

CHAPTER VI

PROSECUTION AND COMPOUNDING OF OFFENCES

The procedure for investigation of offences under Legal Metrology Act, 2009 is not prescribed by any of the Rules framed thereunder and hence there is no other way but to adopt the procedure as provided under Criminal Procedure code (Cr.PC). As per the provisions of Section 15 of the Act and the Section 157 of Cr.PC, As Legal Metrology officer, on receipt of information about commission of an offence or otherwise, has reason to suspect that offence has been or likely to be committed, shall proceed to the spot to investigate the facts and circumstances of the case and if necessary shall take all necessary steps for discovery of the offender. Provided that, if it appears to the Inspector that there is no sufficient ground for entering into investigation, he should not investigate the matter.

The Legal Metrology officer should maintain a register of complaints and information so received which is required to be properly investigated. Sections 100,102 of Cr.PC and Section 15 of the Legal Metrology Act, 2009 authorizes the officers to seize weight or measure, packaged commodities and documents or articles. Once seizure is affected, the process of discovery of accused should be initiated which may involve:

1. Acquiring the proof of ownership of business, the weights or measures or other goods or documents, in respect of which offence is detected. The proof shall be legal documents which may disclose the identity of the offender.
 - i. If the accused firm is a proprietary concern, and if shops and Establishments Act is applicable, Legal Metrology officer shall obtain/procure valid copy of shops and Establishments Act license. Where Shop Act is applicable, but license is not available, Legal Metrology officer shall procure any such license/document issued by competent authority, which indicates the status of the firm and name of the owner. In case, Shops and Establishments

Act is not applicable, the Legal Metrology Officer shall take undertaking from the accused regarding the ownership of the firm.

ii. If the accused firm is a partnership concern, the Legal Metrology Officer shall procure valid copy of partnership deed. He shall ensure that all the partners are alive and are responsible for the offence. In addition, he shall obtain any other valid license/ document which contains the names of the partners.

iii. If the accused firm is private limited or public limited and the company has nominated any director as per Rule 29 of the Legal Metrology (General) Rules 2011 made under Section 49 of the Legal Metrology Act 2009, the Legal Metrology Officer shall procure a copy of such nomination. If no person is nominated by the accused company, he shall procure existing list of directors of the company along with memorandum of association and article of association. If there is any discrepancy in the names of the directors between the two documents, he shall procure form number 32 as per Company Act. He shall ensure that all Directors are alive and responsible for the offence.

2. If any other person other than responsible person has abetted the offence, the identity and other details of such person necessary for prosecution should be collected.

3. If a packaged commodities are seized at retailer's premises, Rule 21(5) of the Legal Metrology (Packaged Commodities) Rules, 2011 authorizes the Legal Metrology Officer to make such enquires so as to know the source of the packaged commodities. The enquiries may be made –

i. By procuring purchase bills/ cash memo/delivery challan and details of dealer /distributor/packer/ manufacturer /importer of said goods from which the Inspector shall find out names and address of all the accused in the said case and address correspondence to the dealer/distributor/packer/ manufacturer/ importer of said goods.

During investigation he may avail facility of e-mail and various web site as available on the record of the case and may also take help from concerned Police Station and concerned LMO of that area. In case where accused is located outside the State, he shall make correspondence to the

Controller of the State through the Assistant Controller of the concerned district/division.

Under section 15 (2) of the Legal Metrology Act 2009, every Legal Metrology Officer is authorized to order any person (to whom he believes to be able to produce any documents/register etc. which shall be useful during investigations) to produce before him the documents or any other things connected with the case. Non compliance of such an order would attract the provisions of Section 31 of the Act under which failure to comply with the order of the Legal Metrology Officer or any Inspector to produce before him for inspection any weight or measure or any document, register or other record relating thereto, is punishable with fine which may extend to Rs. 5000/- and for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

If the accused is found committing same or similar offence, within three years from the date on which the first offence committed by the accused was compounded, then it shall be deemed as second or subsequent offence, as prescribed under section 48 (4) of the Legal Metrology, Act 2009 and such case shall be non compoundable, due care shall be taken while compounding. Investigation of any such offence shall be completed in all respect, in consultation with the higher officers by the concerned Legal Metrology Officer. And case be lodged in the court of law within the stipulated limitation period as prescribed.

