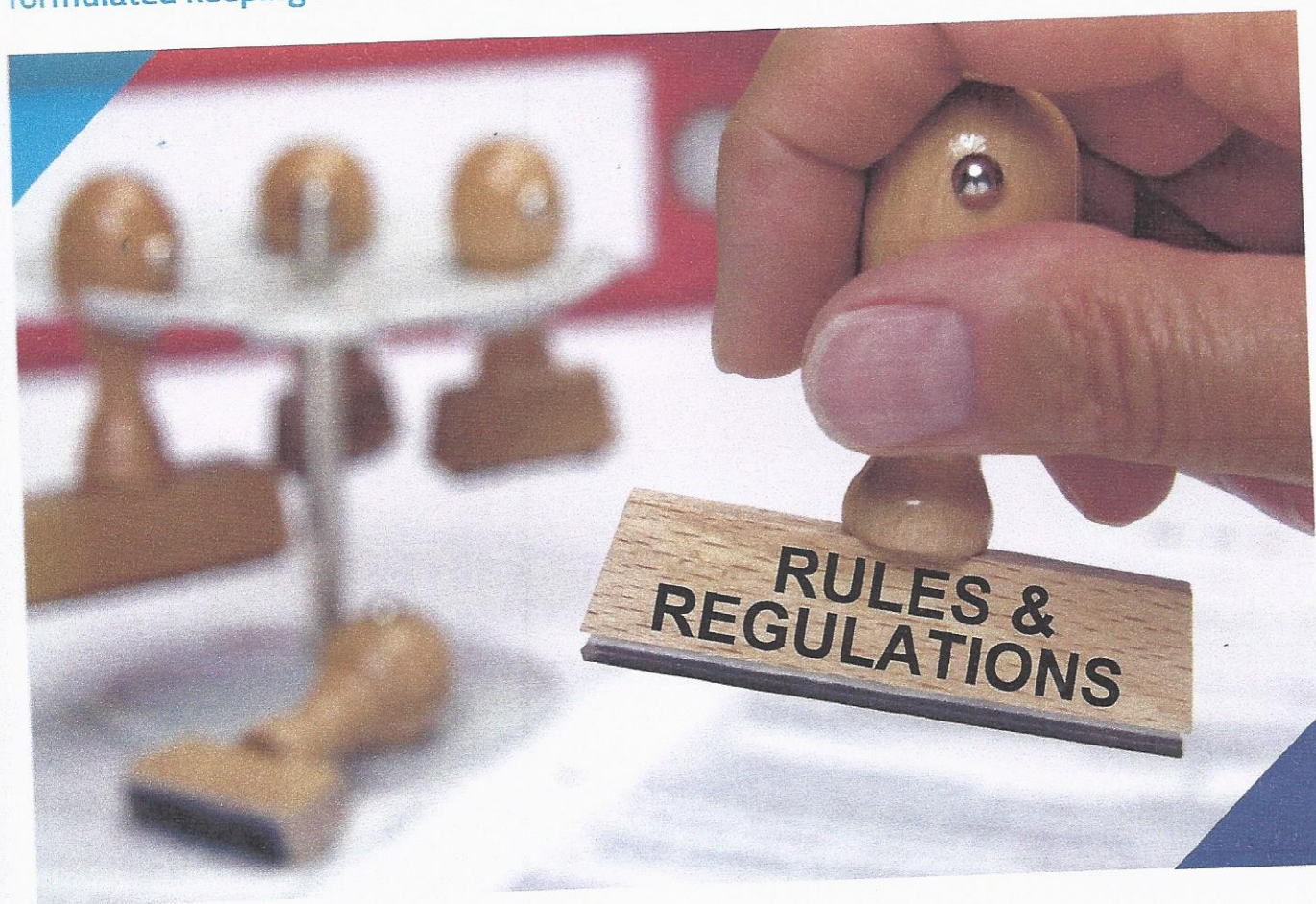
# WHITEPAPER ON REGULATION OF DIRECT SELLING IN INDIA

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# Chapter 4: Foreign Regulatory Frameworks for Direct Selling

Direct Selling is governed differently in several jurisdictions: some jurisdictions have a single umbrella consumer protection code applicable to all industries; while some have chosen to prohibit certain unfair consumer practices in the Direct Selling industry, and others have chosen to regulate Direct Selling while explicitly banning Pyramid Schemes. There are broad global best practices by industry & regulators which are formulated keeping in mind consumer protection.



