



WELCOME TO OUR

August 2025 Newsletter



In this newsletter you will find:

A legal analysis on general partnerships in Kenya

General partnerships



The law recognizes three types of partnerships in the corporate realm. These include:

- General partnerships;
- Limited partnerships, and
- Limited liability partnerships.

While each of these classes of partnerships have distinct characters in law, some of their legal characters are somewhat similar by virtue of being a partnership.

In this legal update, we will strictly analyse the legal character of a general partnership in the Kenyan legal landscape.

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A partnership is a business structure where two or more individuals agree to operate a business together and share in its profits and losses.

A general partnership cannot simply be defined as a body corporate because of the following reasons:

- **Lack of Separate Legal Personality**– Unlike a company which exists as a separate person in the eyes of the law, a general partnership is simply a contractual relationship between two or more persons (partners) carrying on a business in common with a view to making profit. Therefore, any legal action must be in the names of the partners or against them, and not in the name of the partnership.
- **The absence of perpetual succession**– A body corporate survives changes in its membership. In contrast, a partnership automatically dissolves upon the death, bankruptcy, or withdrawal of a partner (unless the agreement provides otherwise)
- **Partners' Personal Liability**– In a body corporate like a limited liability company, liability is usually limited to shareholding. However, in a partnership, partners are jointly and severally liable for debts and obligations of the business.

Legal character of a general partnership

Even though a general partnership may be registered under the Business Names Act, registration is not a requirement for its formation.

Generally there are two ways through which a partnership can be formed. They include:

- Partners deciding to execute a partnership deed or a memorandum or any other document showing their intention to form a partnership.
- **By inference / implication**; This is where the parties hold themselves out as having formed a partnership, this is inferred from their conduct

While a partnership is distinct from a body corporate, there are some shared legal characters but with certain modifications. For example,

- a general partnership can sue or be sued through its partners, and any property of the partnership is jointly owned by them.
- The partnership can also borrow or lend money through the partners acting within their authority, with the partners being jointly and severally liable for any debts or obligations incurred.

In a general partnership, the partners are responsible for the partnership's business, and the partnership itself may sue or be sued in its own name, enter into contracts, and own or hold property for its business purposes. Unless otherwise agreed, the business may continue despite changes in the partners.

It is also important to note that each partner acts as an agent of the partnership in conducting its business, and any change in the nature of that business requires the consent of all partners.

Other unique characters of a general partnership is that it has a full legal capacity, except that it may not employ a partner as its employee.

Duty of partners

Duty to act in good faith

A partner must act in good faith towards the partnership and fellow partners. This includes;

- keeping other partners informed on all matters affecting the business;
- accounting for any profits or benefits gained without consent from partnership property, name, connections, or;
- accounting for any profits or benefits gained from competing activities.
- The duty to act in good faith applies even after breakup until dissolution.

Duty of disclosure

Furthermore, before forming or joining a partnership, all parties must disclose any information that could reasonably influence the decision to form or join, unless this duty is waived by agreement.

Share of Profits and Losses

The following are the general rules that guide the share of profits and losses in general partnerships unless provided otherwise by a partnership agreement;

- Partners are entitled to share equally in the profits generated by the partnership;
- They must also contribute equally to any losses.
- No partner has a right to profits, nor a duty to bear losses, for any period before they became a partner.
- If a partner dies, their estate remains liable for debts and obligations the partnership incurred during the time they were a partner.

Remuneration and expenses,

The following rules guide the remuneration of partners in a partnership unless provided otherwise by the Partnership Agreement:

- Partners are not generally entitled to receive a salary or other remuneration for work they do in managing the partnership's business.
- However, the partnership must reimburse a partner for payments they make either in the proper conduct of the business, for preserving partnership assets, or to settle all or part of a personal liability they incur on behalf of the partnership.

- If the partnership fails to indemnify a partner as required, the partner may recover the unpaid amount from the other partners in the same proportions they would share a partnership loss.
- Similarly, if the partnership fails to pay a partner any other sum it owes them, the other partners must contribute towards that amount in the same proportions as they would bear a loss.

