

# CHAPTER K38 - KWARA STATE PARTNERSHIP LAW

## ARRANGEMENT OF SECTIONS

### SECTION

1. Short title.
2. Commencement.
3. Interpretation.

### PART I

#### *Nature of Partnership*

4. Nature of partnership.
5. Rules for determining existence of partnership.

### PART II

#### *Relations of Partners to Persons Dealing with Them*

6. Postponement of rights of certain persons in case of insolvency.
7. Power of partner to bind firm.
8. Partners bound by acts on behalf of firm.
9. Partner using credit of firm for private purposes.
10. Effect of notice that firm will not be bound by acts of partner.
11. Liability of partners.
12. Liability of firm for wrongs.
13. Misapplication of money or property.
14. Liability for wrongs joint and several.
15. Improper employment of trust property for partnership purposes.
16. Persons liable to "holding-out".
17. Admissions and representations of partners.

18. Notice to acting partner to be notice to firm.
19. Liabilities of incoming and outgoing partners.
20. Revocation of continuing guaranty by firm.

### PART III

#### *Relations of Partners to One Another*

21. Variations by consent of terms of partnership.
22. Partnership property.
23. Property bought with partnership money.
24. Right of occupancy of partnership property.
25. Procedure against property for partner's separate judgement debt.
26. Rules as to interests and duties of partners.
27. Expulsion of partner.

### SECTION

28. Retirement from partnership.
29. Presumption where partnership for terms continued over.
30. Duty to render accounts.
31. Accountability for private profits.
32. Duty not to compete with firm.
33. Rights of assignee.

### PART IV

#### *Dissolution of Partnership*

34. Dissolution by expiration or notice.
35. Dissolution by death, bankruptcy or charge.
36. Dissolution by illegality of partnership.
37. Dissolution by the Court.

- 38. Rights of persons dealing with firm against apparent members.
- 39. Rights to notify dissolution.
- 40. Authority of partners for purposes of winding-up.
- 41. Rights as to application of partnership property.
- 42. Apportionment of premiums when partnership prematurely dissolved.
- 43. Where partnership dissolved for fraud or misrepresentation.
- 44. Rights of outgoing partner in certain cases to share profits made after dissolution.
- 45. Outgoing or deceased partner's share a debt.
- 46. Distribution of assets on final settlement.

## PART V

### *Supplemental*

- 47. Savings and application.

---

## KWARA STATE PARTNERSHIP LAW

**A Law to provide for partnerships.**

[KWS 29 of 1991, No. 4 of 2006.]

[Date of commencement: 15<sup>th</sup> August, 1991]

### **1. Short title**

This Law may be cited as the Kwara State Partnership Law.

### **2. Commencement**

This Law shall be deemed to have come into operation on the 1st day of October, 1987.

### 3. Interpretation

In this Law, unless the context otherwise requires—

"**business**" includes every trade, occupation or profession;

"**Court**" means the high court;

"**firm**" means collectively persons who have entered into partnership with one another;

"**firm name**" means the name under which the business of the firm is carried on; and

"**partnership property**" means all property and rights and interests in property originally bought with partnership stock or acquired whether by purchase or otherwise on account of the firm or for the purposes and in the course of partnership business.

## PART I

### *Nature of Partnership*

#### 4. Nature of partnership

(1) Partnership is the relationship which subsists between persons who have agreed to carry on and are carrying on a business in common with a view to profit.

(2) Notwithstanding the foregoing provision the relation between members of any company or association which is—

- (a) registered as a company under the Companies and Allied Matters Act, or any other written law for the time being in force and relating to the incorporation of trading companies and other associations; and
- (b) formed or incorporated by or in pursuance of any other written Law,

is not a partnership within the meaning of this Law.

[No. 4 of 2006.]