Examining Foreign  
Regulatory Frameworks  
for Direct Selling



Securing Consumer Interest



Global Best Practices



**While the regulatory system for Direct Selling in India leaves much to be desired, there are other jurisdictions that have comprehensive regulations on the subject that can serve as a model for domestic reform. Countries like Malaysia and Singapore have dedicated legislation on the subject, while other countries like the USA have state-specific statutes or federal laws on pyramid schemes to protect consumer interests.**

In *Koscot Interplanetary Inc.*<sup>64</sup>, the US Federal Trade Commission issued a series of corrective measures spelling out, for the first time, what constituted legal and illegal Direct Selling practices. Since then other countries have caught up and framed suitable laws to deal with the phenomenon, largely following the principles laid out in the *Koscot* cases. For instance, in Japan, Direct Selling business is regulated by the Act on Specific Commercial Transactions.<sup>65</sup> This Act covers door-to-door sales, mail order sales and telemarketing sales. Similarly, although Europe has had a long history of Direct Selling, it had no laws to govern it for a long time. In 1985, European Council issued a directive which protected consumer in respect of contracts negotiated away from the business premises. This directive was further revised in 1997 to provide an exclusive definition of distance selling and excluded contracts related to specific financial services from the definition of distance contract. In order to implement these directives, UK passed Consumer Protection (Distance Selling) Regulation in 2000.

repealed these Directives and issued a fresh one to bring clarity to and strengthen consumer protection. The new directive applies to any contracts between consumer and traders whereas previous directives applied to specific contracts. This directive also increased cooling-off period to 14 days from earlier 7 days for withdrawal or cancellation of contract.

In order to determine best practices for India, we shall examine legislation adopted by six jurisdictions: Singapore, the UK, the US, China, Vietnam and Malaysia. These countries collectively hold more than a 50% share in global Direct Selling market. Pyramid schemes stand banned in all six. Some of the common features of laws in these countries now include: no compensation on recruitment, compulsory registration of Direct Selling companies, cooling off period for cancellation of contracts, independent status of agents and period audit of their accounts.

A summary of key provisions in the above countries is as follows:

In 2011, European Parliament and Council

REQUIREMENTS FOR DIRECT SELLING	USA	UK	CHINA	MALAYSIA	SINGAPORE	VIETNAM
Promotion of Pyramid Schemes	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited (allowed in some conditions)	Prohibited
Compulsory Registration	Yes (Only in Montana)	No	Yes	Yes	No	Yes

<sup>64</sup> 86 F.T.C. 1106, November 1975.

<sup>65</sup> (Act No. 57 of June 4, 1976)



REQUIREMENTS FOR DIRECT SELLING	USA	UK	CHINA	MALAYSIA	SINGAPORE	VIETNAM
Cooling-off Period	90 Days	14 Days	30 Days	10 Days	60 Days	30 Days <sup>1</sup>
Re-purchase price	90% of original cost	Not de-fined	Not de-fined	Not de-fined	Not defined	90%
Recruitment Norms	No	No	Yes	No	No	Yes
Status of participant	Independ-ent seller	Independ-ent seller	Employee	Independ-ent seller	Independent seller	Not available
Applicability of Direct Selling laws on mail orders/telemarketing	No	No	No	No	No	No
Guidelines for direct sellers	No	No	Yes	Yes	No	Yes