If, after investigations, it appeared that no offence is committed or likely to be committed in the matter, the facts shall invariably be brought to the notice of the superior higher authorities and their guidance may be sought by the Legal Metrology Officer.

Discreet inquiries shall always be made by the Legal Metrology Officer while interacting with general public and the intelligence so gathered shall be utilized as an input for investigation.

4. In case where smudging of price on the Packaged Commodity is found, the Legal Metrology Officer should investigate as to who had smudged the price. If the retailer is found to have done that then this fact should be mentioned in the inspection report.

5. If a case is booked in warehouse the Legal Metrology Officer shall enquire about the ownership of the warehouse. If the warehouse is on rent, he shall obtain copy of agreement and fix responsibility for the offence accordingly.

Booking of Cases

1. **Inspection of Establishments by Controller/Deputy Controller/Asst. Controller:** The Controller, Deputy Controllers and Assistant Controllers are basically supervisory authorities. They should not maintain any seizure receipt book in their office. Whenever a situation warrants that direct inspection of establishment by these officers is required, they should call the area Inspector along with his **inspection kit** (consisting of seizure receipt book, test equipments etc.). If in any emergency, the area Inspector is not available; another Inspector of neighbouring district within the District only may be called. But in that case the concerned Assistant Controller/ Deputy Controller should note down the reasons in his diary and get written consent of Controller. If the emergency is such that written consent of Controller could not be obtained, verbal consent followed by post facto consent will be allowed. If Inspector other than area Inspector is called by Deputy Controller the same should be intimated to the concerned Assistant Controller also. Whenever the process of inspection and seizure is carried out in presence of Assistant Controller/ Deputy Controller, they should invariably sign the related documents. Deputy Controller, Assistant Controllers and Inspectors working in head office are not allowed to go for field inspections unless specifically authorized. In case of authorization, specific instructions as regards to, which seizure receipt book and test equipments are to be used, will be given. The controller can conduct inspection in whole of the State with any Deputy Controller, Assistant Controller or Inspector and take action as noted above.

2. **Inspection by squads:-**In case of Inspections by squads, the action taken should be intimated to the area Inspector, concerned Assistant Controller and Deputy Controller. The area Inspector, on receipt of such intimation should report the same to the Court having jurisdiction if required.

3. **Inspection in campaigns:-**In case of campaigns, participating Inspectors may use seizure receipt books allotted to them. The cases booked vide seizure receipts used by Inspectors other than area Inspectors, should be handed over to the area Inspector along with copy of the seizure, inspection report and other related records as soon as the campaign is over. These cases should be recorded in the case register of area Inspector and other participating Inspectors should not record these cases in their case registers but mention this special duty in their Daily Diary Report being maintained by them.

4. **Processing and investigation of cases registered:** After recording case in the prosecution register, Area Inspector will send a show cause notice to the accused in Performa as provided in **ANNEXURE-XVI** indicating the details of violation and asking to show cause as to why he should not be prosecuted for the same. Further he may be asked to furnish the names and addresses of the responsible persons of the accused firm and proof thereof. If the defaulter firm does not provide such information then action against the person incharge can be initiated as envisaged in Section 31 & 41 of the Act. Section 31 provides penalty for non production of documents and Section 41 provides for penalty for furnishing false information. Such details as required can also be obtained from licenses issued by different authorities such as Shops and Establishment Licenses, Food Licenses, Licenses issued by Local Authorities like Excise Department and Agriculture Department etc. The accused firm should be asked to submit documentary evidence to support the same. If the names and addresses of responsible persons of such firms or companies are obtained from website/memorandum or articles of association, then further enquiry about the responsibility of conduct of business of such company can be made by sending individual notices as aforesaid. During this enquiry, nomination under the Act can also be checked.

If the violation is such that its primary responsibility lies with somebody else along with the defaulter firm or company, then the Area Inspector should enquire about source of the seized goods. If it is revealed in an enquiry that some more defaulters (wholesaler, distributor, marketer, manufacturer) are involved in the case then the Area Inspector should register

case against such defaulters, as soon as he gets prima facie evidence against them, and process it according to the procedure described in foregoing paras.

