



The "Salaried Partner" Trap: The Hidden Governance, Tax, and IP Risks Across Professional Sectors.

The Briefing

The decision to grant a high-performing professional the title of "**Fixed Remuneration Partner**" is often viewed as a sophisticated retention strategy. This practice is not isolated to law firms; it is widely utilized across Kenya's professional sectors, including medical and dental practices, engineering groups, architectural firms, tech consultancies, and accounting networks. Founders often issue these titles alongside a fixed salary and profit share to reward top talent without diluting voting equity.

However, a landmark legal precedent in Kenya has exposed the structural vulnerability of this approach. Giving a

key executive a "partner" title triggers a catastrophic domino effect across a firm's tax obligations, intellectual property (IP) protection, and corporate governance.

The Jurisdictional Shockwave & The LLP Statutory Anomaly

In [Miriam Nzilani Mweu v Kiptiness & Odhiambo Associates \(2020\)](#), a professional elevated from an Associate to a Fixed Remuneration Partner sued her firm in the Employment and Labour Relations Court upon resignation. The dispute centered on alleged breaches of contract and constitutional rights. The firm successfully raised a jurisdictional objection under Section 8(2) of Kenya's Partnerships Act,

2012, which strictly prohibits a partnership from employing a partner as an employee. Because her contract entitled her to a fixed salary plus a 7.5% share of net revenues and a 7.5% commission on new business, she was legally deemed a partner, not an employee. The court struck out the petition without deciding its merits.

A critical misconception among business founders is that registering a Limited Liability Partnership (LLP) bypasses this rule because an LLP is a separate corporate body. The court in the *Mweu* case directly addressed this statutory mesh. Section 8 of the Limited Liability Partnerships Act 2011 explicitly states that the provisions of the general Partnerships Act apply to LLPs unless expressly provided otherwise. Since the LLP Act does not contain a provision allowing an LLP to employ its partners, the prohibition in Section 8(2) of the Partnerships Act remains in full force. Whether you operate a general partnership or a modernized LLP, **a partner cannot legally be an employee of the same firm.**

The Four Pillars of Structural Vulnerability

Pillar 1: Governance & The Mutual Agency Trap

When you designate a professional as a "partner" to bypass the rigidities of the Employment Act 2007, you inadvertently grant them the legal powers associated with

a partnership. Under partnership laws, every partner serves as an agent of the firm. While internal agreements might limit their voting rights, external third parties are not bound by your private arrangements. A "salaried partner" possesses the ostensible authority to bind the firm to crippling third-party liabilities, sign commercial leases, or access sensitive financial books.

Pillar 2: KRA Tax Landmines (The PAYE vs. IT2P Collision)

The moment an individual transitions from an employee to a profit-sharing partner, their tax compliance profile shifts fundamentally. As an employee, remuneration is subject to strict PAYE withholding at source, alongside mandatory statutory deductions (NSSF, SHIF, Housing Levy). Conversely, legitimate partners in a firm report their profit shares as individual business income under an IT2P framework.

When a firm creates a "salaried partner" who receives a fixed monthly draw alongside a net-revenue commission, it creates an ambiguous KRA audit profile. If the courts rule that a "salaried partner" is not a legal employee (as seen in the *Mweu* precedent), the firm cannot legally treat their fixed monthly distributions as PAYE wages. Conversely, if KRA audits the firm and determines the "partnership" was merely a disguised employment relationship to dodge the Housing Levy or SHIF, the firm faces massive exposure for unremitted statutory deductions and back-taxes. A

legally flawed partnership contract directly triggers severe tax misclassification risks.

Pillar 3: Intellectual Property & The Restrictive Covenant Paradox

Protecting a firm's intellectual property, such as client lists, proprietary software, architectural designs, or consulting methodologies, relies heavily on freedom of contract. In Kenya, employers generally rely on statutory presumptions (where IP created in the course of employment automatically vests in the employer) and strict non-compete clauses housed within standard employment contracts.

However, freedom of contract only protects you if it is executed within the correct legal vehicle. If the courts classify your "salaried partner" as an actual legal partner under Section 8(2) of the Partnerships Act, they are no longer an employee. Consequently, any IP assignment clauses or restrictive covenants trapped exclusively inside their old employment contract may be rendered unenforceable, as the employment relationship legally ceased to exist. Because there is no automatic statutory presumption that a partner's creations belong to the firm, unless IP ownership and commercial restraints of trade are explicitly drafted into the formal Partnership Deed or a standalone commercial IP agreement, you risk watching a departing partner walk away with your most valuable assets.

Pillar 4: Phantom Equity & Sector-Specific Structuring

The strategic answer is not to abandon high-level profit-sharing, but to structurally divorce the financial incentive from the legal title of "Partner" under the Partnerships Act. At [EMET Chambers, Kenya](#), we engineer frameworks that reward elite talent without compromising structural integrity.

For Regulated Professions (Lawyers, Doctors, Auditors):

Because professional statutes (like the Advocates Act) prohibit third-party corporate entities from employing and seconding fee-earners, firms must rely on Phantom Equity and Title Engineering.

- a. Instead of issuing a "Fixed Remuneration Partner" contract, the individual remains strictly contracted as a senior employee (e.g., "Senior Associate" or "Managing Associate").
- b. Their employment contract includes a highly specific, contractual bonus scheme tied to firm revenue or practice-group EBITDA (Phantom Equity). They receive the exact same financial upside of a partner, but their legal status remains explicitly anchored within the Employment Act 2007.

For Non-Regulated Sectors (Consultancies, Tech, Private Equity):

Firms can deploy ServiceCo Structures. By establishing a separate corporate entity (a Service Company) to legally employ executives, the ServiceCo manages payroll and contracts its management services to the underlying LLP. This insulates the core partnership from employment claims while ensuring executives remain clear employees of the ServiceCo for PAYE and non-compete enforcement.

A Structural Audit Checklist for Managing Directors and Board Members

If your clinic, engineering firm, consultancy, or practice uses hybrid partner titles, evaluate your exposure against these core metrics:

- a. **Authority Check:** Do your non-equity or salaried partners sign contracts, engage suppliers, or pitch clients using partner titles without explicit written limitations registered with third parties?
- b. **Tax Profile Check:** Are fixed monthly draws or profit commissions paid out to non-equity partners without clear, defensible

delineation between PAYE employee payroll and partner IT2P individual income reporting?

- c. **IP Protection Check:** Are your key intellectual property assignments and non-compete clauses housed inside standard employment contracts rather than commercial partnership agreements?
- d. **Contract Integrity Check:** Do your executive contracts use the term "partner" alongside terms like "salary," "employment," or "job description"?

The gap between a commercial objective and a legal reality is where catastrophic liabilities take root. If your firm currently utilizes non-equity partner titles, profit-sharing hybrid models, or is preparing to elevate a top performer, you require immediate structural clarity before a dispute or KRA audit forces the issue.

Protect your core business architecture. Reach out to our Corporate & Commercial team to book a comprehensive structural audit today.

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