

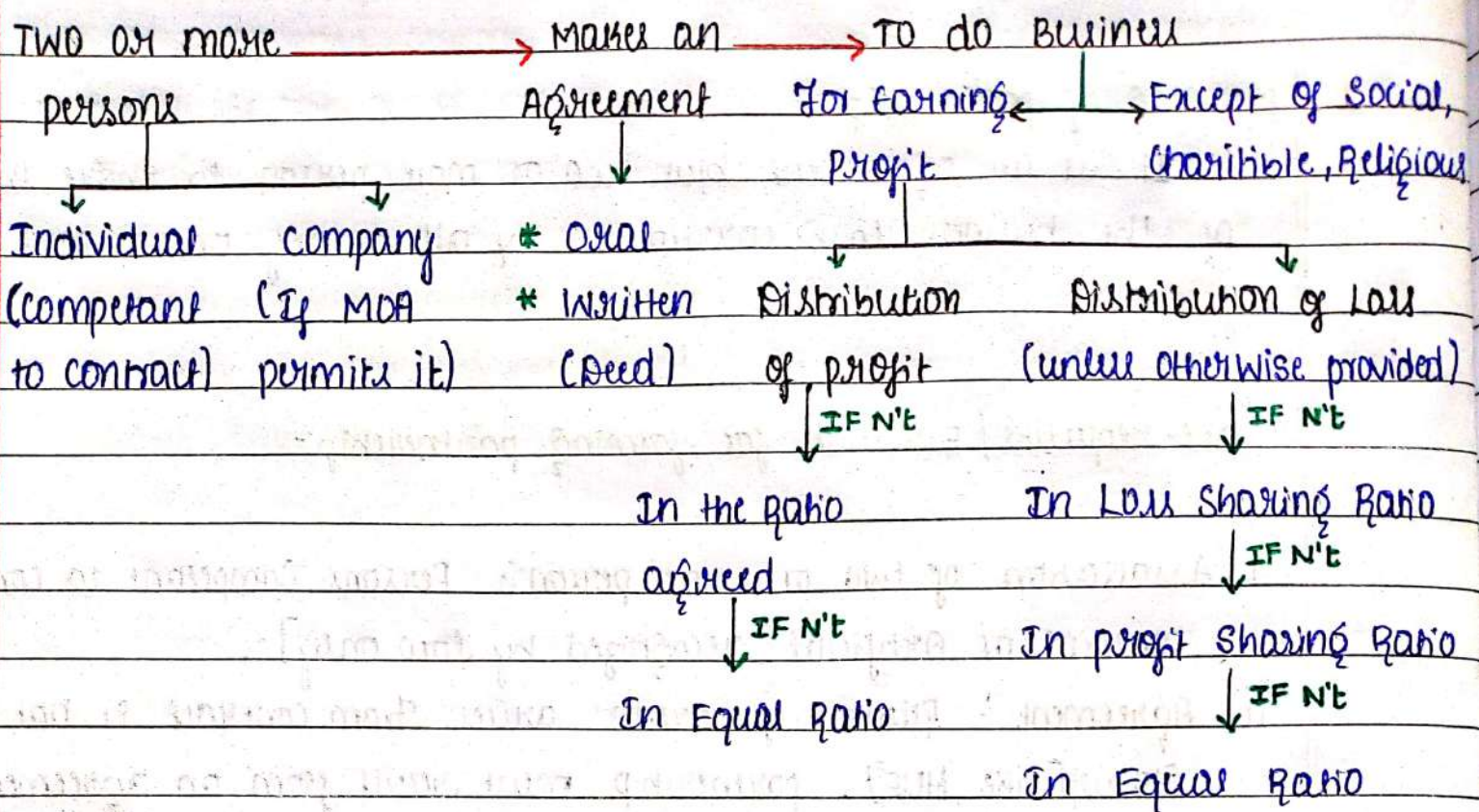
1. Meaning of partnership :-

It is an agreement b/w two or more person to share the profits of the business to be carried on by all or any one or more acting for all.

