
Compliance and Enforcement Framework
for
Postal & Courier Operators

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1. Introduction

The Communications Authority of Kenya is established under the Kenya Information and Communications Act (KICA), 1998 as the regulatory body for the information Communication and Digital Economy sector in Kenya. The Authority facilitates development of the Information Communication and Digital Economy sectors including telecommunications, broadcasting, Postal & Courier services, cybersecurity and electronic commerce.

This document reinforces the enabling compliance and enforcement regulatory rules for Postal & Courier operators. The framework provides the basis for enforcing laws and policies that promote order, justice and fairness in the Postal & Courier sub-sector.

1.1. Purpose

The purpose of this paper is to document the process of compliance and enforcement for Postal & Courier operators in Kenya.

1.2. Scope

The licence compliance and enforcement framework for Postal & Courier operators applies to all entities offering Postal & Courier services in Kenya.

2. Licensing of Postal & Courier Operators

2.1. Legal Basis

Sections 47 to 76 of the Kenya Information and Communications Act, 1998, provide for the provision of Postal & Courier services in Kenya.

Section 49 of the Act is instructive that that no person shall operate or provide postal services except in accordance with a valid licence. The Act provides further provides guidance in Sections 77 to 82 on how the Authority shall undertake the granting of licences.

2.2. Market Structure

The market structure for Postal & Courier services is shown in the table below:

	Categories	Responsibility	Annual operating fees	License term (years)
1.	Public Postal Operator	Responsible for USO and has a wide International and domestic coverage	KShs. 500,000 or 0.4% of turnover of audited accounts whichever is higher	25
2.	International Operator	Operates internationally with a global and domestic network	KShs. 100,000 or 0.4% of turnover of audited accounts whichever is higher	15
3.	National Operator	Operates within the domestic market.	KShs. 30,000 or 0.4% of turnover of audited accounts whichever is higher	15

2.3. Licensing Process

The current procedure for licensing of Postal & Courier operators and the Postal & Courier application form can be downloaded from the Authority's website. All applicants should meet the following minimum conditions:

- 1) The entity applying should be registered in Kenya as a limited liability company, sole proprietor, co-operative society or partnership.
- 2) The entity should have a duly registered office and permanent premises in Kenya.
- 3) In the case of a limited Company, certificate of incorporation should be provided.
- 4) Co-operative Societies should provide proof of registration by the Ministry responsible for Co-operatives, and attach a copy of its by-laws and Minutes of the most recent Annual General Meeting.
- 5) The entity should provide a PIN certificate and valid Tax Compliance Certificate

Upon receipt of a duly completed application, the application shall be taken through the licensing process which is summarised below:

- 1) Payment of the non-refundable application fee.
- 2) Consideration of the application by the Business Process Committee and Communications Licensing Committee.
- 3) Publication of a notice in the Kenya Gazette of the Authority's intention to grant the licence. The Notice will provide for 30 days to receive representations from the public.
- 4) Approval of the application by the Authority's Board of Directors
- 5) Issueance the applicant with an offer to grant the licence
- 6) Acceptance by the applicant of the Authority's offer through payment of regulatory fees
- 7) Grant of the licence.

3. Obligations of Licensed Postal & Courier Operators

Postal & Courier operators are required to observe a number of requirements as indicated in the Act, the Regulations and licence conditions.

3.1. Requirements under KICA

Section 52 of the Act obligates the Postal and Courier operators to undertake the following :

- 1) To provide courier services to any person, who requests for such services where available;
- 2) To notify the Authority forthwith of the current tariffs charged for postal services and changes to the tariffs for each different type of postal service provided to each location within thirty days of such changes;
- 3) To display prominently at each premises from which it conducts its business, current tariffs for each postal service to various destinations;
- 4) To comply with all applicable and relevant laws, rules and regulations including, but not limited to the law relating to customs and imports and exports with regard to receipt and dispatch of postal articles to and from Kenya;
- 5) To furnish the Authority with a copy of its latest audited annual accounts and financial statements of the business with the application for renewal of its licence;
- 6) If the licensee is a company with a share capital, to provide documentary evidence of current status of shareholding together with the applicant for renewal of its licence;

- 7) Where the licensee intends to enter into any association, contract or arrangement with a third party, to provide postal services which only the licensee is permitted under its licence to provide, to seek approval from the Authority before entering into such association, contract or arrangement;
- 8) To exercise its rights and powers and perform its duties and obligations under the licence in such manner as is consistent with the agreements or treaties to which Kenya is a party;
- 9) Not to enter into any arrangement with any person running an international postal service on terms and conditions which the Authority deems to be unfavourable to the national interest.

