



PHD House, 4th Floor, Ramakrishna Dalmia Wing
4/2, Siri Institutional Area, August Kranti Marg, New Delhi – 110016,
Tel# 9599665859 E-mail: ceo@mait.com □ Website: http://www.mait.com

Ref.No.MAIT/PY/2482

May 26, 2022

Shri Anupam Mishra
Joint Secretary
Department of Consumer Affairs

Sub: Recommendations on Decriminalization of Legal Metrology Act, 2009

Respected Sir,

Greetings from **MAIT**, India's apex Industry body empowering IT, Telecom & Electronics Hardware!

At the outset, MAIT extends its heartiest congratulations to Department of Consumer Affairs (DoCA) for successfully organizing the **“National Workshop to discuss decriminalization of Legal Metrology Act, 2009”** on 9th May 2022 at Vigyan Bhawan. The Workshop deliberated meaningful consultations and focused towards decreasing burden on businesses while protecting consumer interests. The electronics industry appreciates that the Ministry of Consumer Affairs understands that **imprisonment as a ‘policy’ tool can lead to compliance burden and overregulation for entrepreneurs and businesses in India, whilst conducting business.**

Members of MAIT are happy to note that DoCA has released **two comprehensive e-books on Legal Metrology**. We have already circulated these resourceful e-books to our stakeholders and we are sure that they will be useful. We are also grateful to your good office for providing us an opportunity to engage with key stakeholders during this Workshop & exchanging views on the issue.

With higher use of technology enabled products, the retail markets for electronics have emerged differently. The consumers of electronics products **understand their needs** and prefer products with higher penetration in market and **latest technologies for ease of use**. The consumer of electronics looks at **the safety of the product it purchases by checking necessary labels, the electronics industry already abides by through BIS provisions.**

Additionally, the electronics production in the country is expected to reach USD 300 billion by 2026. The electronics industry and technology entrepreneurs in India are today investing in the country to provide jobs, economic growth and innovation. The burden of regulations through imprisonment can deter the business sentiment. With a big target at hand, it is important for DoCA to ensure significant and persistent policy initiatives and efforts to create a conducive electronics manufacturing and investment ecosystem.

MAIT aligns itself with the Hon'ble Minister's vision of enabling Ease of Doing Business through decriminalization & reiterates its strong commitment to keeping a balance between consumers and industry interests. **MAIT's recommendations on the subject are attached as Appendix** and we are confident that you would consider them positively.

We look forward to engaging in subsequent interactions with the Ministry on behalf of the industry on issues of mutual interest.

With regards,

George Paul
CEO

MAIT Recommendations on Decriminalization of Legal Metrology Act, 2009

We concur largely with the changes proposed for Section 29, Section 36 and Section 49 of the LM Act by The Department of Consumer Affairs' July 2020 Proposal for Decriminalisation of the LM Act¹ specifically the removal of imprisonment. However, there are a few suggestions on the changes proposed since we would like to emphasise and strongly recommend a hefty penalty **only as a mode of punishment for offences.**