Capital Contribution

- A partner can only contribute capital to the partnership—or change the amount they contribute—if all partners agree.
- A capital contribution does not earn interest.
- If a partner advances funds to the partnership beyond their agreed capital (loaning the partnership), they are entitled to interest at three percent per annum from the date of the advance, provided prevailing economic conditions allow it.

Management of the Business

- Every partner has the right to take part in managing the partnership's business.
- Decisions on ordinary matters related to the business are made by a majority vote of the partners.

- All other matters require unanimous agreement. (Deciding whether to start, defend, or pursue legal or arbitral proceedings is considered an ordinary matter.)
- These rules on decision-making cannot be changed whatsoever by any agreement, whether oral or written.

Accounting and Partnership Records

- Each partner must ensure that proper accounting records are kept for any transactions they are involved in that affect the partnership.
- These records must be made available to the partnership or any partner upon request.
- Partners must also cooperate with whoever is responsible for maintaining the records or preparing the partnership's accounts.

Power of Partners

- A partnership is bound by the actions of a partner when that partner is carrying on the business of the partnership in the usual way.
- However, the partnership will not be bound if the partner lacked authority to act, and the person they were dealing with either knew they had no authority or did not know or believe they were a partner.

Partnership Property

The following are categories of partnership property:

- All property acquired for the purposes of, and in the course of, the partnership's business.
- Property held in the names of partners that was either acquired on behalf of the partnership or contributed as capital is held by those partners in trust for the partnership.

Execution of Deeds

A partnership executes a deed validly if;

- it is signed by at least two partners;
- each of them must be authorised by all partners to sign;
- the signing must be expressed to be on behalf of the partnership;
- the document must be delivered as a deed.

The scope of liability

- The partnership is liable for loss or injury caused to a third party by the wrongful act or omission of a partner if the partner was acting either in the ordinary course of the business.
- Anyone who is not a partner but represents themselves, or knowingly allows themselves to be represented, as a partner is personally liable for any obligation incurred by someone who relies on that representation. This is called liability by holding out.

The life cycle of a partner

- A new partner can only join an existing partnership if all current partners consent. This consent may be given expressly in writing or may be implied from the partners' conduct—particularly if the new person starts working with the partners in running the business for profit.
- A person stops being a partner if they die, are expelled, the partnership is dissolved, the court orders their removal, or they are declared bankrupt or subject to sequestration.
- A partner may resign only by giving at least three months' written notice to the other partners. In a partnership of three or more, another partner may also resign during that notice period, taking effect at the same time, provided they give at least two weeks' written notice.
- A majority of partners may also expel a partner through an order for the Court or if the partner's share in the partnership has been seized to satisfy a personal debt. Expulsion requires at least three months' notice.



The partnership break-up

A partnership comes to an end in any of the following situations:

- If the number of partners drops below two.
- If it was set up for a fixed term and that term expires.
- If the Court orders its dissolution on a partner's application.
- If the Court makes an order after an application for dissolution by the Cabinet Secretary in charge of matters partnerships.

If the partnership has no fixed term—or if it was for a fixed term but one or more partners left during its course—it may be dissolved if at least half of the partners agree. In such cases, the break-up date is the date they agree to dissolve it.

A partner who has already given notice of resignation is not counted when deciding whether at least half the partners agree to dissolve.

If a fixed-term partnership continues beyond the end of its term without a new agreement, it becomes a “partnership at will” and the partners' rights and duties remain the same, so far as consistent with that status.

An agreement to dissolve or continue may be inferred if the partners stop running the business, or if they carry on with the business for profit.

After break-up, the partnership can still operate as far as is necessary to:

- Finalise the dissolution.
- Wind up affairs by the partners themselves.
- Wind up affairs through a liquidator.

Partners keep their authority to bind the partnership and their rights and duties for the purpose of winding up and completing unfinished transactions. They may also agree in writing to let one or more partners continue business solely for winding-up purposes. These rules don't apply to anyone who involuntarily ceased to be a partner through death, bankruptcy, expulsion and order of the court.