pre-requisites / Essentials for forming partnership:-

- i. Association of two or more person :- Persons Competant to contract, natural or Artificial [recognized by law only].
- ii. Agreement :- Relation of partners arises from contract & not from the statute [like HUF]. partnership must result from an agreement, that is voluntary & contractual. Agreement may be "express or implied. It may be "oral or in writing"
- iii. Business :- No association to carry on business = NO partnership.
- iv. Sharing of profit :- Ratio agreed in Agreement If not, Equal Ratio.
* In case of Loss, it also distributed [in Loss sharing Ratio If not, profit sharing Ratio If not, Equal Ratio] unless otherwise provided.
i.e one can be a partner only for profit [can't be only for Loss]
- v. Mutual Agency [True Test of partnership]
 - A partner is both an agent & a principal.
 - This is a conclusive evidence of partnership.
 - NO Mutual Agency = NO partnership.
 - Act of one partner is Act of all partners.
 - Sharing of profit is the prima facie evidence of partnership, But True Test is Mutual Agency.
 - In businesses other than partnership, profit sharing is present everywhere but this mutual Agency is unique in partnership.

SUMMARY :-



In the Following cases :- profit Sharing ✓, Mutual Agency X

- Lender of money
- Seller of Good will
- Widow or child of part a deceased partner
- Manager
- Joint owner

Types of partnership:-

i. General p'ship :-

It is a partnership formed for carrying on a agreed business in general.

ii. particular p'ship :-

- It is a p'ship formed only for a particular purpose / venture.
- When purpose is completed, p'ship comes to end.
- However, at the discretion continue partnership, If continued, it becomes p'ship at will.

iii. Partnership at will :-

- In this partnership, no time is fixed. No provision is made for dissolution.
- Any partner (by giving written notice to all partners) may dissolve partnership.

iv. Partnership for fixed period :-

- It is partnership in which duration is fixed & can't be dissolved by any partner at his will.
- Such partnership is dissolved before fixed period by adopting modes of dissolution.
- If this kind of partnership continues even after expiry of fixed period.

Types of partners :-

i. Active (ostensible) partner :-

- He is the one who actively participates in business of firm.
- He must give public notice on retirement/death.
- If nothing is specified, every partner is active partner.
- He is well known to all the outsiders.

ii. Sleeping partner (Dormant partner) :-

- Do not actively participate in business.
- He just provide capital & goes away [share profit/loss]
- No requirement of public notice in case of death/retirement.
- His name is in partnership deed, but public does not know him.

iii. Nominal partner (Secret partner) :-

- He lend his name to firm with out any real int in firm.
- He neither contributes capital nor participate in business.
- Liable to third parties for all act of firm.

- He is unknown to outsiders

iv. Sub partner. [partner of partner]

- He is not a partner at all.
- He can't exercise rights of partner
- If a partner transfers his share / share his profit with a third party, then he is known as Sub-partner.
- He is not liable to any debts of firm / acts of partner.

v. partner by Estoppel or Holding out:-

- Holding out means to represent.
- When a stranger represents (holds) himself as partner or knowingly permits others to represent him as partner in the firm, he is partner by holding out or partner by Estoppel.
- Such person is then stopped from denying character he has assumed & upon faith of which creditors may be presumed to have acted.
- Only person to whom representation has been made can enforce the contract.
- For Fixing Liability, it is not necessary that 3rd party shall be deceived by fraudulent intention.
- In case of "partnership by Estoppel", the representⁿ is made by partners about a stranger with in his knowledge & hearing & he does not contradict it. He is then liable as partner.

Effect of Holding out:-

- He becomes personal liable & individually liable for the acts of the firm
- But under the doctrine of Subrogation as well as on basis of quasi-contract, he can recover the amt so paid from the partner.
- He does become partner & can't exercise rights

