

IN EXERCISE of the powers conferred by sections 59 and 66 of the Kenya Information and Communications Act, 1998, the Minister for Information and Communications, in consultation with the Communications Commission of Kenya, makes the following Regulations:—

THE KENYA INFORMATION AND COMMUNICATIONS (POSTAL AND COURIER SERVICES) REGULATIONS, 2010

1. Citation.

These Regulations may be cited as the Kenya Information and Communications (Postal and Courier Services) Regulations, 2010.

2. Interpretation.

In these Regulations, unless the context otherwise requires-

“basic postal services” means a defined set of postal services that are essential for public use including postage stamps, private letter boxes, acceptance, conveyance and delivery of letters weighing up to three hundred and fifty grams and postal financial services;

“commemorative stamps” means postage stamps used as a mark of honour for events or matters of national or international significance and for philatelic purposes with a validity period of five years from the date of issue;

“definitive stamp” means stamps depicting nature or natural heritage and which are valid for a maximum of ten years from the date of issue;

“Extra-Territorial Office of Exchange (ETOE)” means an office of exchange operated by or in connection with a postal licensee outside its national territory;

“post code” means a numeric or other code that identifies postal zones and individual post offices within the country for purposes of simplified mail distribution;

“postal licensee” means the Postal Corporation of Kenya and any other organisation licensed to provide unreserved postal services, including courier companies, transporters, freight, forwarders, delivery companies and direct marketing companies that handle postal articles;

“reserved postal services” means-

(a) the collection, transportation, sorting, and delivery, for hire or reward of letters and postcards weighing up to three hundred and fifty grams, but not including exempted letters sent by licensed courier, letters accompanying goods at the time of delivery, newspapers, magazines, books, non-addressed leaflets, catalogues, and trade announcements letters delivered otherwise than for reward, letters delivered by an employee of the sender, letters containing any writ or proceeding from court or any legal instrument of any kind and, letters carried to the premises of a provider of electronic mail service for the purpose of transmission by electronic mail;

(b) the production and issuance of postage stamps, pre-stamped envelopes, aerogram, and international reply coupons bearing the official national coat of arms or the words “Republic of Kenya”, “Kenya,” or “Kenya Post”; and

(c) the rental or lease of private letter boxes or bags including use of postal addresses and post codes;

“terminal dues” means remuneration by the administration of the origin of a postal article to the administration of the destination of the postal article;

“universal postal services” means consistent supply of basic postal services at affordable prices at all points within the country;

“universal service obligations” means obligations assumed by the public postal licensee by virtue of a license granted by the Commission under the Act to provide universal postal services;

“unreserved postal services” means courier services, counter services, money orders, electronic bill payment, parcel collection, transport and delivery, expedited mail service, overnight mail services, and other ways of handling postal articles not defined as reserved postal services.

3. Delivery and acceptance.

(1) A postal article shall be considered—

(a) to have been delivered to the addressee—

(i) when it is delivered into a private letter box or bag of the addressee;

(ii) when it is left at the house, or office of the addressee as set out thereon, or with the employee, agent or any other person authorized to receive it; or

(iii) where the addressee is a guest or is a resident at a hotel, hostel or lodging, when it is left with the proprietor or manager of the hotel, hostel or lodging or with his agent; or

(b) to have been received by a postal licensee when it is deposited into a posting box or handed over to an employee or agent of a postal service operator authorized to receive it.

4. Postal licensees to make rules

(1) A postal licensee shall submit to the Commission, for approval, the terms and conditions of the services it offers relating to—

(a) letters;

(b) parcels;

(c) documents;

(d) financial services;

(e) registered items;

(f) insured items;

(g) post restate;

(h) private boxes or bags; and

(i) any other services as may be introduced by the licensees.

(2) A postal licensee shall, annually, publish the terms and conditions relating to the services prescribed in paragraph (1) that have been approved by the Commission.

