

TS3B: Apply sanctions under the terms set out in legislation

REGULATORY FUNCTION: TARIFF SETTING		TS3B
OBJECTIVE TS3 Administrative infringement proceedings against uncompliant operators are in place	ACTION CARD TS3B APPLY SANCTIONS UNDER THE TERMS SET OUT IN LEGISLATION	
COST: High FREQUENCY: One time TARGET GROUPS: Regulators, service operators, service clusters		
DESCRIPTION Regulators penalize operators who do not comply with tariff directives. Possible sanctions include fines, prosecution, changes to operator’s management teams, licence removal, or transferring licenses to other operators. However, prior to actual application, sanctions must be made transparent through regulatory policies and acts. Predefined penalty systems allow for the imposition of adequate penalties on utilities for acts or omissions that infringe legal provisions in terms of tariff collection, fulfilment of key performance indicators established in concessions, or other social or environmental regulations. Transparently outlined sanction mechanisms ensure the integrity of regulatory infringement actions.		
EXPECTED OUTCOMES <ul style="list-style-type: none">• Transparent sanctions are applied within the rule of law.• Non-complaints cannot continue their operations without aligning to agreed tariff regulations.• Affected consumers and other relevant parties are satisfied, morally and financially.		
EXAMPLE: KENYA In Kenya , following its enforcement strategy, the regulator WASREB enforces tariff-related decisions through the following actions. <ul style="list-style-type: none">• Issuing of fines.• Ordering the payment of penalties by licensees to third parties aggrieved by action or inaction of licensees.• Levying of penalties for non-payment of regulatory levies.• Prosecution of offences committed by licensees under the Water Act or recommending prosecution of culprits to other concerned public agencies for offences in relation to any other Act.• Use of court action in judicial review proceedings.• Recommending to the Ministry the removal of the top management and board of directors of the water services board if inspection reports are not followed up by licensee.• Order the removal of top management team of Water Service Provider and board of directors.• Cancellation of the Service Provision Agreement (SPA).• Transfer of licenses to another licensees.		
LINKS Kenya Enforcement Strategy: https://wasreb.go.ke/downloads/Enforcement%20And%20Compliance%20Strategy.pdf		
INTERNAL CAPACITIES NEEDED AND THE ROLE OF PARTNERS Imposing sanctions require regulators to have certain judiciary and administrative skills. These could also be sustained and supported by best practices from other regulators. Potential partners include national judiciary and disciplinary institutions, and development partners who can train regulators’ staff on how to apply and manage sanction measures within their regulatory mandates.		