<sup>1</sup>Only for food products

## Global Direct Selling Regulations

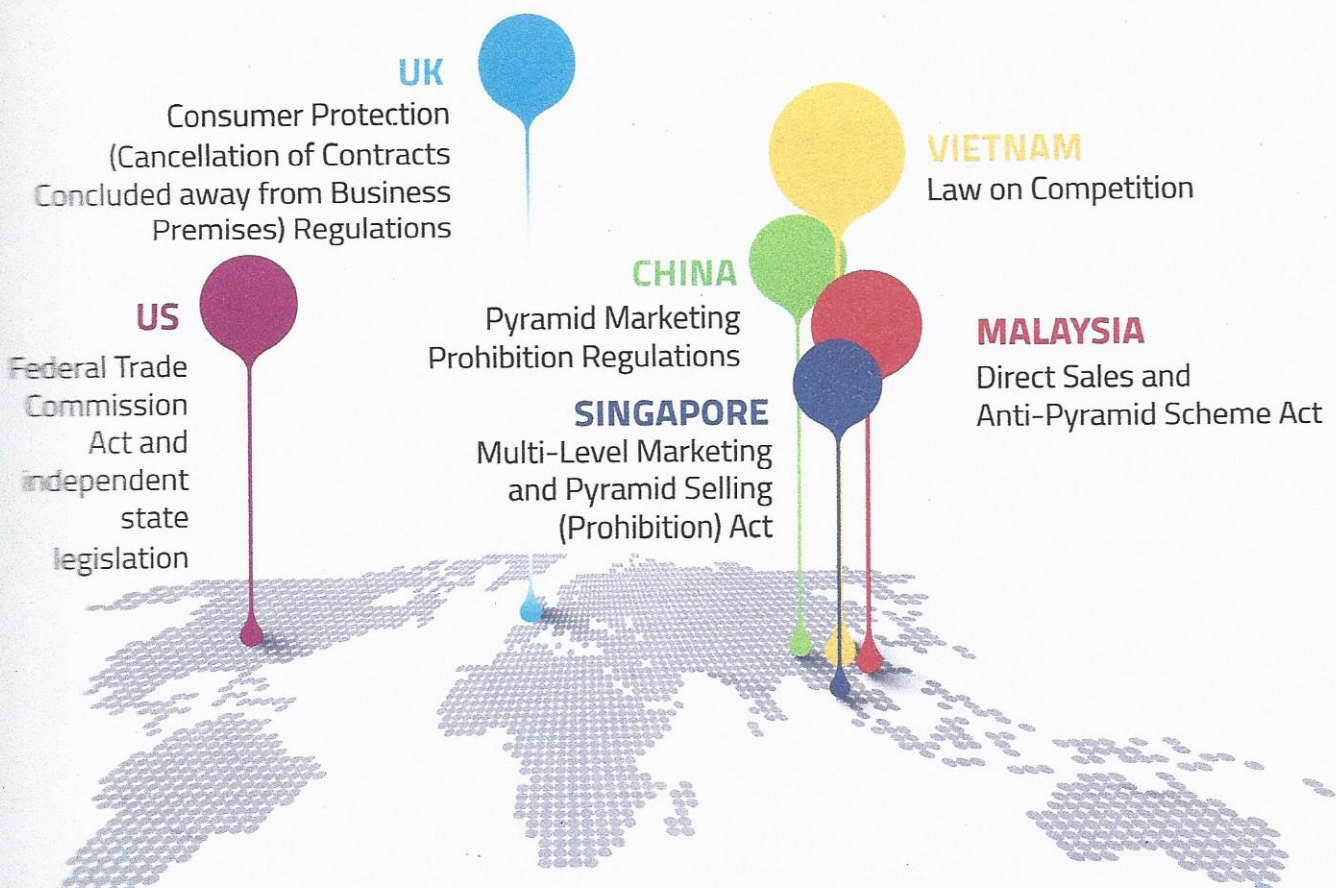


Figure 4.1 Global Direct Selling legislation



## I. Vietnam

According to Article 3.11 of Vietnam's Competition Law<sup>66</sup>, Direct Selling (which is also referred to as multi-level sale) refers to:

- “ **An approach of marketing to retail goods, which meets the following conditions:**
- a. The marketing to retail goods are conducted through a multilevel and multi-branch network of participants in the multi-level sale;**
  - b. Goods are marketed by participants in the Multi-level Sale (Direct Selling) directly to consumers at the customers' homes, working places or other places other than regular retail places of the enterprises or participants;**
  - c. Participants in the Direct Selling (Multi-level Sale) enjoy commissions, bonuses or other economic benefits from the sale results of their own and of lower-level multi-level sale participants within the network which is organized by themselves and approved by the multi-level sale (Directs Selling) enterprises.**
- ”

In July 2014, the government issued Decree 42<sup>67</sup>, which addresses business licenses for Direct Selling activities.<sup>68</sup> Decree 42 states that any Direct Selling businesses in Vietnam must be established as companies. The process of licensing will be regulated by the Vietnamese Ministry of Industry and Trade, and each license will last five years. There are two key prohibitions in the legislation which protects consumers from being defrauded:

1) any business activities in which income of participants primarily derives from the recruitment of new participants; and

2) Direct Selling enterprises must repurchase sold goods at the request of the seller. Vietnam has a highly restrictive regime in place: companies involved in Direct Selling must submit periodic reports on their operations to the government, and any companies who fail to do business in the 12-month period after they are granted licenses will have said licenses revoked.

