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Shri Rohit Kumar Singh
Secretary (CA)
Department of Consumer Affairs,
Ministry of Consumer Affairs, Food & Public Distribution,
Government of India

Subject: Recommendations on Decriminalization of the provisions of the Legal Metrology Act, 2009 read with the Legal Metrology (Packaged Commodity) Rules, 2011

Respected Sir,

1. The Industry is grateful for the opportunity to provide inputs to the Ministry of Consumer Affairs, Government of India on decriminalisation of penalty provisions under the LM Act to facilitate and promote ease of doing business. We laud the effort of the ministry since this exercise will further strengthen the Government of India's objective of treating its entrepreneurs and enterprises as wealth creators. The objective of the central government to identify various statutes and decriminalise minor offences will not only aid in unclogging court processes but will also remove criminality of offences from statutes relevant to trade and where no *malafide* intentions are involved thereby aiding ease of doing business and investments in India.
2. The electronics industry and entrepreneurs in India are today investing in the country. This is helping transforming India into a competitive manufacturing destination in an effort to position India as a lead contender in the global supply chain. This is helping create jobs, drive economic growth, GDP and innovation. The burden of penal provisions risking imprisonment can deter the economic growth in the country as it goes straight to impact investor sentiment. **The Prime Minister, Mr. Narendra Modi in 2021, applauded the "new types of wealth creators"**¹ in his Independence Day speech. Decriminalisation of provisions under LM Act can help businesses thrive in India and facilitate investor confidence.
3. The Department of Consumer Affairs in July 2020, had prepared a Proposal for Decriminalisation of the LM Act and sought several stakeholder consultations. After the recent stakeholder consultation with Ministry of Consumer Affairs on 11th February, 2022, we are happy to provide recommendations on the provisions to be decriminalised and the rationale. You will appreciate that during the meeting the entire industry community was unanimous in seeking decriminalisation of the penal provisions. MAIT joins and supports the industry's informed view with its below recommendations.
4. Our recommendations for decriminalisation align with the aforesaid principles enunciated for de-risking the stringent compliance regime under the LM Act. Additionally, the process of decriminalisation will have another beneficial effect of reducing cases wherein due to a huge pendency of cases in our judicial system in all tiers of courts, there is an urgent need to ease the burden of the judiciary. As per the data available on the website of the National Judicial Data Grid² it is clear that the number of pending criminal cases in India is far greater than the number of pending civil cases. It is therefore critical to reduce such pendency of criminal cases by classifying offences as minor and major and decriminalising minor offences and establishing an alternative mechanism for enforcement of LM Act.

¹ PM's address on August 15, 2021 on Independence day

² As on 7th July, 2021 and available at <https://njdg.ecourts.gov.in/njdgnew/?p=main/index>

5. Our proposal mainly includes a review of Section 29, Section 36 and Section 49 of the LM Act which respectively pertain to penalty for publishing advertisements with non-standard units of weight & measures and penalty for selling pre-packaged commodities with declarations having non-standard units of weight & measures.

Reasons for decriminalization of provisions under LM Act:

The reasons for decriminalization of the provisions of the LM Act 2009 are summarized below

1. **Procedural or technical lapses: Such non-compliances are typically inadvertent in nature.**
 - **No Mens rea** - Many offences under the LM Act and the LMPC Rules do not have the element of Mens rea (malafide/ criminal intent) and are violations due to **negligence, 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 financial penalties. Our experience suggests that most of observations noted during inspections are technical in nature and do not relate to matters causing adverse impact on consumers.
 - **Penalty Disproportionate to the offence** - Both major and minor offences under the LM Act and the LMPC Rules have criminal penalties includes imprisonment. For eg. Penalty for a major offence such as “tampering or altering of Standards weights and measures” under Section 26 of the LM Act, is imprisonment for six months to one year /fine or both, on the second or subsequent offence. However, penalty for inadvertently quoting a non-standard unit in an advertisement, is also punishable, under Section 29 of the LM Act, for imprisonment up to one-year/Fine or both, on the second or subsequent offence. **Minor offences that are a result of an inadvertent error or procedural discrepancies that can be rectified should ideally be de-criminalized**. If the offence is so grave impacting national security, causing danger to the life of consumers then why wait for commission of second violation. Such offences should be dealt with accordingly in the first instance itself. However, if the nature of offence is not major as above, then a graded financial penalty structure should be instituted.
 - **Disproportionately harsh penalty on the top Management of the Company** - Section 49 imposes criminal liability on the officials of the company who are in charge, and was responsible to, the company for the conduct of the business of the company such as board of directors, chief operating officers, partners etc. However, many times, such high officials have no actus reus (i.e. the physical act) or mens rea (i.e. mental intention) in relation to the alleged offence which is committed as for instance Directors on the Board of companies do not generally handle or supervise day-to-day operations of a company. Initiating prosecution against such Directors for technical contraventions of the Act/Rules leads to **undue harassment for them**. **Alternatively, Companies should be provided the option to designate a nodal officer to whom notices addressed to the company can be sent or this should be replaced with any authorised person of the company, and who can be proceeded against in case of proved serious contraventions, in place of Directors and other senior officials.**
2. **Create a graded penalty structure as per the violations committed:**
 - There is a need to place more reliance on alternative mechanism that can be used as remedied for non-compliance, such as financial penalties as against imprisonment. More so if the offence is minor in nature. **A framework should be devised whereby certain violations can become liable for minor and major offences**, for which penalties must be paid by the violator.
 - **The guiding principles for labeling minor and major offences could be the repetitions of violations or non-compliance, a company’s promptness in taking corrective action, the amount of loss to the consumers and the kind of benefits that the company derived from the violation.**
 - Before deciding the imposition of any penalty, proper opportunity must be given to the company to present its case.
 - The process of penalty payments should be done without the need to involve courts where the compliance has been done, and the fine or penalty for non-compliance has been tendered. The financial penalty should be commensurate to the nature and gravity of offence. This will help

bring compliance in the sector which will help protect consumer interest. Imprisonment does not help protecting consumer interest. More so the consumers in the present era are much informed about their buying preferences and rights. There are many information which may not be a deciding factor in buying specially the electronics product. For example, weight of the electronic product has less value in deciding a purchase than its technical features or capacity. In case of being duped in the first place, they will resist buying the product of the same company / dealer. They will not wait for a second chance to be duped. A rationale approach is required to enthuse discipline and compliance.

