

**THE CENTRAL BANK OF KENYA (FOREIGN
EXCHANGE BUREAU) (PENALTIES) REGULATIONS**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
 2. Specific violations
 3. Other violations
 4. Written notification
 5. Instructions on payment of penalty
 6. Payment penalty
 7. Additional penalty
 8. Debt due to the Bank
-

THE CENTRAL BANK OF KENYA (FOREIGN EXCHANGE BUREAU) (PENALTIES) REGULATIONS

[Legal Notice 82 of 2009]

1. Citation

These Regulations may be cited as the Central Bank of Kenya (Foreign Exchange Bureau) (Penalties) Regulations.

2. Specific violations

The following shall constitute violations by a foreign exchange bureau or a person of guidelines or directions of the Bank under the Act which shall be subject to assessment of monetary penalties—

- (a) failure by a foreign exchange bureau to—
 - (i) submit annual audited accounts and a copy of the auditor's report in the prescribed form to the Bank, within three months after the end of its financial year;
 - (ii) furnish, at such time and in such manner as the Bank may direct, any information in an accurate and complete manner as the Bank may require to properly discharge its functions under the Act;
 - (iii) comply with the Act, the Forex Bureau Guidelines or such other guidelines or directions as the Bank may issue from time to time;
 - (iv) submit accurate periodic reports and returns to the Bank;
 - (v) maintain a minimum balance of two thousand United States Dollars or such other amount as may be prescribed by the Bank with the authorized banks;
 - (vi) maintain the minimum capital requirements prescribed by the Bank;
 - (vii) maintain a proper information management system to facilitate information dissemination;
 - (viii) accurately record all transactions relating to the purchase and sale of foreign currency;
- (b) conducting business in a manner, which is in the opinion of the Bank unsafe or unsound;
- (c) conducting foreign exchange business through a proxy or nominee;
- (d) transferring shareholding or changing directorship in a foreign exchange bureau without obtaining the prior written approval of the Bank;
- (e) engaging a foreign exchange officer who has not been vetted, approved and registered by the Bank; or
- (f) maintaining foreign currency accounts with more than the prescribed number of authorized banks.

3. Other violations

The Bank may levy monetary penalties for the violation of or non-compliance with any other direction that is not provided for under regulation 2.

4. Written notification

(1) The Bank shall, after reviewing all available information and determining the contravention or violation of one or more of the provisions of regulations 2 or 3, notify the foreign exchange bureau or a person in writing informing it of its finding and its intention to assess monetary penalties.

(2) The Bank shall assess the gravity of the contravention or violation and may give the foreign exchange bureau or a person reasonable time to rectify the violation.

[Subsidiary]

(3) The Bank shall give a foreign exchange bureau or a person seven days notice in writing requiring the foreign exchange bureau or a person of the correction of the violation, the Bank shall instruct the foreign exchange bureau or that person, in writing, of the penalties assessed and the manner in which such monies shall be paid to the Bank.

5. Instructions on payment of penalty

Following the notification and expiration of the timeframe in regulation 4(2), or sooner if advised by the foreign exchange bureau or a person of the correction of the violation, the Bank shall instruct the foreign exchange bureau or that person, in writing, of the penalties assessed and the manner in which such monies shall be paid to the Bank.

6. Payment penalty

(1) The penalties prescribed under these Regulations shall be paid to the Central Bank of Kenya by a foreign exchange bureau or a person as the case may be, within fourteen days from the date of service of the notice, unless otherwise stated by the Bank in writing.

(2) Where a foreign exchange bureau that is required to pay a penalty under these Regulations fails to pay a penalty within the time directed by the Bank, the Bank may recover the amounts due on the penalty from the non-interest bearing deposit held by the Bank on behalf of the foreign exchange bureau.

(3) Where the Bank recovers any amount due on a penalty from the non-interest bearing deposit held by the Bank, the foreign exchange bureau shall within thirty days of being notified by the Bank, raise the amount in the non-interest bearing deposit to the level required by the Bank.

(4) Where no payment is made or received under paragraph (3), the Bank may revoke the licence of the foreign exchange bureau.

(5) Where the penalties under paragraph (1) are payable by a person fails to pay, that person shall be disqualified from holding office in a foreign exchange bureau.

7. Additional penalty

(1) Where the Bank is not satisfied either by evidence provided by a foreign exchange bureau or a person, or by information obtained by the Bank, that the violation has been rectified as directed, the Bank may prescribe additional penalties not exceeding ten thousand shillings in each case for each day or part thereof during which such contravention continues.

(2) Once the Bank is satisfied that the violation has been rectified, the daily additional penalty of ten thousand shillings shall cease to accrue and the Bank shall assess the aggregate penalty.

8. Debt due to the Bank

(1) Where any provision of these Regulations imposes a penalty on any foreign exchange bureau or a person and, either the penalty or part of the penalty remains unpaid, the unpaid amount of the penalty shall constitute a civil debt due from a foreign exchange bureau or a person to the Bank.

(2) The Bank may—

- (a) in addition to the provisions of regulation 6(4), institute civil proceedings against a foreign exchange bureau or a person for the recovery of the penalty; or
- (b) direct that any part of the penalty which remains unpaid after a particular period notified to the foreign exchange bureau, shall constitute a debt payable by the foreign exchange bureau.