Exception to Holding out:-

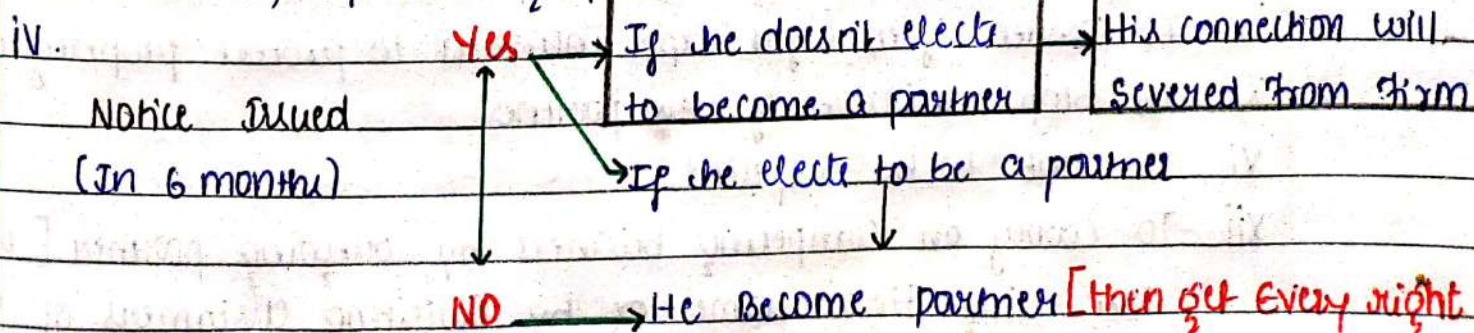
- i. For partner's tort cases, if they committed
- ii. Where Holding out partner is declared Insolvent
- iii. to bind the estate of deceased partner
- vi. partner for profit only.
 - He is entitled to share profit only without being liable for losses.
 - He is liable to the third parties for all acts of the firm.
 - He is bound to contribute for losses of firm when other partner's pvt estate is not sufficient to make up losses.

2. Position of a Minor in partnership.

- i. A Minor can't be bound by a contract because contract with a minor is void-ab-initio.
- ii. A Minor can't become a partner in partnership firm.
- iii. He can be admitted as beneficiary of existing partnership, with consent of all partners. & [not of a new p'ship firm]
- iv. Minor is eligible for share of profit, with all partner's consent.

Rights of a minor:-

- i. For agreed share of profit
- ii. Access to Books of A/c.
- iii. on Attaining majority, he may elect to become a partner within 6 months, by issuing public notice



Liability of Minor:-

Before attaining Majority → Liability upto the amt of his share in the firm.

After attaining Majority

- If elected to become partnership ☒
↳ He is liable as a beneficiary for acts upto the date of public notice.

- If elected to become partner ☒
↳ He is liable as a partner for the acts committed from the date when he was admitted as a beneficiary.

3. Rights & Duties of partners.

Rights:- unless otherwise agreed by parties, the following rules apply.

- i. To take part in conduct of business.
- ii. To be consulted.
- iii. To access books of A/c.
- iv. To Remuneration.
- v. To Share profit (In agreed ratio or in Equal ratio).
- vi. To Int on capital (only if decided in Agreement or there is a custom or usage of trade - It is paid out of profits).
- vii. To Int on advance (In agreed rate - If not, then @ 6% p.a).
- viii. To Retire (As per agreement).
- ix. To Indemnified (for exp^s incurred to protect property of firm).
- x. To Stop admission of new partner.
- xi. To not to be expelled.
- xii. To carry on competing business by outgoing partner [with out using Firm's name or by soliciting customers of firm].

Duties: Apart from any duties imposed by partnership deed (articles), the following statutory duties are implied.

- i. To act in good faith & in trust - in dealings with other partners.
- ii. Carrying business of firm to greatest common advantage.
- iii. To render true a/c to other partners.
- iv. To indemnify for loss caused to firm due to his misconduct
[this duty can't be excluded from any agreement]
- v. To a/c for personal profit made using firm's good will/name.
- vi. To use property of firm only for purpose of firm's business.
- vii. He shall not transfer his rights or interest to an outsider without consent of all partners.
- viii. To return profit earned by carrying on competing business of firm.
- ix. To share loss in agreed ratio [this duty can be excluded by an agreement]

4. Authority of a partner.

- i. It refers to the power/capacity of partner to bind firm by his act.
- ii. When authority is given expressly by an agreement → Express Authority.
- iii. When authority can be understood by conduct or delivery b/w partners → Implied authority.
- iv. All acts of a partner done to carry on business of firm in usual way are included within meaning of Implied Authority.
But, implied authority may differ from one firm to another firm of different sectors.
- v. The partners by contract, can either restrict or extend implied authority of partner.
- vi. If the third party is aware of restriction, if any imposed on the partner, then the firm is not liable.