Current Provision	Current Punishment	Proposed Amendments	Rationale for Decriminalization
<p>Section 29, LM Act</p> <p>Penalty for quoting or publishing etc. of non –standards units in advertisements, on the pre-packaged commodity etc. (Violation under Section 11 of the LM Act)</p>	For second or subsequent offence, Imprisonment up to one year or fine or both	Graded Fine Based Penalty System (without imprisonment), For non-substantive/ Trivial issues/ omissions, there shall not even be a penalty ,let alone imprisonment.	For repetition of same or similar offence committed earlier, a fine may be sufficient, since the violation may not necessarily involve mens rea (malafide/ criminal intent) and may not adversely affect public interest at large.
<p>Section 34, LM Act</p> <p>Penalty for sale or delivery of commodities. etc., by non-standard weight or measure</p>	For the second or subsequent offence, with imprisonment for a term which shall not be less than three months but which may extend to one year, or with fine, or with both.	Graded Fine Based Penalty System (Without imprisonment). For repetition of same or similar offence committed earlier, a fine may be sufficient	For repetition of same or similar offence committed earlier, a fine may be sufficient, since the violation may not necessarily involve mens rea (malafide/criminal intent) and may not adversely affect public interest at large.
<p>Section 36(1), LM Act</p> <p>Penalty for importing, selling etc. of non- standard packages in declarations</p> <p>(If the packages of the commodities do not have the mandatory declarations as per Section 18 of the LM Act read with the LMPC Rules)</p>	For second offence fine Up to INR 50,000 and for subsequent offence fine from INR 50,000 to INR 1,00,000 or with imprisonment upto one year or with Fine	Graded Fine Based Penalty System (without imprisonment) For non-substantive Trivial issues/ omissions ,there shall not even be a penalty ,let alone imprisonment.	For repetition of same or similar offence committed earlier, a fine may be sufficient, since the violation may not necessarily involve mens rea (malafide/ criminal intent) and may not adversely affect public interest at large.
<p>Section 36(2)</p> <p>Penalty for selling etc. of non-standard packages in quantity</p> <p>(If the packages of the commodity has an error in the net quantity as required to be declared under Rule 6(1)(c) of the LMPC Rues)</p>	For second or subsequent offence, Fine: up to INR 1,00,000 or with imprisonment up to one year or both	Graded Fine Based Penalty System (without imprisonment)	For repetition of same or similar offence committed earlier, a fine may be sufficient, since the violation may not necessarily involve mens rea (malafide/ criminal intent) and may not adversely affect public interest at large.

¹ Available at - <https://consumeraffairs.nic.in/latestnews/stakeholder-consultation-upto-1282020-proposal-decriminalization-legal-metrology-act-2009>

Section 48 Compounding of offences	The Director or legal metrology as may be specially authorized by him in this behalf, may compound offences punishable under section 25, section 27 to 39, or any rule made under sub-section (3) of section 52	Director/Legal Metrology Officer has the discretion to compound as the word written is ' may ' not shall .	Director/Legal Metrology Officer has the discretion to compound as the word written is ' may ' not ' shall '. The officer can deny to exercise the discretion to compound as the word written is "may" not "shall".
Section 49 Offences by companies and power of court to publish names, place of business, etc., for companies convicted	Company may nominate any director as the person responsible, for the conduct of the business	Liability should be on Company, not on its Directors/Officers	The top management of the company will not have the actus reus and mens rea for the offence. They also may not be involved in day to day functioning of the company/ factory and may not be available at the time of occurrence of an offence.

Section 25 *inter alia* provides for penalty for 'use of any numeration otherwise than in accordance with the standards. In case the numeration here refers to the adherence to the Legal Metrology (Numeration) Rules, 2011, we propose that the proposed decriminalisation be extended to this category of contraventions as well.

- **Changes to the current Legal Metrology Notice format:** The format of LM Notices that we have received directs a manufacturer to either compound the offence against which the notice is issued or face prosecution. The notice does not provide an opportunity of explaining the alleged contravention or mention the remedy of preferring an appeal. We recommend strict adherence to principles of natural justice in the proceedings by the Inspector, and recommend the following mandatory steps:
 - Opportunity of explaining the alleged contravention, post which the Inspector concerned may pass a reasoned order and
 - Time to be provided for compounding or filing appeal, post which alone a prosecution or such other steps may be taken.

Rationale: In current scenario most manufacturers prefer to compound an alleged offence to save themselves from going through prosecution even for trivial contraventions. An opportunity to explain the contravention followed by a speaking order to be issued by the Inspector would help address this position to a significant extent.

- Many offences under the LM Act do not have the element of Mens rea (malafide/ criminal intent) and are violations due to **inadvertent omission, or technical or procedural omissions/issues**. In the absence of any criminal intent, the penal provisions with respect to imprisonment should be substituted with penalties.
- **Graded penalty structure:** The industry suggests developing an alternative framework, whereby certain violations can become liable for minor and major offences, for which penalties must be paid by the violator Label minor and major offences basis repetitions of violations, a company's promptness in taking corrective action, loss to consumers.
- In case of any doubt / issue by a company, add a provision for advance approval by a designated officer in the Department of Consumer Affairs. This will add predictability and some sense of security for entities operating in India.