5. Issuance of postage stamps.

(1) The public postal licensee shall issue postage stamps that-

(a) are of the best quality;

(b) cannot be easily replicated; and

(c) are engraved with subjects that are consistent with the broad philatelic objectives of Kenya.

(2) When considering any expedient issuance of definitive commemorative and special stamps and related activities, the public postal licensee shall be fair to all interested parties.

(3) A definitive stamp shall—

(a) be issued once in every five years;

(b) run for a period of not less than five years and not exceeding ten years;

(c) concern subject matters approved by the Commission at least fourteen days before the issue; and

(d) bear face values chosen by the public postal licensee.

(4) A commemorative stamp may be issued at such intervals as the public postal licensee determines to be commercially viable and shall –

(a) concern a subject matter approved by the Commission at least fourteen days before the issue; and,

(b) bear face values chosen by the public postal licensee.

6. Sale of postage stamps.

(1) The public postal licensee may enter into arrangement with any person to sell postage stamps on its behalf.

(2) The public postal licensee shall develop standard terms and conditions for resale of stamps and submit them to the Commission for approval.

(3) The Commission shall consider the standard terms and conditions of re-sale of stamps submitted under paragraph (2) and communicate its decision to the public postal licensee within thirty days from the date of submission of the request for approval.

7. Illegal manufacture and unlawful use of postage stamps.

(1) Subject to section 73 of the Act, a person shall not-

(a) without lawful authority, possess any dye, plate, instrument or contrivance used for the printing of postage stamps sold or used by the public postal licensee;

(b) manufacture, or without lawful excuse, possess any dye, plate, instrument or contrivance or part of any such die, plate, instrument, or contrivance or of any materials, for making illegal stamps, or mark in imitation of, or similar to, or purporting to be any stamp or mark of the public postal licensee;

(c) without lawful authority, make on any postage stamp any mark in imitation of or similar to or purporting to be any stamp or mark of the public postal licensee;

(d) without lawful authority, stamp, mark, obliterate, print over or in any other way alter the original appearance of, or caused to be stamped, marked, obliterated, printed over or in any other manner to be altered the original appearance of any unused postage stamp issued by the public postal licensee.

(2) The Commission shall confiscate any dye, plate, stamp, instrument, contrivance, or materials found in the possession of any person in contravention of this regulation.

(3) For purposes of this Regulation, an illegal stamp means any facsimile, imitation or representation, whether on paper or otherwise of any stamp for denoting a rate of postage used by a licensee.

8. Issuance of certificates of posting.

(1) The public postal licensee shall, at the request of the sender of an unregistered postal article intended for transmission by letter box, give the sender a certificate of posting of the postal article upon payment of the prescribed fee.

(2) A certificate of posting of an article shall not entitle the sender to compensation

or to the right of return of an already accepted article and shall not be acceptable as proof of the nature of the contents of the postal article to which it related.

9. Disposing undeliverable postal articles.

(1) Domestic letters or other postal articles that cannot be delivered due to an undecipherable or non-existent address or post code may be opened by a postal licensee and where the letter or article is capable of being delivered based on information in the letter or article; the postal licensee shall deliver the letter or article delivered accordingly.

(2) Where a letter or postal article opened under paragraph (1), is incapable of being delivered, but contains the address of a sender, it shall be returned to the sender.

(3) Every undeliverable postal article that has been opened and remains undeliverable may be kept for a minimum period of three months and may thereafter be destroyed.

(4) Where the letter or postal article opened contains any thing of value or a saleable article, it shall be kept safely and a record thereof opened and maintained by a postal licensee for a period of six months and if not claimed, the contents shall be disposed of in accordance with the Disposal of Uncollected Goods Act. Cap. 38.

(5) Where a letter or postal article is opened as provided by this regulation, the licensee shall affix a mark on the letter or postal article indicating the-

(a) date and time of opening;

(b) period it has remained undelivered;

(c) contents ; and

(d) manner the licensee decides to deal with the undelivered article.