A person who leaves on break-up is treated as still being a partner, but only for winding-up purposes—unless they left involuntarily.

A partner who voluntarily leaves may publish notice of their departure and may require other partners' consent to do what is necessary to publish that notice.

A “successor partnership” is one formed after a break-up but before full dissolution, and that includes at least one partner from the former partnership.



If a successor partnership acquires property, its ownership—and that of anyone to whom it later transfers the property—cannot be challenged on the basis that the property belonged to the old partnership.

This protection applies if the transfer is to someone who:

- Acts in good faith.
- Provides valuable consideration.
- Has no knowledge that the property was former partnership property.

The final winding up of the partnership.

When a partnership ends, the partners themselves can handle the winding up. If there's disagreement about how to wind things up, the majority view of the partners will prevail.

When the partnership is being wound up, the partners' rights and obligations regarding partnership property are dealt with in this order:

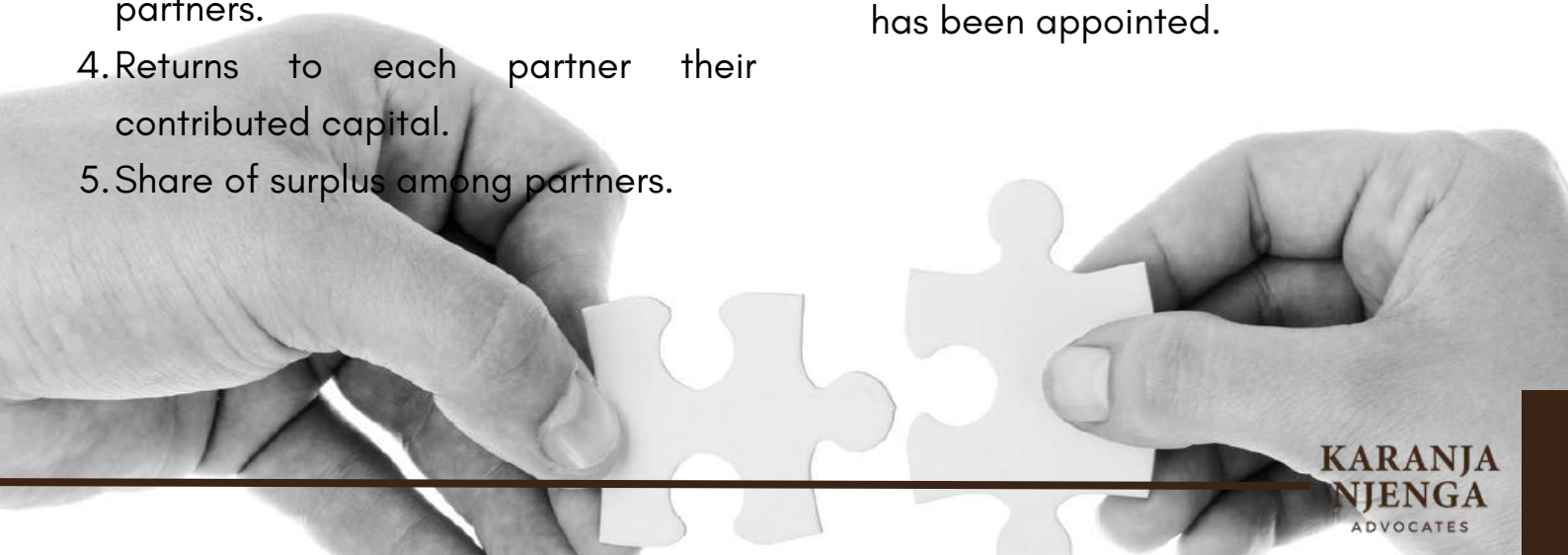
1. Partners pay what they owe to the partnership.
2. Payments of debts owed to outsiders.
3. Payments of amounts owed to partners.
4. Returns to each partner their contributed capital.
5. Share of surplus among partners.