## **5. Rules for determining existence of partnership**

In determining whether a partnership does or does not exist regard shall be had to the following rules—

- (a) joint tenancy, tenancy in common joint property, common property or part ownership does not of itself create a partnership as to anything so held or owned whether the tenants or owners do or do not share any profits made by the use thereof;
- (b) the sharing of gross returns does not of itself create a partnership whether the persons sharing such returns have or have not joint or common right or interest in any property from which or from the use of which the returns are derived; and
- (c) the receipt of a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but receipt of such share or of payment contingent on or

varying the profits of a business, does not of itself make him a partner in the business; and in particular—

- (i) the receipt by a person of debt or liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such;
- (ii) a contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profit of the business does not of itself make the servant or agent a partner in the business or liable as such;
- (iii) a person being the widow or child of a deceased partner and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner is not by reason only of such receipt a partner in the business or liable as such;
- (iv) the advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits or shall receive a share of the profit arising from carrying on the business or liable as such.  
Provided that the contract is in writing and signed by or on behalf of all the parties thereto; and
- (v) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of

the sale by him of the goodwill of the business, is not by reason only of such receipt a partner in the business or liable as such.

## PART II

### *Relations of Partners to Persons Dealing with Them*

#### **6. Postponement of rights of certain persons in case of insolvency**

In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in the last foregoing section, or of any buyer of a goodwill in consideration of a share of the profit of the business being adjudged a bankrupt, entering into an arrangement to pay his creditors less than one hundred kobo in the naira or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan and the seller of the goodwill shall not be entitled to recover anything in respect of the share of the profits contracted for, until the claims of the other creditors of the borrower or buyer, for valuable consideration in money or money's worth have been satisfied.

#### **7. Power of partner to bind firm**

Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners unless the partner so acting has in fact no authority to act for the firm in the particular matter and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner.

#### **8. Partners bound by acts on behalf of firm**

An act or instrument relating to the business of the firm done or executed in the firm name or in any other manner showing an intention to bind the firm by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners.

This section shall not affect any general rule of Law relating to the execution of deeds or negotiable instruments.

#### **9. Partner using credit of firm for private purposes**

(1) Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business the firm is not bound unless he is in fact specifically authorised by the other partners.

(2) This section does not affect any personal liability incurred by an individual partner.

#### **10. Effect of notice that firm will not be bound by acts of partner**

If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

#### **11. Liability of partners**

Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner and after his death his estate is also severally liable in a due course of administration for such debts and obligations so far as they remain unsatisfied, subject to the prior payment of his separate debts.



## **12. Liability of firm for wrongs**

Where by any wrongful act or omission of any partner acting in the ordinary course of the business or the firm, or with the authority of his co-partners, loss for injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefore to the same extent as the partner so acting or omitting to act.

## **13. Misapplication of money or property**

Where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it or where a firm in the course of its business receives money or property of a third person and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

## **14. Liability for wrongs joint and several**

Every partner is liable jointly with his co-partners and also severally for everything for which the firm, while he is a partner therein, becomes liable under either of the two last preceding sections.

## **15. Improper employment of trust property for partnership purposes**

If a partner being a trustee improperly employs trust property in the business or on account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein.

Provided that this section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust; and

Provided also that nothing in this section shall prevent trust money from being

followed and recovered from the firm if still in its possession or under its control.

#### **16. Persons liable to "holding-out"**

(1) Every person who by words spoken or written or by conduct represents himself or who knowingly allows himself to be represented as a partner in a particular firm is liable as a partner to anyone who has on the faith of any such representation given credit to the firm whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or allowing it to be made.

(2) Where after a partner's death the partnership business is continued in the old firm name the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executors, administrators, estate or effects liable for any partnership debts contracted after his death.

#### **17. Admissions and representations of partners**

An admission or representation made by any partner concerning the partnership affairs and in the ordinary course of its business is evidence against the firm.

#### **18. Notice to acting partner to be notice to firm**

Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm except in the case of a fraud on the firm committed by or with the consent of that partner.

## **19. Liabilities of incoming and outgoing partners**

(1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.

(2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

(3) A retiring partner may be discharged from any existing liabilities by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either expressed or inferred as a fact from the course of dealing between the creditors and firm as newly constituted.

## **20. Revocation of continuing guarantee by firm**

A continuing guarantee given either to a firm or to a third person in respect of the transaction of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guarantee was given.

## **PART III**

### *Relations of Partners to One Another*

## **21. Variations by consent of terms of partnership**

The mutual rights and duties of partners whether ascertained by agreement or defined by this Law may be varied by the consent of all the partners and such consent may be either expressed or inferred from a course

of dealing.

## **22. Partnership property**

(1) All partnership property must be held and applied by the partners exclusively for the purpose of the partnership and in accordance with the partnership agreement.