In case of violation regarding mandatory declarations on packaged commodities, kept for sale by retailers or wholesalers in addition to action against such defaulters, if the manufacturers name and sufficient postal address is appearing on the packages itself, then case against such manufacturer should also be registered on the same day. If more than one product is seized from a single establishment, for violation of different sections/rules even then, only one case against the defaulter firm should be registered.

5. **Compounding Of An Offence:** If the accused/offender is prepared to admit guilt in reply to the notice in the format as given in **ANNEXURE-XVI** and voluntarily purposes to compound the case in compoundable offences, then the area Inspector would prepare a proposal as per the format given in **ANNEXURE-XVII** for compounding the case and submit it to the concerned Assistant Controller. While submitting such a proposal the area Inspector shall ensure that:-

- (a) Names and addresses of the accused person/firm are correctly mentioned in the proposal.
- (b) Documentary evidence about the responsibility of accused person/firm is attached along with the proposal.
- (c) Sections/Rules violated are correctly mentioned in the proposal.
- (d) The name of the person signing the consent letter and his position in the accused firm is mentioned in it. (supporting documents should be attached)
- (e) Declaration that the offence is first offence during last 3 years and due care will be taken for not repeating the same in future is mentioned in consent letter.
 - For deciding whether a particular offence is first or the second the details of violation should be considered for example if first offence is detected and compounded, was for not writing date of manufacture and an offence subsequently detected was not

for writing e-mail address. If these offence are committed within a span of three year and violated the same Section 18 of the Legal Metrology Act, 2009, then it will be treated a first offence.

- Period of 3 year should be counted from the date on which compounding amount for the first office was deposited.
- (f) Linking documents such as purchase bills produced by retailers, wholesalers etc., in linked cases are attached along with the proposal.
- (g) Present status of other accused persons such as retailers, wholesalers and manufacturers in linked cases along with necessary documents is written in proposal.

The Assistant Controller, on receipt of such a proposal for compounding the case, shall pass an order within 15 days after examining the matter in detailed as per the format given in **ANNEXURE-XVIII**. The compounding authority while determining the amount of compounding fee shall have regard to the seriousness and nature of the offence and evidence on the record.

The Act prescribes the maximum amount of compounding fee for each offence, the details of which have been given in a table form in the last part of this chapter.

The fee for compounding of offences in state of Punjab has also been provided and specified in SECHDULE XIX of the Punjab Legal Metrology (Enforcement) Rules 2013.

The Compounding authority shall get the necessary entries made in the compounding case register as given in **ANNEXURE-XIX**. The order passed shall be forwarded to the concerned Legal Metrology Officer for serving the same to the accused within 7 days. It is advisable that the compounding order in respect of an accused from outside of the State should be in English. If such an order is passed in the state language then the translated version of the same should be conveyed to him. If the Compounding fee is not deposited within the time as specified in the order or no reply is received from the accused then the

Legal Metrology Officer should file the case in the court of law keeping in view the period of limitation.

In case of offences, compoundable only by Director of Legal Metrology, Government of India, New Delhi, as prescribed, the case should be forwarded through the Controller. For this purpose the Assistant Controller should critically scrutinize these cases and proposals send by the area Inspector and forward the same to Controller along with his comments and recommendations. If any discrepancy is noticed by him, he should get it complied with and then send it to Controller office. The Controller, on receipt of such a proposal and after examining the same, shall forward to the Director Legal Metrology, Government of India, New Delhi for further necessary action at their end, with intimation to concerned Assistant Controller and Area Inspector.

Closing of Case

If upon investigation it is found, that the product seized is duplicate/spurious, or due to any other reason, that no case is made out, then the Inspector shall submit the proposal for closing the case, with proper justification, to the Assistant Controller. The proposal shall be critically be analyzed by Assistant Controller, who shall forwarded the complete case file to the Controller for further necessary action, with clear remarks/comments and recommendation, on the proposal of the Inspector for closing the case. The Controller, on receipt of such a proposal for closing the case, shall pass an order within 15 days after examining the matter in detailed The reasons for closing the case must be mentioned in order with proper justification. The decision taken by the Controller should be communicated to the concerned Inspector and the person involved.

How to Club Offences

It is often observed that a particular package manufactured by some manufacturer is seized at more than one place. If the manufacturer compounds a case booked at a particular place and requests to club other cases with it, then following procedure should be adopted:-

1. All the products manufactured/distributed till the date on which the manufacturer gets the information about violation of Act/Rules by him,

will be considered for clubbing. While passing order to club such offences, a note of documents/facts verified should taken in the order.