(6) Where a letter or postal article is returned to the sender because of being undeliverable as addressed and the sender refuses to take delivery, the letter or postal article shall be dealt with as provided under paragraph (3).

10. Postal articles of dead persons.

Where a postal licensee is satisfied that the addressee of a postal article is dead, it

may-

(a) retain the postal article and on production of the will or letters of administration to the estate of the addressee together with the written application of one or more of the executors or administrators, deliver or release the article in accordance with such request; or

(b) treat the postal article in accordance with the provisions of these regulations that relate to undeliverable postal articles.

11. Prohibited articles.

(1) All postal licensees shall, where applicable before accepting any item for postage, require the sender to declare its contents.

(2) In accordance with section 58 of the Act, a person shall not send, by post—

(a) any explosive, inflammable, dangerous, noxious or deleterious substance, filthy, sharp instrument not properly protected or any article or thing whatsoever which is likely to injure either other postal articles in the course of conveyance or any person handling the article;

(b) any article for export, import or carriage which is prohibited under any law in Kenya, or which, being subject to any restriction imposed by such law, is transmitted otherwise than in accordance with that restriction;

(c) any article which may not, under the law of the country to which it is addressed, be imported or transmitted by post;

(d) any article sent by post in a stamped or embossed envelope wrapper, card forms or paper in imitation of the one issued under the authority of the public postal licensee;

(e) any article of such form or colour or so made up for transmission by post or that is likely, in the opinion of the postal licensee, to embarrass the officers of the organizations dealing with the article;

(f) any article bearing any stamp or impression of a stamping machine denoting payment of postage or fee which is imperfect or mutilated or defaced in any way or across which is written or printed or otherwise impressed.

(g) any article whereon the payment of any postage or fees purports to be denoted

by any stamp or impression which has been previously used to denote payment of the postage or fees on any other postal article or any other stamp duty or tax;

(h) betting advertisements relating to illegal business;

(i) fortune telling advertisements;

(j) sweepstake or lottery tickets, or advertisement and other notices in relating to sweepstake or lottery that are unlawful;

(k) money lenders circulars that are enclosed;

(l) any article which infringes trade mark or copy right laws;

(m) any sample packets consisting of literature for the blind containing any article liable to customs duty in the country or place of destination;

(n) any living creature, other than bees, leeches and silk worms, parasites or destroyers for noxious insects; and

(o) any other article which, is prohibited from being posted or accepted for transmission by post by the Act or these Regulations.

(3) The prohibited postal articles may, in exceptional circumstances, be sent by post in accordance with the First Schedule to these Regulations.

(4) Any person who contravenes this regulation 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 both.

12. Postal security and safety.

A postal licensee shall take reasonable steps to improve mail security and combat postal crimes that include among others—

(a) mail violation;

(b) mail bombs;

(c) illicit drug trafficking or firearms; or

(d) other crimes relating to postal articles and property.

13. Compensation.

(1) A Postal licensee shall develop and file with the Commission its compensation policies for loss or damage of postal articles.

(2) In the case of an insured postal article compensation shall be limited to the market value of the postal article even where it has been insured in excess of its value.

(3) A postal licensee shall not pay compensation—

(a) where the article is a prohibited article and is not sent as provided under these regulations;

(b) in the case is of an insured postal article, where—

(i) a false statement has been made by the sender or addressee for the postal article;

(ii) the addressee of the postal article has signed and returned the delivery note without objection;

(iii) any bill of exchange, bond, coupon, or other negotiable security particulars that are required to sufficiently identify the contents of the postal article are not presented to the postal licensee; or

(iv) the cover or seal of the article bears traces of theft or damage.

14. Use of technology.

A postal licensee shall use appropriate technology to enhance the quality of its services and diversify postal services.

15. Universal service obligation.

(1) The Commission shall from time to time provide targets to postal licensees to facilitate the achievement of universal service obligations.