4. **For offences, rules must use principle of proportionality:** Imprisonment terms are not meant to be prescribed lightly, given the huge socioeconomic costs associated with them and the increase in burden on courts. Consequently, it is proposed that Department of Consumer Affairs must be tasked with the process of determining criminality as per the gravity of offence. A standardised sentence to jail should take place in instances like , loss of life of the consumers, financial frauds, scams, money laundering, forgery, and counterfeiting. The underlying presumption for prosecution must be a wilful act of commission to do harm, rather than errors of omission.

Best Practices across the Globe

For reference relevant regulations in the United States and United Kingdom have been briefly described below –

1. UNITED STATES -

The Fair Packaging and Labelling Act³ and Regulations Under Section 4 Of The Fair Packaging And Labelling Act⁴ do not provide for criminal penalties.

The Section on Enforcement (Section 1456)⁵ of the Fair Packaging And Labelling Act deals with misbranded consumer commodities, unfair or deceptive acts or practices in commerce and imports.

Section 1456(a) states that misbranded consumer commodities are deemed to be misbranded (i.e. where statements designs of pictures used in labelling that are false or misleading) under Chapter III of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 331 et seq.]⁶ which is treated as a major infraction and hence subject to criminal penalties as opposed to other technical violations which are not subject penal offences.

While a violation of 21 U.S.C. 331 may entail criminal penalties/imprisonment under the provisions of 21 U.S.C 333⁷, Section 1456(a) specifically excludes non confirming labels (i.e.; those labels which do not include the required mandatory declarations under the US law) as provided for in Section 1452⁸ from the ambit of penalties under 21 U.S.C 333. It may be said therefore that non confirming labels do not attract criminal penalties.

Under Section 1456(b), Unfair or deceptive acts or practices in commerce are subject to enforcement under 15 U.S.C 45(b)⁹. A perusal of 15 U.S.C 45(b) indicates that such violations attract a cease and desist notice, but not criminal penalties.

3 Available at <https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title15-chapter39&edition=prelim>

4 Available at <https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=d46d8c24934536de0ef58344303bf174&rgn=div5&view=text&node=16%3A1.0.1.5.62&idno=16>

5 Available at <https://www.law.cornell.edu/uscode/text/15/1456>

6 [21 U.S.C. 331](#)

7 Available at <https://www.law.cornell.edu/uscode/text/21/333>

8 Available at <https://www.law.cornell.edu/uscode/text/15/1452>

9 Available at <https://www.law.cornell.edu/uscode/text/15/45#b>

2. UNITED KINGDOM –

Criminal penalties are provided for only major offences which involve mens rea such as falsification of records. Minor offences are not punishable with criminal penalties. The UK's Weights and Measures (Packaged Goods) Regulations, 2006¹⁰ provides for imprisonment not exceeding three months¹¹ for serious and major offences which involve falsifying¹² or altering records to comply with provisions of the Regulations.

The Regulations provide for only fine¹³ and not imprisonment for offences including, but not limited to:

- Selling a package in circumstances in which the seller knows or has reasonable grounds for believing that the package has a negative error greater than twice the tolerable negative error.¹⁴
- Selling a package in circumstances where the seller knows, or has reasonable grounds for believing, that the package comes from a batch of packages which has failed the reference test.¹⁵
- Offences relating to E-marks.¹⁶

Recommended Changes*:

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 Act¹⁷ specifically the removal of imprisonment. However, there are a few deviations from 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
Section 29 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)	For second or subsequent offence, Imprisonment up to one year or fine or both	Penalty: up to INR 2 Lacs. Removal of 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.
Section 36(1) Penalty for importing, selling etc. of non- standard packages in declarations (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)	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	Penalty: up to INR 2 Lacs. Removal of 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.
Section 36(2) Penalty for selling etc. of non-standard packages in quantity (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)	For second or subsequent offence, Fine: up to INR 1,00,000 or with imprisonment up to one year or both	Penalty: upto INR 2 Lacs. Removal of 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.

10 Available at <https://www.legislation.gov.uk/uksi/2006/659/made>

11 Regulation 18(2) and 18(3)

12 Regulations 13(2), 13(3) and 13(4)

13 Regulation 18(1)

14 Regulation 14(1)

15 Regulation 14 (2)

16 Regulation 15

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

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	Company may nominate at a person at the managerial level instead of at director level	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.
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* 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.

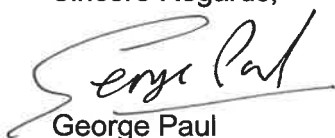
3. Changes to the current Legal Metrology Notice format: The format of LM Notices that we have received directs a manufacturer to either compound the offence against which the notice is issued or face prosecution. The notice does not provide an opportunity of explaining the alleged contravention or mention 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.

We are sanguine that our recommendations on the matter pertaining to the Decriminalisation of LM Act will be considered positively and lead to improving the business climate nationally.

Sincere Regards,



George Paul
CEO
MAIT