Acts within Implied Authority.

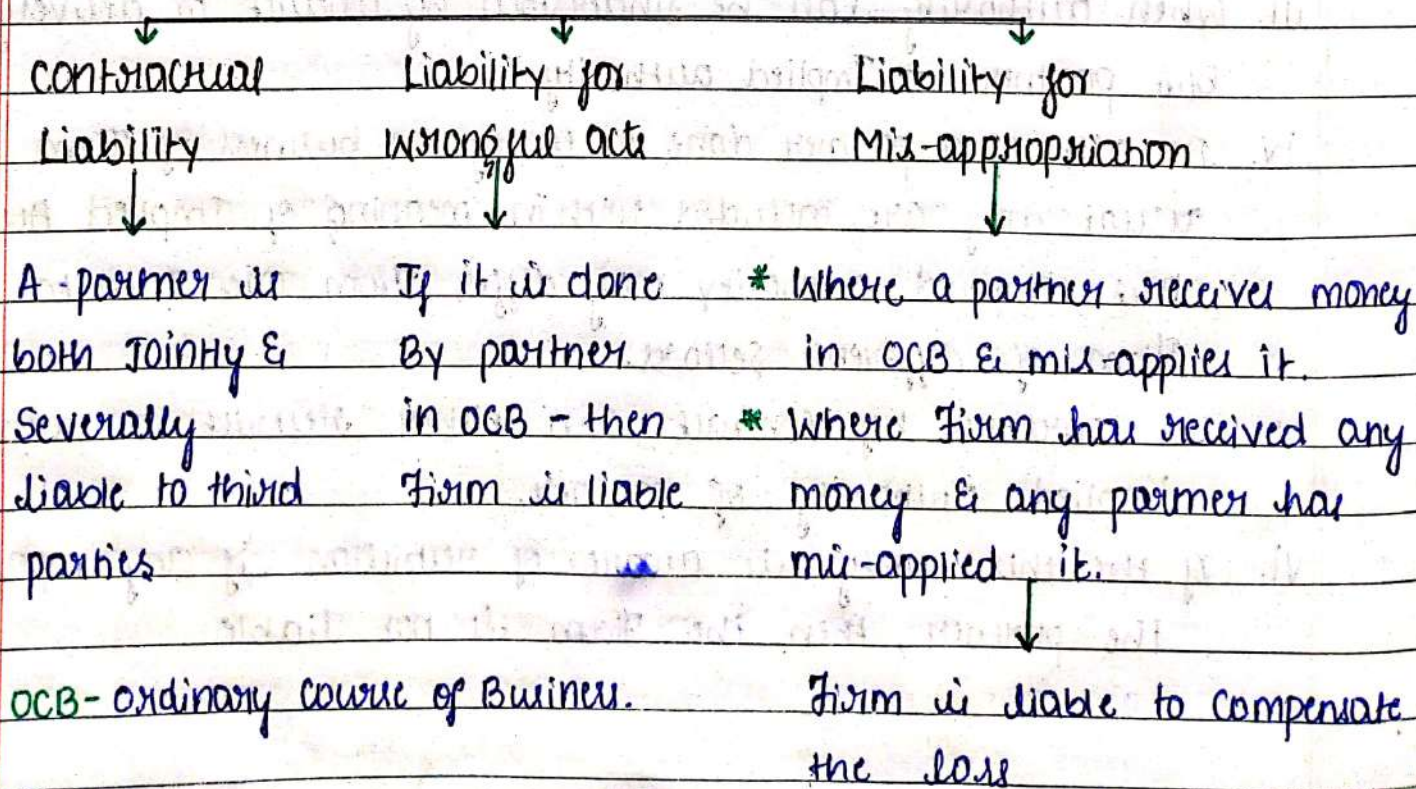
W.H.T. Firm :-

- i. purchase / sale of goods.
- ii. Receiving / paying Firm's due.
- iii. Appointment of employees.
- iv. Borrowing loan & pledging goods of Firm as security.
- v. To accept, make, issue negotiable Instruments in firm's name.
- vi. Engage the Lawyer for Firm.