The Vietnam model therefore has a tendency toward over-correction: it penalizes Direct Selling companies that may not be engaging in fraudulent activities.

## II. Malaysia

Direct Selling activity in Malaysia is governed by the Direct Sales Act 1993 (DSA) and the Ministry of Domestic Trade and Consumer Affairs. Malaysia has a separate legislation “DS & Anti Pyramid Scheme Act 1993” to “provide for the licensing of persons carrying on direct sales business, for the regulation of Direct Selling, and for other matters connected therewith.” The Act defines “direct sale” as “a door-to-door sale and a mail order sale” and “door-to-door” sale.<sup>69</sup>

In 2011, Malaysia amended the existing statute and renamed it the ‘Direct Sales and Anti-Pyramid Scheme Act, 1993’ (‘DS & APS Act’). This was done to ensure that direct sales activities were properly licensed for the protection of consumers. The statute prohibits illegal pyramid schemes/chain distribution schemes etc., besides describing requirements of direct sales contracts, cooling off periods, etc. One of the key provisions of the DS & APS Act is that persons negotiating door-to-door sales are

<sup>66</sup>Vietnam Law on Competition, National Assembly of Vietnam, No. 27-2004-QH1. Available at: [http://www.vietnamlaws.com/freelaws/lw27na3dec04competition\[xv1135\].pdf](http://www.vietnamlaws.com/freelaws/lw27na3dec04competition[xv1135].pdf)

<sup>67</sup> The existing legislation at that time was Decree No. 110/2005/ND-CP on Management of Multilevel Sale of goods.

<sup>68</sup> KPMG in India analysis, Direct Selling: A global industry empowering millions in India. Available at: <https://www.kpmg.com/IN/en/IssuesAndInsights/ArticlesPublications/Documents/Direct-Selling.pdf>.

<sup>69</sup> Door-to-door sales is further defined as “a person who goes from place to place...or who makes telephone calls, seeking out persons who may be prepared to enter, as purchasers, into contracts for the sale of goods or services; and (b) that first-mentioned person or some other person then or subsequently enters into negotiations with those prospective purchasers with a view to the making of such contracts.”



treated as independent contractors and must produce an identification card and an authority card.<sup>70</sup> As per the rules, no person shall carry on any direct sales business unless it is a company incorporated under the Companies Act of 1965 and holds a valid licence. The Act also lays down the conditions under which business may be conducted and defines the requirement of Direct Selling contract and mentions conditions under which licence may not be granted. Under the Act, a pyramid scheme is defined in

the same terms as many other jurisdictions: it comprises a scheme in which entry fees are charged and the majority of income is derived from recruitment of new members as opposed to sales. In addition to the Act, there are statutes such as the Competition Act, 2010, Personal Data Protection Act 2010, Price Control & Anti Profiteering Act, 2011 and Consumer Protection Act, 1999 which are applicable to Direct Selling companies.

### III. China

According to China's Regulation on Administration of Direct Sales<sup>71</sup>, Direct Selling is a selling method in which a Direct Selling company recruits sellers who directly sell products to final consumers at non-fixed places.<sup>72</sup> In addition to promulgating regulations on Direct Selling, China issued regulations that prohibit "chuanxiao", or 'pass-along sales' in November 2005 (these are known as the 'Pyramid Marketing Prohibition Regulations'). These regulations mandate that companies must obtain approval from the Chinese government before they engage in Direct Selling activities. Additionally, the regulations state that only certain products may be sold using direct sales methods.<sup>73</sup>

According to the Regulations, multi-level marketing is deemed illegal when:

- i) entry fees are levied on new members<sup>74</sup>;
- ii) payments are calculated primarily on recruitment and not on product sales;
- iii) remuneration is on the basis of an upline-

downline relationship and exceeds 30% of sales revenues. This definition of illegal multi-level marketing conforms with that adopted by other countries. However, the regulatory environment in China is fairly restrictive (in similar fashion to Vietnam): the government has broad leeway to determine which Direct Selling companies may operate within the country, and which may not.