If the partnership cannot meet its debts to outsiders, partners must contribute to cover the shortfall in the same proportions they share losses. Furthermore, if the partnership cannot repay capital in full, the remaining assets are shared among partners in proportion to the capital they contributed.

Partners do not have to contribute to certain obligations if they are not legally liable for them, or if they would not have to indemnify another partner for them. If a partner is insolvent or not required to contribute, the other partners must cover the shortfall according to their agreed liability proportions.

In the long run, a partnership that has broken up is regarded as dissolved when:

- All partnership property has been given to those entitled to it.
- Any trust property has been transferred to the rightful owner or their trustee.
- There are no outstanding debts.
- There are no pending claims by or against the partnership.
- If a liquidator was appointed, they have left office and no replacement has been appointed.



Court's Powers in Relation to Partnerships

In partnership matters, the term "Court" refers to the High Court, unless the partnership's gross assets are worth three hundred thousand shillings or less – in which case, the Resident Magistrate's Court has jurisdiction.

The Court has the authority to order the following:

- that a partner's share of the partnership's property and profits be charged to pay off that partner's judgment debt, including interest.
- appoint a receiver to collect the partner's share of profits or other monies from the partnership,
- give directions for taking accounts and inquiries as if the partner had voluntarily granted such a charge.

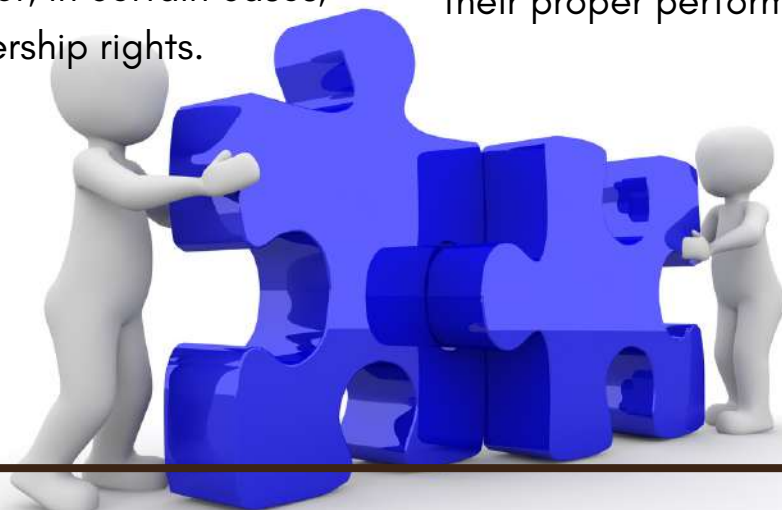
N/B: Other partners may redeem the charged interest at any time, or, if a sale is ordered, buy the partner's share.

- remove a partner, remove another partner on request, or dissolve the partnership altogether.
- directions to implement its orders, such as how a removed partner can realise their share or, in certain cases, restrict their partnership rights.

- If a removal is backdated, the Court can issue directions to put everyone in the position they would have been in had the partner left on that earlier date.

Where a partner is removed for fraud, misrepresentation, or non-disclosure, they must indemnify other affected partners for any loss suffered, and non-fault partners have priority when partnership assets are distributed. Non-disclosure here means a breach of statutory or contractual duties of disclosure.

- Pending a removal application, the Court can restrict a partner's participation in the business.
- The Cabinet Secretary may also apply to have a partnership dissolved, and the Court may order dissolution on terms it considers suitable. If no breakup date is specified in the order, the date is taken as the date of the order.
- The Court may appoint a liquidator or a provisional liquidator if the application is still pending to wind up the partnership and distribute its assets, and may require security for their proper performance of duties.



Legal humor!



The Lawyer and the Doctor

A lawyer and a doctor were at a party. The doctor kept being asked for medical advice, which annoyed him. He asked the lawyer, "How do you deal with people asking for free advice?" The lawyer replied, "I send them a bill." The next day, the doctor received a bill from the lawyer.