Acts Beyond the Implied Authority. [It requires Express Authority. It can't bind Firm]

- i. Submit a dispute to arbitration
- ii. opening bank a/c on behalf of firm in his own name
- iii. Compromise / Relinquish any claim.
- iv. With draw a Suit
- v. Admitting any liability in a Suit against the Firm.
- vi. To acq^r Im. property on behalf of firm / it's transfer
- vii. Enter into partnership on behalf of firm.

4. Liabilities of partners - Inter Se [among themselves]



OCB - ordinary course of Business.

5. Dissolution

- It means putting an end to partner's relation.
- If a particular partner goes out, but remaining partners carry on business of firm → Dissolution of p'ship.
- Discontinuation of relation existing b/w all partners of firm → Dissolution of firm
- Retirement, Death, Insolvency, Insanity of one partner or more partners makes Dissolution of partnership & not of firm [if the other partner continue the business]

MODES :-

i. Voluntarily [with out court's intervention]

- a] By Agreement :- Firm's Dissolution → Consent of all partners - Contract terminated
- b] On happening of certain contingency :-
 - Expiry of time.
 - Completion of work.
 - Death/Insolvency of partner
- c] Compulsory Dissolution :- Insolvency of All partners / object become unlawful.
- d] In case of p'ship at will :- Any partner → Written notice to all partners for making Dissolution.

ii. Dissolution by court

- a] Insanity / permanent Incapacity of partner [suit for Dⁿ can be filed by any other partner]
- b] Misconduct of partner :- Misconduct relate to Business + Adverse effect
- c] Breach of Agreement by partner.
- d] Sale / Transfer of whole Int of partner
- e] Continuous losses.
- f] Just & Equitable Ground.

Effects / consequences of Dissolution.

i. Rights of partners:-

- a] To wound up Business:- pay All the Debts + Receive the Surplus.
- b] To earn personal profit:- In case, where a partner buys Goodwill
- c] To recover premium on pre-mature termination:-
But no premium is given in case of Misconduct / Death / expressly prohibited.
- d] To rescind partnership in case of Fraud / misrepresentation:-
Has a right of lien on surplus after payment of third parties.

ii. Liabilities of partner:-

- a] For acts done after Dⁿ of partnership but before Dⁿ of Firm
↳ If any surviving partner earns profit before Dⁿ of Firm, he shall ac for that profit & pay it to the Firm.
- b] For acts done After Dⁿ of Firm.
↳ partners continue to remain liable to third parties for acts done until public Notice of Dⁿ is given.

iii. Continuing Authority.

If there are Joint & Separate debts due from Firm

Property of Firm:- First use to pay Firm's Debt & then that of partner's
Property of partner:- First use to pay partner's Debt & then Firm's Debt.

iv. Settlement of Accounts.

a] In case of Loss [Assets < Liabilities]

- Pay from profit If Insufficient → from Capital Insufficient
- Partners shall bear in Profit sharing Ratio.

b) Utilisation of profit.

- Pay Debts → Repay loans & advances of partners → Capital of partners → Surplus will be distributed in PSB

V. Sale of Good Will.

- purchased by any of partner or by outsider.
- The value is divisible among partners at decided Ratio.
- Buyer's right:- unless otherwise provided.
 - i. Represent himself in continuing Business.
 - ii. Exclusive right to use firm's name.
 - iii. Soliciting former customers & preventing the seller from doing the same.
- Seller's right:- Subject to Restraint clause in contract of sale.

6. Registration :-

Application for Registration.

i. When :- Any time

ii. How :- By sending by post or delivering to the Registrar of area in which any place of Business of firm is to be situated.

iii. Documents :- prescribed form + fee

a] Firm's name.

d]. Date when each partner joined

b] Place / principle place of Business

e] Names & Address of each partner

c] Name of any other place where

f] Duration of firm.

firm carries on business.

iv. Signed & Verified by :- All partners + Authorized agents

v. Subsequent Regⁿ :- When there is alteration in name, place, Consequent etc.:-

Regⁿ is not compulsory.

Consequences of Non-Regⁿ

Although regⁿ of firm is not compulsory, consequences or disabilities of non-Regⁿ have a persuasive pressure for their Regⁿ. Those disabilities are:-

- i. Firm / partners can't sue in a civil court against third party.
- ii. No relief to partners for set-off of claim [Amt > ₹100]
- iii. Adjoined partner can't bring legal action against other partner or the firm.