It is important to also note that the Regulations limit the payment of compensation to Sales Representatives (distributors) to their personal sales volume only, and prohibits the payment of commissions based on any downline group successful sales efforts. However, in November 2013, the Supreme Court of China made an important distinction between "compensation by team" and "using the number of participants developed as the basis of compensation...". While, in the former, the compensation is based on sales volume, and would not be a crime, in the latter instance, the compensation is linked

<sup>70</sup> The Act endeavours to protect consumers by making the following acts offences:

- issuing a false authority case which contains any false or misleading information;
- supplying or advertising the supply of any goods or services by mail order which are not in accordance with the Act;
- furnishing false or misleading information in an advertisement for the supply of goods or services by mail order;
- neglecting to make available a sample of the goods supplied by mail for the inspection of the public at the places and times specified in the advertisements.

<sup>71</sup> Article 3: For the purposes of these Regulations, the term "Direct Selling" means a form of distribution by which a Direct Selling enterprise recruits direct sellers to directly market products to end consumers hereafter the "consumers" outside the fixed business premises.

For the purposes of these Regulations, the term "Direct Selling enterprises" means enterprises that have been approved in accordance with the provisions hereof to sell products by way of Direct Selling.

For the purposes of these Regulations, the term "direct sellers" means persons that directly market products to consumers outside the fixed business premises.

<sup>72</sup> On The Legal And Market Analysis Of "Direct Selling", In China. International Journal on Business and Management 3.12 (2008): 86-91. Web. 26 May 2015.

<sup>73</sup> Furthermore, the regulations limit products that may be sold by Direct Selling companies to those that are produced by the company itself or its parent/holding company.

<sup>74</sup> This includes disguised entry fees in the form of mandatory product purchases for new members.



solely to the referral or introduction of new members, and would attract penalty under the

## IV. Singapore

There is a specific rule in Singapore that bans pyramid selling schemes and arrangements (similar to India's Prize Chits and Money Circulation Schemes Act): it is known as the Multi-level Marketing and Pyramid Selling (Prohibition) Act (1973). However, the Multi-level Marketing and Pyramid Selling (Excluded Schemes and Arrangements) Order enacts an exception to this general rule for legitimate direct sellers. Singapore differentiates between legitimate and illegitimate Direct Selling on the basis of one simple question: do participants in the business profit from sales, or merely from recruitment of new members? Any Direct Selling business that profits merely from recruitment attracts the provisions of the Prohibition Act and is deemed illegal.

In 1993, the case of *Tan Untian v PP* greatly impacted businesses in Singapore in which the High Court adopted a strictly literal interpretation to the definition of a 'pyramid selling scheme or arrangement'. The court held that definition requires three conditions to be simultaneously fulfilled:

- A person, X, pays to buy goods or pays to acquire a right to buy goods from the organiser of the scheme and
- X either receives a gratuity for recruiting

## V. The United States

Direct Selling regulations in the United States are unique because they are multi-layered: there are distinct federal regulations as well as state-specific ones.

At the state level, there are regulations that prohibit exaggerated claims of earnings through Direct Selling. These statutes are extant in

relevant provisions of China's Criminal Law.<sup>75</sup>

an additional participant Y or earns a commission from sales made by an additional participant Y and

- X shares his gratuity or commission with yet another participant Z.

In order to protect the interests of consumers, Direct Selling companies may not:

- i) charge an entry fee;
- ii) charge a commission for recruitment; or
- iii) engage in misleading representations to customers.

Direct Selling companies must maintain fair and accurate records of their sales and benefits accruing to the participants, and offer a refund/buy-back guarantee on the basis of which participants can return unsold goods. Additionally, Singapore has "lemon laws": these refer to "laws protecting consumers against defective goods that fail to conform to contract, or meet satisfactory quality or performance standards at the time of purchase."<sup>76</sup>

The Singapore model thus seeks to strike a balance between protecting consumer interests and enabling legitimate Direct Selling companies to conduct their business in the country.

five states: Georgia, Louisiana, Maryland, Massachusetts, and Wyoming.

However, this does not mean that the other states lack a mechanism for consumer protection: all US states have banned illegal pyramid schemes in one form or another (through lottery laws or chain scheme statutes).

<sup>75</sup> "Opinions on the Application of Law in Handling Criminal Cases of Organizing and Leading Pyramid Selling Activities", Publicized Regulation [2013] No.37, Supreme People's Court of China, 14 November 2013

<sup>76</sup> "Singapore Laws" Web. 26 May 2015 Available at: [Dsas.org.sg](http://Dsas.org.sg).



States like South Dakota and Texas have anti-pyramid statutes, while states like Montana has a multi-level filing requirement as part of its anti-pyramid statute. Therefore, each state exercises sovereignty in deciding how to regulate Direct Selling.