2. If the cases requested for clubbing are booked by Inspectors from different places within the Division, then concerned Asst. Controller or Deputy Controller will pass the Clubbing order.
3. If the cases requested for clubbing are booked by Inspectors from different places from different Divisions, then the Controller or the Deputy Controller H.Q. if authorized by the Controller, will pass the Clubbing order.

In order to issue a clubbing order, following documents should be verified:

- A request letter from the concerned offender for clubbing
 - A copy of seizure receipt of the case which is already compounded.
 - A copy of compounding order, and
 - A copy of challan as a proof for payment of compounding amount. If the Inspector receives a clubbing request, he should verify the papers and make sure that the commodity in packaged form, section/rule violated in the case booked by him is the same as that in the case which is already compounded, then the Inspector shall forward the case to the Assistant Controller with his recommendations. The Assistant Controller shall send the proposal to Deputy Controller with his remarks.
- Controller on receipt of such proposal from different Inspectors shall take into consideration all documentary proofs and take decision regarding clubbing of the cases and pass an order to that effect, within 15 days. The copies of the order shall be sent to all concerned. On receiving the order, concerned Inspector shall close the case after taking necessary entries in the Prosecution Case Register and shall return seized goods to the concerned. Provided that the cases of retail/wholesale dealers involved in these cases shall be treated as separate cases and compounded in usual manner.

Disposal of Cases

If compounding notice sent on the addresses of the accused is returned with the postal remarks such as incomplete address, deceased, not available at address, left address, in such cases the following procedure shall be adopted:

1. If the accused is in local jurisdiction of the Inspector and he is not traceable, the Inspector should visit the place of the accused and make an enquiry for tracing him. If he is not traceable, inspection report about the facts should be drawn. The proposal for closing the case should be submitted to the appropriate compounding authority along with such inspection report.
2. If the accused is not in his local jurisdiction but within the State, the Inspector should report this fact to the concerned Assistant Controller. Assistant Controller should write to the concerned Assistant Controller, with the request to find out and make available the details of the accused, through local Inspector.
3. If the accused is from outside the State, the Inspector should report this fact to the concerned Assistant Controller and the Assistant Controller should write to the Controller of the concerned State through with the request to find out and make available the details of the accused.
4. The Inspector should make efforts to find out the addresses and details of the accused person from other sources such as police, Shops and Establishments organization, Registrar of companies, etc.
5. The Inspector may also try to find out the details of the accused by availing the facility of electronic media such as internet, mobile, telephone, etc.
6. Despite all the aforesaid efforts, if the details of accused could not be made available within six months from the date of prosecution, the matter shall be reported to the compounding authority for close of case.
7. If the compounding authority Assistant Controller on examining the report of the Inspector, other material facts and circumstances of each case, may forward the case to the Controller for closing the case.

Controller will pass the order for closing the case and forward a copy to Assistant Controller and concerned area Inspector.

8. On the basis of such order, the Inspector can take entry in the register along with details of such order and mark the case in the register as “closed.”

Filing a Case In The Court Of Law

1. If the offence is non-compoundable, the complaint shall be filed in the court of law within the period of limitation.
2. If the offence is compoundable, however, the accused even after notice is not willing to compound the offence or failed to reply within specified period or he did not deposit the compounding amount as ordered by compounding authority within the specified period, concerned Inspector shall proceed for filing the case in the court of law, immediately by following the procedure as given below:
 - (a) before filing a case in the Court of law, the Inspector shall intimate the accused in writing in the format given in ANNEXURE XI
 - (b) if the accused expresses in writing that he is willing to compound the offence at this stage, the Inspector should follow the procedure for compounding the offence
 - (c) if there is no possibility of compounding the offence, the Inspector should file the complaint in the format as given in ANNEXURE XII, in the Court of law, along with copies of necessary documents.
 - (d) the Inspector should note down the court case number (C C No.) and other details in the case register maintained in the office. If the accused desires to compound the offence after filing the complaint in the court, the accused may be asked to make an application to the court to permit him for compounding the offence at Departmental level and the Inspector should thereafter act as per the directions of the court.