Non-Regⁿ does not affect:-

- i. Right of third parties to sue firm or any partner.
- ii. Right of partners to sue for dissolution of firm for settlement of acc^t / realization
- iii. power of official Assignee, Receiver of court to release property of insolvent partner & to bring an action.

7. Imp Distinction

partnership	Company
i. No separate Legal Existence	i. Separate legal existence
ii. Firm & partners are not different	ii. Company is separate from members
iii. partners' ve unlimited liability	iii. members have limited liability
iv. Max no of partners is 50.	iv. In public co → No max no of members' limit listed
v. No free transferability of share	v. Free transferability of share in case of public co.
vi. Mutual Agency among partners	vi. No mutual Agency b/w members
vii. profit are distributable among partners as per deed.	vii. No compulsion for profit distrib

viii. Mgt dies with partners

ix. Property of firm is joint property of all partners

x. Creditors of firm can sue partners jointly & severally.

xi. Partner can't contract with firm

xii. Restrictions on partner's authority do not bind outsiders.

xiii. Audit is not compulsory

viii. Mgt dies with Directors & not with Members

ix. Property of company belongs to company itself & not of members

x. Creditors of company can't sue members of company

xi. Members can contract with company

xii. Restrictions contained in Articles bind outsiders.

xiii. Audit is compulsory

partnership

i. It arises from an agreement

ii. Governed by Indian P'ship Act

iii. persons are called partners

iv. Max. partners limit is 50.

v. A person can be admitted, with consent of all partners.

vi. Female can become a Full partner

vii. Every partner has implied Authority

viii. unlimited liability of partners.

ix. Generally partnership is dissolved on death of any partner

HUF

i. It arises by status / operation of law

ii. Governed by Hindu law

iii. persons are called 'coparceners'

iv. No max limit for coparceners.

v. male person becomes member merely by his birth.

vi. Female doesn't become member merely by her birth.

vii. only Karta has Implied Authority.

viii. Only Karta's liability is unlimited. other coparceners' liability is ltd to extent of their shares in Family property.

ix. HUF continues to operate even after death of coparceners

partnership

- i. Arises from an agreement
- ii. Formed for carry on Business
- iii. Mutual Agency.
- iv. persons are called as partners
- v. Max partner's limit is 50
- vi. partners require consent of other partners for transferring his share to stranger.
- vii. No right to claim partition of property but he can sue other partner for dissolution of firm

Dissolution of Firm

- i. It refers to dissolution of p'ship b/w all partners of firm.
- ii. It necessarily involves D^n of p'ship.
- iii. It involves windup of firm & settlement of a/c
- iv. Firm may be dissolved by court order
- v. Business is discontinued
- vi. Realization a/c is prepared.

Co-ownership

- i. may/may not arise from Agree
- ii. may not involve for Business
- iii. NO Mutual Agency.
- iv. persons are called co-owners.
- v. No ceiling limit for co-owners
- vi. co-owners don't require consent of other, for transferring his Interest/rights.
- vii. co-owner has right to claim partition of property

Dissolution of p'ship

- i. It refers to change in relation of partners.
- ii. It may or may not involve D^n of firm.
- iii. It involves only re-constitution & requires only re-valⁿ of A&L.
- iv. D^n of p'ship is not ordered by court
- v. Business continues under firm's name
- vi. Revaluation a/c is prepared.

point to be noted:-

- i. No charitable Institution or Club may be floated in p'ship.
- ii. Company may be floated non-economic purpose.
- iii. Since, a Firm has no separate legal entity, It can't be a partner in another firm.
- iv. When a party dies, his legal heir can't become partner automatically without an agreement.
- v. Agreement can be modified any no of times but 100% consent of all partners is compulsory.
- vi. All partners have equal rights & duties. No one has much authority or less authority.
- vii. As relation of partners inter se are that of agency, no consideration is req^d to create the p'ship.
- viii. An incoming partner is not liable for debts incurred before he joined the firm as a partner.
- ix. The Estate of Insolvent/Dead partner, is not liable for p'ship debts contracted after the date of death/insolvency.
- x. To buy entry into an existing firm, a new partner sometimes has to pay premium to the existing partners in addition to any investment of capital.