### **Federal Trade Commission**

At the federal level, there is strict consumer protection as expressed in the Federal Trade Commission Act.<sup>77</sup> This does not cover every category of illegal Direct Selling, but it works to prevent companies from making fraudulent representations to customers. These cases are examined from the point of view of the reasonable consumer: any company or individual that "makes representations likely to mislead consumers acting reasonably" is in violation of the law. The law does not merely prohibit material<sup>78</sup> misrepresentations of fact – it also covers omissions to disclose important information (if it has a tendency to deceive).

In 1975, in the case of *Koscot Interplanetary Inc.*, the Federal Trade Commission (FTC) of US held that such schemes (better known as pyramid schemes) were deceptive in nature and in contravention of the FTC Act. The Commission considered Amway to be a legal Direct Selling company. It described the essential features of a pyramid scheme as follows:

"Such schemes are characterised by the payment by participants of money to the company in return for which they receive (a) the right to sell a product and (b) the right to receive in return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users...As is apparent, the presence of this second element, recruitment with rewards unrelated to product sales, is nothing more than an elaborate chain letter device in which individuals who pay a valuable consideration with the expectation of recouping it to some degree via recruitment are

bound to be disappointed."

In 2004, FTC issued a Staff Advisory Opinion, "Pyramid scheme Analysis", in which it articulated the tests to make the distinction between a multi-level Direct Selling schemes and that of a pyramid.

A summary of key features of the decisions of FTC related to Direct Selling are as follows:

### **Anti-pyramid provision**

The most often cited definition of a pyramid scheme is found in the Federal Trade Commission's decision in a case, in which, the F.T.C. held that 'entrepreneurial chains' are characterized by "the payment by participants of money to the company in return for which they (the participants) receive:

- right to sell a product and
- right to receive money in return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users."

### **Cooling-off period**

The Federal Trade Commission's cooling-off rule gives consumers three days to cancel purchases worth \$25 (Approx. 1,500) or more if products are purchased at home, and worth \$130 (Approx. 7,800) or more if purchase are made at temporary location of Direct Selling company.

<sup>77</sup> FICCI, *Compilation of Various International Acts & Laws for Direct Selling Industry*.

<sup>78</sup> A claim is deemed "material" if it involves information that is likely to affect a consumer's choice of, or conduct with respect to, a product (including a service or earning opportunity).



State	Regulatory & Procedural Mechanism
Georgia	<ul style="list-style-type: none"> <li>▪ The Act prohibits multilevel distribution company to operate wherein the financial gains are dependent upon recruitment of other participants.</li> <li>▪ There is a requirement to provide a written document about disclosures required by Georgia Law to purchaser by seller prior to sign a business opportunity contract.</li> </ul>
Wyoming	<ul style="list-style-type: none"> <li>▪ The Act prohibits endless chain and referral sales.</li> <li>▪ The company shall be required to enter in a cancellable contract with the purchaser.</li> <li>▪ There must be a buy-back option.</li> </ul>
Maryland	<ul style="list-style-type: none"> <li>▪ A written contract is required to enter with the each participant in the scheme.</li> <li>▪ Participant should have option to cancel the contract within 3 months with written notice after the date of goods or services first ordered.</li> <li>▪ The company shall be bound to repurchase all goods on cancelation.</li> </ul>
Massachusetts	<ul style="list-style-type: none"> <li>▪ Every multilevel marketing company shall enter in a contract with participant which can be cancelled any time on written notice by participant.</li> </ul>
Montana	<ul style="list-style-type: none"> <li>▪ As per Montana Code 30-10-216, a multilevel distribution company/person cannot do any business unless it is registered under the code or it is a member of Direct Selling association.</li> <li>▪ There is a requirement to renew registration every year.</li> </ul>
Puerto Rico	<ul style="list-style-type: none"> <li>▪ The company shall enter in a contract with dealer with a clause that this contract can be cancelled within the term of 90 days from signature or on any non-compliance of term of contract.</li> <li>▪ The company shall reacquire the total of the products acquired by the dealer which are in his possession and in good condition.</li> <li>▪ The commonwealth of Puerto Rico prohibits the multilevel distribution company to pay the payment of benefits to its dealers, agents or participants in consideration only for the search and enlistment of new participants.</li> </ul>

## VI. The United Kingdom

In the UK, Trading Schemes (also described as Direct Selling schemes, network marketing, multi-level marketing and other names) are a legitimate form of business activity offering individuals the opportunity to earn money by selling the scheme's goods or services from home. In 2000, in order to implement European

Council's Directives UK enforced a Consumer Protection (Direct Selling) Regulation. The key provisions of this regulation<sup>79</sup> are presented below:

### Definition

Direct Selling in UK is defined as a distance

<sup>79</sup> The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. Available at: <http://www.legislation.gov.uk/uksi/2013/3134/contents/made>



contract. As per the Consumer Contract Regulation, 'distance contract' refers to a contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.