3.2. Licence Conditions

In addition to the compliance requirements provided for in the Act, the licence granted to a Postal & Courier Licensee has terms and conditions outlining the obligations of the licence holder. These include but are not limited to:

- 1) Provide postal and courier services for items between 0 gm and 32 Kgs. All items above 32Kgs are considered to be cargo and are not subject to the postal regulatory framework
- 2) Prior to commencement of licensed services or adjustment of the tariffs, or the terms and conditions of an existing service, to file with the Authority:
 - a. The description and scope of the service;
 - b. Terms and conditions of the service;
 - c. Charges, (excluding special offers), upon which it proposes to offer the licensed Services.
- 3) Endeavour to achieve the quality of service requirements that have been specified by the Authority
- 4) Not intentionally interrupt nor suspend the provision of any type of licensed service without prior and due formal notification to the Authority and licensees affected by such interruption or suspension
- 5) Not to show undue preference to, or exercise undue discrimination against, particular persons or persons of any class or description in respect to the provision of the Licensed Services.

- 6) Establish and maintain efficient information services to assist any person to whom it provides licensed services to answer questions regarding products, services, and any other reasonable questions relating to the licensed services
- 7) Payment of all fees indicated in the licence
- 8) Within nine months from the effective date of the licence, submit the accounting principles relating to the running of the licensed services and which allow the recording of investments, expenses and revenues in accordance with accounting standards recognized in Kenya
- 9) Within 60 days of the end of each fiscal year of the licensee, submit the audited financial statements for the preceding year
- 10) Maintain such information as will enable the Authority to carry out its functions under the Act in such manner and at such times as the Authority may request
- 11) Permit the Authority to inspect its premises, facilities, files, records and other data to enable it to exercise its functions under the Act
- 12) Ensure compliance with all laws and regulations related to provision of services under the license
- 13) Ensure that the operating environment meets the minimum standards indicated in the licence.
- 14) Ensure the integrity of all postal courier items in its care
- 15) Put in place systems and procedures for handling of undeliverable items
- 16) Take all proper and adequate safety measures to safeguard life, property and postal articles against any danger.
- 17) Not to handle any prohibited items except in accordance with provisions in the schedule of prohibited annexed to the licence.
- 18) Notify the Authority of changes in shareholding which meet the thresholds indicated in the licence
- 19) Not to assign, delegate, transfer or encumber in any manner the rights, interests or obligations under the licence without the prior, express and written consent of the Authority
- 20) Not engage in any activities whether by act or omission, which have or are intended to or likely to have, the effect of unfairly preventing, restricting or distorting competition in Kenya (or a part of it), in relation to any business activity relating to the licensed services.

- 21) Not to subsidize or cross-subsidize, or permit itself to be subsidized or cross-subsidized or give or receive undue preference to or from as the case may be, any of its associated businesses or persons as concerns the provision of the licensed services and/or any other licenses granted to the licensee by the Authority.
- 22) Provide interconnection with other licensees upon reasonable request
- 23) Notify the Authority within the set timeline of any of the agreements or arrangements which meet the thresholds indicated in the licence Employ reasonable measures and actions to ensure the privacy and confidentiality of proprietary information and business secrets obtained in the course of its business from any person to whom it provides services
- 24) Apply the dispute settlement mechanism set out in the Act for any dispute or disputes that arise out of the provisions of the license
- 25) Participate in enabling the provision of Universal Access/Service.

4. Licensee Compliance Monitoring

4.1. Legal Basis

Section 83A (1) of KICA on enforcement of licence conditions provides that, where on its own motion or consequent upon a complaint made by any person, the Authority:

- 1) is satisfied that a licensee is contravening or has contravened the Act, or any other written law or any of the conditions of that licence;
- 2) notifies the licensee in writing, specifying the acts or omissions which, in its opinion constitute or would constitute contravention of the Act or the licence;
- 3) requires the licensee to remedy the contravention within such period as the Authority may specify in the notice, then if the licensee fails to remedy the contravention within the prescribed period without reasonable cause, such a licensee shall be liable to a penalty of five hundred thousand shillings up to a maximum of zero decimal two per centum of the annual gross turnover of the offending licensee in the preceding year for every year or part thereof in which the offence is continuing and such penalty shall be debt owed to the Authority and recoverable summarily.