Provided that the legal right or interest in any land which belongs to the partnership shall devolve according to the nature and tenure thereof and the general rules of law applicable thereto and in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(2) Where co-owners of a right of occupancy or other interest in any land, not being itself partnership property, are partners as to profits made by the use of that land and acquire a right of occupancy or other interest in respect of other land out of the profits to be used in like manner, the right of occupancy or other interest so acquired belongs to them, in the absence of an agreement to the contrary not as partners but as co-owners for the same respective interests as are held by them in the land first mentioned at the date of the acquisition.

## **23. Property bought with partnership money**

Unless the contrary intention appears property acquired with money belonging to the firm is deemed to have been acquired on account of the firm.

## **24. Right of occupancy of partnership property**

Where a right of occupancy or other interest in land has become partnership property it shall unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner) and also as between the heirs of a deceased partner and his executors or

administrators as personal property.

## **25. Procedure against property for partner's separate judgement debt**

(1) A writ of execution shall not be issued against any partnership property except on a judgment against firm.

(2) The Court may, on the application of any judgment creditor of a partner, by summons or as may be prescribed by rules of court, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon and may by the same or a subsequent order appoint a receiver of that partner's share or profits whether already declared or accruing, and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require:

Provided that the other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

## **26. Rules as to interests and duties of partners**

The interests of partners in partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners by the following rules—

- (a) all the partners are entitled to share equally in the capital and profit of the business and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm;

- (*b*) the firm must indemnify every partner in respect of payment made and personal liabilities incurred by him in the ordinary and proper conduct of the business of the firm, or in or about anything necessary done for the preservation of the business or property of the firm;
- (*c*) a partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital he has agreed to subscribe is entitled to interest at a rate mutually agreed in writing by the partners and in default of such agreement, at the current bank rate;
- (*d*) a partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed to him;
- (*e*) every partner may take part in the management of the partnership business;
- (*f*) no partner shall be entitled to remuneration for acting in the partnership business;
- (*g*) no person may be introduced as a partner without the consent of all existing partners;
- 
- (*h*) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners but no change may be made in the nature of the partnership business without the consent of all existing partners; and
- (*i*) the partnership books of account and records are to be kept

at place of business of the partnership (or the principal place if there is more than one) and every partner may if he thinks fit have access to and inspect and copy any of them.

## **27. Expulsion of partner**

No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement in writing between the partners.

## **28. Retirement from partnership**

Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all other partners.

## **29. Presumption where partnership for terms continued over**

(1) Where a partnership entered into for a fixed term is continued after the term has expired and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term so far as is consistent with a partnership at will.

(2) A continuance of the business by the partners, or such one of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

## **30. Duty to render accounts**

Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

### **31. Accountability for private profits**

(1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners, from any transaction concerning the partnership or from any use by him of the partnership property, name or business connection.

(2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner and before the affairs thereof have been completely wound up either by any surviving partner or by the representatives of the deceased partner.

### **32. Duty not to compete with firm**

(1) A partner shall not without the consent of the other partners carry on any business of the same nature as and competing with that of the firm.

(2) If a partner carries on a business in breach of subsection (1) of this section he shall account for and pay over to the firm all profits made by him in that business and such refund shall be without prejudice to other rights and remedies available to the firm and to other members for the breach.

### **33. Rights of assignee**

(1) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not as against the other partners entitle the assignee during the continuance of the partnership to interfere in the management or administration of the partnership business or affairs or to require any accounts of the partnership transactions, or to inspect the books but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled,



and the assignee must accept the account of profits agreed to by the partners.

(2) In case of dissolution of the partnership whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

## PART IV

### Dissolution of Partnership

#### **34. Dissolution by expiration or notice**

(1) Subject to any agreement between the partners, partnership is dissolved—

(*a*) if entered into for a fixed term, by the expiration of that term;

(*b*) if entered into for a single venture or undertaking, by the termination of that venture or undertaking; and

(*c*) if entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.

(2) In the last mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or if no date is so mentioned, as from the date of the communication of the notice.

### **35. Dissolution by death, bankruptcy or charge**

Subject to any agreement between the partners—

- (a) every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner; and
- (b) a partnership may, at the option of the other partners, be dissolved if any partner permits his share of the partnership property to be charged under this Law for his separate debt.