### **Information in off-premises contract**

The seller needs to provide some information to the customer before entering into a contract. Such information includes identity of seller, address of establishment, telephone number, total price of the goods, additional delivery charges etc.

### **Cooling off period**

There is a cooling off period during which the purchaser can cancel the contract. The regulation provides different cooling off periods for each circumstance. According to the regulation, the cancellation period ends at the end of 14 days after the day on which the goods come into the physical possession of consumer.

### **Compensation for recruitment**

The Fair trading Act, 1973 prohibits participation in a trading scheme where remuneration is paid in respect of the introduction of other persons who become participants in the trading scheme. Further, the Trading Schemes Regulations 1997 state that a promoter of, or a participant in, a trading scheme shall not accept from a participant joining the trading scheme any payment or an undertaking to make a payment of any sum exceeding £200 (Approx. 20,000) unless 7 days have expired from the making of the agreement relating to goods or services supplied or to be supplied under that agreement to the participant by the promoter or any other participant under the trading scheme

Under new rules that fall under the Fair Trading Act, these types of sales are called uninvited direct sales. The rules offer extra protection to consumers when approached by uninvited sales people at their home or workplace, or by telephone. Doorstep Selling Regulations address the specific situation in which consumers are sold goods and services in their homes (or the homes of others.) In the case of the latter, regulations require sellers to inform consumers of the 'cooling off period' (the window of time in which consumers may change their mind and return the product). Additionally, trading schemes must comply with the provisions in Part XI of the Fair Trading Act as amended by the Trading Schemes Act 1996 and the Trading Schemes Regulations 1997.



## **B. Securing Consumer Interest**

There is a wide range of possible laws and mechanisms by which Direct Selling can be regulated in order to offer consumers protection against fraudulent schemes. It should be noted at this juncture that many legitimate Direct Selling companies adhere to a voluntary code of ethics<sup>80</sup> imposed by Direct Selling associations in their country that is much more stringent than the law in those countries.<sup>81</sup>

Although adhering to the Direct Selling Code of Ethics is voluntary, jurisdictions such as the EU

<sup>80</sup> "Code of Ethics", Direct Selling Association, Available at: <http://www.dsa.org/code-of-ethics/code-of-ethics-%28full-text%29>.

<sup>81</sup> For instance, the United States DSA states that salespeople must provide receipts for products, provide accurate and truthful information about their products, and inform customers about the cooling-off period in which the consumer may withdraw from a purchase order within a minimum of three days from the date of the purchase transaction and receive a full refund of the purchase price. <http://www.dsa.org/code-of-ethics/code-of-ethics-%28full-text%29>.



have instituted wide-ranging policies for the Direct Selling sector that prioritize consumer protection. For instance, the Unfair Commercial Practices Directive (2005/29/EC) provides safeguards for vulnerable consumers, as well as a comprehensive black list of unfair practices which are banned in all circumstances. The Directive also deems pyramid schemes (which are defined as "pyramid promotional schemes where compensation is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products") illegal. Other directives such as the Consumer Rights Directive (2011/83/EU)<sup>82</sup> or the Alternative Dispute Resolution Directive (2013/11/EU)<sup>83</sup> stipulate that consumers may withdraw orders within 14 calendar days, or turn to alternative dispute resolution entities to resolve contractual disputes.

Some of the most important measures that businesses and governments can adopt in the interest of consumer protection are:

1) Preventing false representations by direct sellers: For instance, Georgia, Louisiana, Maryland, Massachusetts and Wyoming have statutes which prohibit companies from making false representations about potential earnings. Under the Fair Trading Act of 1986, there are provisions seeking to prevent false representations by direct sellers.