Notwithstanding the provisions the above subsection, any licensee aggrieved by a decision of the Authority under the section may appeal to the tribunal within fifteen days of receipt of the notification thereof by the Authority.

4.2. Compliance Monitoring Process

4.2.1. Designation of Inspectors and Right of Access

The Authority may designate officers administratively for purposes of carrying out inspections;

- 1) The inspectors will have identity cards which shall be produced by the inspectors at the request of any person in charge of any place that is to be inspected.
- 2) An inspector may at all reasonable times enter into any premises owned or controlled by a licensee in which the inspector has reasonable grounds to believe that has any document, information, or apparatus relevant for ensuring compliance with the Act and to examine such document, information or apparatus or remove the document, information or apparatus for examination or reproduction as the case may be.
- 3) Where an inspector has reason to believe that there is any communication equipment or interference causing apparatus, he may examine such equipment, apparatus, logs, books, reports, data, records, documents or other papers and remove such information, document, apparatus, or equipment for examination or reproduction.
- 4) An inspector shall record and sign for any information, document, article, apparatus or equipment removed by him or her and shall leave a copy of the document recording that removal.
- 5) For the purpose of exercising, performing and discharging the powers, functions or duties of the Authority under the Act an inspector, may by notice in writing require any person to;
 - a. Furnish him or her within such time and at such place as may be specified in the notice, any document specified or described in the notice which is in the custody or control of such a person;
 - b. Produce for inspection any book, return, account or record in his possession or control; or
 - c. Produce for inspection any equipment, apparatus or systems.

It is anticipated that licencees shall ordinarily not obstruct the course of regulatory mandate in that licensees and their authorized persons shall allow inspectors to access their facilities at reasonable times for the purpose of enabling the inspectors to carry out inspection and verification, including visits to premises and facilities and the inspection of equipment and documents.

An inspector shall not have the authority to compel any person, for any reason, to produce any document which he could not be compelled to produce in any civil proceedings.

4.2.2. Investigations by the Authority

The Authority is at liberty to commence investigations on a licensee's compliance where it has reasonable cause to believe that a licensee has failed to comply:

- 1) With the construction, installation or service provision requirements issued by the Authority; or
- 2) Has contravened any condition of the licence issued by the Authority; or
- 3) With any of the performance obligations under the Act, or its licence conditions.

The Authority shall in carrying out investigations on any matter under the Act take into account the following factors:

- 1) Any representation made to the Authority by or on behalf of a person whom the Authority considers to have an interest in the matter which is the subject of the representation; or
- 2) A complaint by any customer of the licensee or a member of the public to the Authority in relating to the services provided by a licensee; and
- 3) The Authority's necessary inquiries and appropriate measures to be taken as the circumstances of the case may require.

4.2.3. Compliance Information

As stipulated in the Licence Conditions:

1. The Licensee shall maintain such information as will enable the Authority to carry out its functions under the Act in such manner and at such times as the Authority may request.
2. The Authority shall have the right to request the Licensee to submit periodic reports, statistics and other data as well as request additional information with a view to supervise and enforce effectively the terms of this License.

3. In particular, by the 15th July of every year or as may otherwise be prescribed by the Authority, the Licensee shall submit an Annual Compliance Report detailing the performance of the previous operational year ended 30th June.
4. The Authority shall review the Compliance Report and:
 - a. If the Licensee is compliant a Compliance Certificate in respect of compliance for the year under review will be issued and;
 - b. If the Licensee is non-compliant it will be called upon to remedy the area of non-compliance in accordance with the provisions of this License and the Act.
 - c. In addition, the Licensee shall on a quarterly basis submit the following compliance reports:
 - i. Network expansion, Traffic volume and revenue reports;
 - ii. Consumer complaints statistical reports; and
 - iii. Report on undeliverable items
5. In making a request for information, the Authority will ensure that no undue burden is imposed on the Licensee in procuring and furnishing such information, unless the Authority considers such information is essential to enable it to exercise its functions under the Act.
6. The Authority shall have the right to publish information which it receives under this Condition unless, following representations by the Licensee, the Authority is satisfied that the information is of such confidential nature that disclosure would have a material adverse effect on the Licensee's business.
7. The Authority shall furnish the Licensee with the format in which the aforesaid reports should be submitted.