### **36. Dissolution by illegality of partnership**

A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

### **37. Dissolution by the Court**

On application by a partner to the Court, by summons or in such manner as may be prescribed by rules of court, the court may decree a dissolution of the partnership in any of the following cases—

- (a) when a partner is adjudged to be a lunatic under the provision of any written law or as shown to the satisfaction of the court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his next friend or person having title to intervene as by any other partner;
- (b) when a partner, other than the partner suing becomes in any way permanently incapable of performing his part of the partnership agreement;

- (c) when a partner, other than the partner suing, has been in the opinion of the Court, regard being had to the nature of the partnership business, is calculated to affect prejudicially the carrying on of the business;
- (d) when a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him;
- (e) when the business of the partnership can only be carried on at a loss; and
- (f) whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

### **38. Rights of persons dealing with firm against apparent members**

(1) When a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

(2) An advertisement in the *Gazette* of the State in which a firm has its principal place of business and in any newspaper circulating in the state shall be notice as to persons who had no dealings with the firm before the date of the dissolution of change so advertised.

(3) The estate of a partner who died or who becomes bankrupt, or of

a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm is not liable for-partnership debts contracted after the date of the death, bankruptcy or retirement respectively.

### **39. Rights to notify dissolution**

On the dissolution of a partnership or retirement of a partner, any partner may publicly notify the same and may require the other partner or partners to concur for that purpose in all necessary and proper acts, if any, which cannot be done without his or their concurrence.

### **40. Authority of partners for purposes of winding-up**

After the dissolution of a partnership the authority of each partner to bind the firm and the other rights and obligations of the partners continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has become bankrupt, but the provision does not affect the liability of any person who has after the bankruptcy represented himself or knowingly allowed himself to be represented as a partner of the bankrupt.

### **41. Rights as to application of partnership property**

On the dissolution of a partnership every partner is entitled as against the other partners in the firm, and all persons claiming, through them in respect of their interests as partners, to have the partnership property applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm, and for that purpose any partner or his representative may on the

termination of the partnership apply to the Court to wind up the business and affairs of the firm.

#### **42. Apportionment of premiums when partnership prematurely dissolved**

Where one partner has paid a premium to another on entering into a partnership for a fixed term and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner the Court may order the repayment of the premium or of such part thereof as it thinks just, having regard to the terms of the partnership agreement and to the length of time during which the partnership has continued, unless—

- (a) the dissolution is in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium; and
- (b) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

#### **43. Where partnership dissolved for fraud or misrepresentation**

Where a partnership agreement is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto the party entitled to rescind is, without prejudice to any other right, entitled—

- (a) to a *lien* on the surplus of the partnership assets after satisfying the partnership liabilities, for any sum of money paid by him for the purpose of a share in the partnership and for any capital contributed by him;
- (b) to stand in the place of the creditors of the firm for any

payment made by him in respect of the partnership liabilities; and

- (c) to be indemnified by the person guilty of the fraud or making the misrepresentation against all the debts and liabilities of the firm.

#### **44. Rights of outgoing partner in certain cases to share profits made after dissolution**

Where any member of a firm has died or otherwise ceased to be a partner and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets or to interest on the amount of his share of partnership assets at the current bank rate.

Provided that when by the partnership agreement an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and that option is duly exercised, the deceased partner or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in the exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

#### **45. Outgoing or deceased partner's share a debt**

Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner's share is a debt accruing at the date of the dissolution of

death.

#### **46. Distribution of assets on final settlement**

In settling accounts between the partners, after a dissolution of partnership the following rules shall, subject to any agreement, be observed:

- (a) losses including losses and deficiencies of capital, shall be paid first out of profit, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits; and
- (b) the assets of the firm including the sum, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order—
  - (i) in paying the debts and liabilities of the firm to persons who are partners therein;
  - (ii) in paying to each partner rateably what is due from the firm to him for advances as distinguished from capital;
  - (iii) in paying to each partner rateably what is due from the firm to him in respect of capital; and
  - (iv) the ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

#### **PART V**

#### *Supplemental*

#### **47. Savings and application**

(1) The rules of equity and common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provision of this Law.

(2) Nothing in this Law shall apply to transactions under Islamic law or customary law.

### **CHAPTER K38**

#### **KWARA STATE PARTNERSHIP LAW**

##### **SUBSIDIARY LEGISLATION**

---

No Subsidiary Legislation

---