2) Institution of a cooling-off period & complaint mechanism: For instance, accredited Direct Selling companies in Singapore must offer consumers a cooling-off period that lasts 7 working days, in addition to a well-defined complaint mechanism.<sup>84</sup> During this period, consumers may seek a full refund of any payments made by them. This measure is part of a joint accreditation scheme by the Consumers' Association of Singapore (CASE)

and the Direct Selling Association of Singapore (DSAS).<sup>85</sup>

3) Buyback for unsold inventory: In the United States, most states require that the company appoints an agent for the service of process and abides by certain regulations relating to allowable income presentations, payment of compensation to participants and offer to repurchase unsold inventory. Similarly, Hong Kong requires Direct Selling companies to buy back unsold, currently marketable inventory at not less than 90% of the salesperson's original net cost less appropriate set-offs, if any.



### C. Global Best Practices

Although consumer protection is an area of pressing concern for any government, it is also important for governments to consider best practices that do not hinder entrepreneurship or harm the interests of legitimate Direct Selling enterprises. This becomes especially important in the context of developing economies like India, where the regulatory framework around Direct Selling is as yet poorly defined. Measures that protect the consumer must not have a chilling effect on legitimate Direct Selling businesses. With this in mind, the following practices can be shown to benefit all concerned

<sup>82</sup> Consumer Rights Directive (2011/83/EU). 1

<sup>83</sup> Alternative Dispute Resolution Directive (2013/11/EU).

<sup>84</sup> My News Desk, New CASE accreditation scheme for Direct Selling businesses launched, <http://www.mynewsdesk.com/sg/qnet/news/new-case-accreditation-scheme-for-direct-selling-businesses-launched-102580> (Jan 09, 2015).

<sup>85</sup> Additional regulations require the company to be registered for at least one year, with the Accounting and Corporate Regulatory Authority, undergo a six month probation period and have no more than five breaches of the Consumer Protection (Fair Trading) Act.



parties - the Direct Selling company, the direct seller, and the customer to whom the products are sold:

1) Clear definitions of Direct Selling:

Without a clear definition of what constitutes Direct Selling, both consumer and seller are left unprotected. Regulatory lacunae (as discussed in Chapter III) may lead to consumers being defrauded, while those conducting legitimate MLM are forced out of business or wrongfully prosecuted. In the alternative, governments should set up an independent regulatory body or Act (that can adapt with time) that governs Direct Selling to prevent confusion.

2) No entry fee imposed (whether upfront or disguised):

Direct Selling businesses should not impose entry fees of any kind on potential recruits, nor should they impose any purchase requirements as a condition of entry (which would amount to a disguised entry fee). Besides being in the interests of the consumer, this would make it easier to differentiate between legitimate Direct Selling and fraudulent schemes.

3) Periodic accounts/audits to prevent stockpiling/measures against inventory loading:

Inventory loading is against the interests of the Direct Selling company as well as the direct seller who finds himself saddled with excess goods. In order to prevent this, Direct Selling companies should conduct frequent audits in order to ensure that the goods they ship to direct sellers are actually being sold by them. Furthermore, there should be a reasonable window of time in which sellers/customers may return goods to the company.

4) Regulating income that is not derived from product sales/cap bonuses earned from recruitment of new members:

In order to prevent illegitimate Direct Selling schemes from operating in the market it would be advisable to regulate or limit the income that may be earned through any non-product sales

activities. This will incentivize direct sellers to sell products instead of merely seeking to recruit new members.

5) Enforcement to prevent exaggerated claims by direct sellers:

Direct Selling companies should set up an internal regulatory body to prevent any exaggerated claims made by their direct sellers. (This would also reduce the burden on government regulators, as well as allow companies to handle violations of procedure internally.) Furthermore, suitable training should be provided to each seller in order to help them adhere to the company's code of ethics.

In conclusion, it is apparent that regulatory frameworks differ vastly from jurisdiction to jurisdiction. An ideal regime is one that protects the consumer and that differentiates genuine Direct Selling from fraudulent activity. In order to succeed, such a regime should take India's unique context into account. The construction of this ideal framework, as well as its implications, will be examined further in the next chapter.

“

**“Such schemes are characterised by the payment by participants of money to the company in return for which they receive (a) the right to sell a product and (b) the right to receive in return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users...As is apparent, the presence of this second element, recruitment with rewards unrelated to product sales, is nothing more than an elaborate chain letter device in which individuals who pay a valuable consideration with the expectation of recouping it to some degree via recruitment are bound to be disappointed.”**

**- US Federal Trade Commission in Koscot.**

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