(2) In providing targets for the fulfillment of universal service obligations by postal licensees, the Commission shall have regard to –

(a) measurable quantity and quality of service standards for postal services in

relation to customer satisfaction;

(b) speed, reliability and security of the service;

(c) accessibility to and affordability of universal postal services; and

(d) the evolution in technological, economic and social environment.

(3) The provision of universal postal services shall be the responsibility of the public postal licensee.

(4) Notwithstanding paragraph (3) the Commission may require a licensee for unreserved postal services to provide any or universal postal services.

(5) The public postal licensee may provide universal postal services through a contract, an agency or a franchise and Commission shall not require such agent or franchisee to hold a license under the Act.

(6) The public postal licensee shall notify the Commission of any contract, agency or franchise entered into under paragraph (5).

(7) The public postal licensee shall not suspend the provision of basic postal service except in case of a force majeure event including, among others, an act of God, fire, flood, explosion, war, strike, embargo, government regulation, civil or military authority.

(8) To the extent necessary to ensure the maintenance of universal service, the Commission may continue to reserve services for public postal licensees.

(9) A licensee who contravenes this regulation commits an offence and is liable on conviction fine of three hundred thousand shillings for every month or part thereof during which such failure continues.

16. Extra-Territorial Offices of Exchange (ETOE's).

(1) A foreign postal licensee shall not establish an Extra-Territorial Office of Exchange in Kenya or use the Universal Postal Union system, without the consent of the Commission.

(2) Postal articles originating from a foreign country shall be considered to be commercial cargo upon arrival in Kenya and shall be subject to customs clearance

procedures.

(3) Postal articles delivered by a foreign postal licensee to an address in Kenya, shall pay the terminal dues applicable under the Universal Postal Union system.

17. Penalty.

A person who contravenes these Regulations commits an offence and is liable, where no penalty is provided, to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

18. Revocation of Part X of L.N. 68 of 2001

Part X of the Kenya Communications Regulations, 2001, is revoked.

FIRST SCHEDULE (r. 11 (3))

ARTICLE QUALIFICATION FOR ACCEPTANCE

- a. Dangerous drugs. By insured box or by insured parcel post and only if sent for medical or scientific purposes to the country, which admits them when sent for those purposes.
- b. Live bees, leeches silk worms, parasites or destroyers of noxious insects used for the purposes of controlling those insects. By letter post if addressed to officially recognized institutions.
- c. Any postal article enclosed in an envelope with an open panel by the inland service.
- d. Paper money not crossed for payment solely through Post Bank. For transmission by the inland service by registered letter or registered parcel post for transmission by the international service by registered letter post, insured letter post, or insured parcel post.
- e. Jewellery and other valuables. By registered letter post of insured parcel, or insured box.
- f. Any postal article bearing the word “registered” or any other phrase to that effect and any article which by these regulations is required to be registered or subject to the provisions of these regulations and is of a monetary value by registered post.
- g. Deleterious liquids perishable biological substances or other similar substances by letter post at the letter rate of postage only if sent for medical examination or analysis to a recognized medical practitioner or qualified veterinary surgeon.
- h. Inflammable liquids having a flash point of thirty two degrees centigrade or above but lower than sixty five degrees centigrade, maximum amount of one litre
- i. Radiative liquids Small quantities suitable packed, provided that when made up for the post radiation measured at the outside surface of a package does not exceed ten miliroentgen per twenty four hours by letter post at the letter rate of postage.
- j. Any article liable to customs duty. To countries which permit by law or

regulations, the importation of such articles by post and by registered post if the law or regulations of the country or place of destination so requires.

k. Advertisements and publications relating to the treatment of general diseases or to any preparations for its prevention, care or relief. If addressed to a qualified medical practitioner or chemist.

Dated the 14th April, 2010

Samuel Poghiso
Minister for Information and Communications