- (e) if a case pending in court is subsequently compounded, the Inspector should make a request in writing to the court to stop further proceedings in the format as given in ANNEXURE XIII
- (f) the Inspector should carry out his role as a complainant and Assistant Public Prosecutor in the case. The assistance of Public Prosecutor shall be taken as per the necessity in the matter.
- (g) in the event of transfer of the concerned Inspector who has lodged the case in the court, he shall hand over all the case papers to the succeeding Inspector. The succeeding Inspector shall intimate in writing to the court about the transfer and thereafter he shall attend the court accordingly.
- (h) after the decision of the court, a proper note should be taken in the Prosecution Register.
- (i) if the accused is acquitted or the punishment awarded by court is not satisfactory, then the Inspector in consultation with Public Prosecutor should make proposal to the higher authority for consideration whether appeal or revision application is to be filed against the order of trial court, and proceed further accordingly within the stipulated time for the same.

Disposal of Seized Articles

Seized articles or goods shall be disposed off in the manner as provided in Rule 11 of the Punjab Legal Metrology (Enforcement) Rules, 2013 and Rule 22 of the Legal Metrology (General) Rules, 2011 as the case may be. No seized goods or articles shall be disposed off during pendency of court proceedings. In case of specific court order, Inspector should deal with it accordingly and otherwise deal with it as per the orders of the Controller or Deputy Controller or Assistant Controller as may be prescribed by the Controller.

Appeal

Appeals shall be dealt with as per provisions of Section 50 of the Act. Every decision or order of Legal Metrology officer or Controller will be

appealable to the next higher authority within 60 days of passing the order or decision. The order/decision of Legal Metrology officer is appealable to the Controller Legal Metrology and that of the Controller to the Secretary Food Civil Supplies & Consumer Affairs. The Appellate Authority shall call for the records from its officer for examination of appeal and shall pass appropriate orders.

Every such appeal shall be preferred in form set out in **SCHEDULE XVIII** of the Punjab Legal Metrology (Enf.) Rules, 2013.

And shall be accompanied by a copy of the order appealed against and fee of Rs. 500/-(Five hundred) in case of appeal to Government and of Rs. 200/-(Two hundred) in case of appeal to the Controller. This fee is payable either in cash or by affixing court fee stamps for the said value as the case may be.

Contravention and penalties under the Legal Metrology Act 2009 & Rules made there under.

S. No.	Penalty Section	Type of Contravention	Section Contravend	First Offence		Second/Subsequent Offence	
				Fine (In Rs)	Imprisonment	Fine (In Rs)	Imprisonment
1	25	Use of non-standard weight or measure	8(3)	Up to 25,000	-		Up to 6 months and also with fine
2	26	Alteration of weight and measure	26	Up to 50,000	-		Not less than 6 months, may extend to 1 year, or with fine, or both
3	27	Manufacture or sale of non-standard weight or measure	8(4)	Up to 20,000	-		Up to 3 years, or fine, or both
4	28	Making any transaction, deal or contract in contravention of the prescribed standards	10	Up to 10,000	-		Up to 1 year, or fine, or both
5	29	Quoting or Publishing, etc, of non-standard units	11	Up to 10,000	-		Up to 1 year, or fine, or both
6	30	Transactions in contravention of standard weight or measure	12	Up to 10,000	-		Up to 1 year, or with fine, or both
7	31	Non-production of documents, etc.	15(2)	Up to 5,000	-		Up to 1 year and also fine
8	32	Failure to get model approved	22	Up to 20,000	-		Up to 1 year and also fine