4.2.4. Enforcement of Licence Conditions

Section 83A of KICA provides that:

- (1) Where, on its own motion or consequent upon a complaint made by any person, the Authority:

(a) is satisfied that a licensee is contravening or has contravened the Act, or any other written law or any of the conditions of that licence;

(b) notifies the licensee in writing, specifying the acts or omissions which, in its opinion, constitute or would constitute contravention of the Act or the licence;

(c) requires the licensee to remedy the contravention within such period as the Authority may specify in the notice, then if the licensee fails to remedy the contravention within the prescribed period without reasonable cause, such a licensee shall be liable to a penalty of five hundred thousand shillings and such penalty shall be a debt owed to the Authority and recoverable summarily.

(2) Notwithstanding the provisions of subsection (1), any licensee aggrieved by a decision of the Authority under this section may appeal to the tribunal within fifteen days of receipt of the notification thereof by the Authority.

4.2.5. Revocation of Licence

Section 51 (3) of KICA provides that the Authority may revoke a licence to provide postal services or vary or modify any conditions attached to it. Notwithstanding any other Condition in the license, the Authority may at any time revoke the license by giving six (6) months' notice in writing in any of the following circumstances:

- 1) If the licensee communicates to the Authority in writing on their intention to terminate the licence;
- 2) If the licensee does not provide evidence of commencement of the provision of licensed services nine (9) months from the effective date of the licence;
- 3) If any amount payable under the licence is unpaid forty-five (45) days after the Authority notifies the licensee that the payment is overdue
- 4) If the licensee is dissolved or enters into liquidation, bankruptcy or equivalent proceedings or makes a general assignment for the benefit of creditors
- 5) If the licensee fails to notify the Authority of any of the events specified in the condition touching on notification of change in shareholding, or the condition on prohibition of cross subsidy, and the Authority has given written notice to the licensee that it intends to revoke the license on the grounds set out in these two conditions
- 6) If the licensee has breached a condition in the licence which:

- a. In the Authority's opinion is of a material nature and
- b. The licensee has failed to comply with any notice issued by the Authority under the Act or under the Regulations and thereafter
- c. Has been given by the Authority a further sixty (60) days in which to make representations in relation to the matters set out in the earlier notice

After the end of the six (6) months' notice, the Authority shall publish a notice in the Kenya Gazette stating that it intends to revoke the licence and setting out the reasons on which this intention is based. Revocation of the licence shall take effect seven (7) days following publication of the notice in the Kenya Gazette.

4.2.6. Civil Proceedings

Under Section 5 of KICA, the Authority may institute civil proceedings against any person for remedies that may include injunctive relief, recovery of penalties, specific performance or pecuniary awards or damages.

5. Enforcement of Illegal Operators

The Authority undertakes investigations on offences under the Act, its attendant regulations and other statutes of concern. The Authority works with the Directorate of Criminal Investigations (DCI) and the Office of the Director of Public Prosecutions (ODPP) on prosecution of criminal matters relating to the Authority.

Section 49 of the Act provides that no person shall operate or provide postal services except in accordance with a valid licence. A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both. Provision of postal services without a valid licence is therefore a criminal offence and thus subject to the provisions of the Penal Code and the Criminal Procedure Code.

Sections 89 and 90 of the Act allow the Authority the rights of entry and search of premises and to examine and test any station or apparatus or obtain any article or thing found in such premises, vessel, vehicle or aircraft subject to a search warrant issued under the provisions of this section of the Act.

A search warrant granted under section 89 may authorise the person or persons named in it to seize and detain, for the purposes of any relevant proceedings, any radio communication apparatus, telecommunication apparatus, article or other thing found in the course of the search carried out in pursuance of the warrant which appears to have been used in connection with or to be evidence of the Authority of any offence under this Act.

6. Glossary

Act	Kenya Information and Communications Act, 1998.
Authority	The Communications Authority of Kenya (CA)
Contravention	Non-compliance with or breach of any of the conditions of a licence and the provisions of the Act or Regulations
Enforcement	Includes administrative actions of the Authority and any other action taken for the purposes of ensuring compliance with of the Act or Regulations
Licence	Postal and Courier operator licence issued by the Authority to provide services as prescribed in the Act
Licensee	Any person licensed under the Act
Monitoring	The powers of the Authority to verify compliance with the provisions of the Act, Regulations and Licenses
Person	A general term used to describe an individual or entity that has been licensed by the Authority for use or to provide a specific radio communication service