S. No.	Penalty Section	Type of Contravention	Section Contravended	First Offence		Second/Subsequent Offence	
				Fine (In Rs)	Imprisonment	Fine (In Rs)	Imprisonment
9	33	Use of unverified weight or measure	24	Not less than 2,000, may extend up to 10,000			Up to 1 year and also fine
10	34	Sale or Delivery of commodities, etc., by non-standard weight or measure	34	Not less than 2,000, may extend up to 5,000			Not be less than 3 months may extend to 1 year, or fine, or both
11	35	Rendering services by non-standard weight, measure or number	35	Not less than 2,000, may extend up to 5,000			Not be less than 3 months may extend to 1 year, or fine, or both
12	36(1)	(1) Selling, etc., of non-standard packages	18(1)	Up to 25,000		*For Second offence Up to 50000	-
						*For Subsequent offence shall not be less than 50000 may extend to 100000	Or up to 1 year, or with both
	36(2)	(2) Lesser net content than declared on package	36(2)	Not be less than 10,000 may extend to 50,000		Up to 1,00,000	Or up to 1 year, or with both
13	37(1)	(1) Contravention by Government approved Test Centre	24	Up to 1,00,000			
	37(2)	(2) Wilful verification/stamping of any weight & measure in contravention of the Act or rules there under	24	Up to 10,000	Up to 1 year or with fine or with both		
14	38	Non-registration by importer of weight or measure	19	Up to 25,000			Up to 6 months, or with fine or, both
15	39	Import of non-standard weight or measure	20	Up to 50,000			Up to 1 year and also with fine
16	40	Obstructing Director, Controller or Inspector	15		Up to 2 years		Up to 5 years
17	41(1)	(1) Giving false information or false return	15	Up to 5,000			Up to 6 months and also fine
	41(2)	(2) Maintaining false record & registers	17	Up to 5,000			Up to 1 year and also with fine

S. No.	Penalty Section	Type of Contravention	Section Contravend	First Offence		Second/Subsequent Offence	
				Fine (In Rs)	Imprisonment	Fine (In Rs)	Imprisonment
18	42	Vexatious search	42	Up to 10,000	Up to 1 year, or with fine, or with both		
19	43	Verification in contravention of Act and rules	43	Up to 10,000	Up to 1 year, or with fine, or with both		
20	44	Counterfeiting of seals, etc.	44		Not be less than 6 months may extend up to 1 year		Not be less than 6 months may extend up to 5 years
21	45	Manufacture of weight and measure without license	23	Up to 20,000			Up to 1 year, or with fine , or both
22	46	Penalty for repair, sale, etc., of weight and measure without license	23	Up to 5,000			Up to 1 year, or with fine , or both
23	47	Tampering with license	47	Up to 20,000,	Or up to 1 year, or with both		
24	53(3)	<p>Contravention of any rule of Punjab Legal Metrology (Enforcement) Rule 2013, made under section 53(3) of this Act</p> <p>(1) Rule 3(4) – Non submission of application for renewal of license</p> <p>(2) Rule 3(5),5 – Non maintenance of registers</p> <p>(3) Rule 3(8) – Non exhibition of license at premises</p> <p>(4) Rule 6(1) – Non reporting 30 days before due date for re-verification for weight &measure which cannot or should not be moved from location</p> <p>(5) Rule 13(3) – Dismantling/Removing of verified weight or measure without prior intimation</p> <p>(6) Rule 13(4) – Not keeping one tenth or one tonne (whichever is</p>	53(3) & Rule 15	Up to 5,000			

S. No.	Penalty Section	Type of Contravention	Section Contravend	First Offence		Second/Subsequent Offence	
				Fine (In Rs)	Imprisonment	Fine (In Rs)	Imprisonment
		<p>less) verified weights at the sight for checking the accuracy</p> <p>(7) Rule 13(5) – Not keeping verified, 5 litre/10 litre capacity measure to check the delivery on daily basis at the petrol/diesel pump</p> <p>(8) Rule 14 – Non exhibition/display of verification certificate at the site of use of any weight & measure</p>					
25	52(3)	<p>Contravention of rule made under section 52(3) of this Act</p>	52(3)	Up to 5,000			
		<p>*Legal Metrology (Packaged Commodities) Rules 2011 :-</p> <p>(1) Rule 27 – Non registration of manufactures, packers and importers</p> <p>(2) Rule 28 – Non registration of shorter address permissible</p>	Rule 32(1)	4,000			
		<p>(3) Rule 5 – Packing in non standard pack</p> <p>(4) Rule 18(2) – Charging price exceeding MRP</p> <p>(5) Rule 18(5) & (6) – Obliterating/Smudging or Altering the retail sale price of package, etc.</p> <p>(6) Rule 18(8) – Non keeping of verified digital weighing scale, capacity 50kg e-value 10g, for filling by bottling plants, distributing by retail dealers and even up to deliverymen of LPG cylinders, etc.</p>	Rule 32(2)	2,000			