



Office of the Registrar of Political Parties

# Guide to Mergers and Coalitions

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# FOREWORD

The Political Parties Act, 2011 is fairly new and its implications for the governance and management of political parties is not well understood by political parties, other electoral stakeholders and members of the public. This publication provides some key information, albeit simplified, about the contents and application of the law in practice. It is hoped that it will contribute to better understanding of and compliance with the Act.

This publication has benefited immensely from the support and contribution of a number of individuals and partners. We would like to thank them all.

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Last, we are grateful to the staff at my Office who have worked tirelessly and with dedication to see the project through.

**Lucy K. Ndungu**

**Registrar of Political Parties**

# Table of Contents

<b>1. General</b> .....	1
<b>2. Meaning of Merger</b> .....	1
2.1 Why Political Parties Merge.....	2
2.2 Requirements for Mergers.....	3
2.3 Merger Procedures.....	4
2.4 Consequences of a merger.....	4
<b>3. Meaning of Coalition</b> .....	6
3.1 Types of Coalitions.....	7
3.2 Why Parties Form Coalitions.....	9
3.3 Requirements of coalitions.....	9
3.4 Consequences of Forming a Coalition.	10
3.5 Amending of the Coalition Agreement..	11
3.6 Ending of Coalition.....	11

## 1. General

This guide summarises the law and practice relating to formation of coalitions and mergers by political parties. This guide is not a substitution to the Constitution 2010 and the Political Parties Act 2011, both which stipulates comprehensive legal and other obligations required of registered political parties.

## 2. Meaning of Merger

Any association of persons or an organization which intends to operate or function as a political party must first be registered in accordance with the provisions of Political Parties Act, 2011

The Political Parties Act does not define a merger but states that “A political party may merge with another political party.”

In general, a “merger” means where two or more political parties consolidate their operations and combine all officers, structures, and other functions of the political parties.

Mergers may occur by:

- **Absorption:** In this case at least one party is completely dissolved and joins another party that has not been dissolved.
- **Amalgamation:** Merging political parties that are dissolved and a new political party formed when they join.

The Act contemplates merger by amalgamation and in this regard provides “political parties which have merged into a new political party under this section shall stand dissolved upon registration of the new political party”.

## 2.1 Why Political Parties Merge

Political parties may consider a merger for varied reasons which include:

- **Vote maximization.** This is mostly to gain maximum votes during elections.
- **Office maximization.** This is achieved through gaining more cabinet posts.
- **Similarity in policy or ideology.** If parties have similar party ideologies, a merger for them will

work best as they will be combining forces to push for their agenda collectively.

- Rebranding a political party's image. Sometimes a political party may seek a merger in order to rebrand its tarnished image.
- Representation and participation of members. Parties may merge in order to gain a better grip in representing its people and give its members a wider platform in which to participate.
- To keep undesired political ideologies, groups or forces out and prevent undue influence.

## 2.2 Requirements for Mergers

The Political Parties Act, 2011 provides for the merger where two or more political parties enter into a merger by forming a new political party.

Political parties entering into a merger shall deposit with the Registrar:

- The merger agreement
- Documentation showing that the rules and procedures of political parties entering into a merger have been followed
- Minutes of the meeting of the governing



bodies of each of the political parties entering into the merger sanctioning the merger

### 2.3 Merger Procedures

Political parties intending to merge have to submit the application for merger together with the agreement.

When two or more political parties merge and upon receiving the letter of confirmation of the merger the Registrar shall issue certificate of full registration.

The Registrar shall amend the Registry of Political Parties by replacing the names of the merging parties with the name of the new political party.

### 2.4 Consequences of a merger

The merger of two or more registered political parties into one new party has these consequences:

- The new party is the successor of both/all merging parties. The former parties cease to exist and no longer appear as parties in the Registry of Political Parties from the date of

- the merger.
- The new party becomes a registered party.
  - The assets of each merging party belong to the new party.
  - The new party is responsible for the liabilities of each merging party.
  - The new party is responsible for the obligations of each merging party to report on its financial transactions and election expenses for any period before the merger took effect.
  - The new party replaces each merging party in any legal proceedings – whether civil, penal or administrative – by or against a merging party.
  - Any decision of a judicial or quasi-judicial nature involving a merging party may be enforced by or against the new party.
  - The registered associations of the merging parties will become deregistered.
  - A new party is entitled to the combined total of the allowances to which the merging parties would be entitled if they had not merged.

When political parties merge into a new party, their

particulars shall be removed from the register of political parties and their names, symbols, logos and colours shall not be registered by any political party for a period of five years.

### 3. Meaning of Coalition

Before the Political Parties Act, 2007 came into force, there was no law that governed formation of coalitions in Kenya. This is not to say that there were no coalitions before. There were few coalitions but these were often wracked with wrangles and never achieved what they had aimed to. This was partly because internal rules were not clearly defined or adhered to.

The Act outlines a legal framework for formation and management of coalitions. It also requires political parties in a coalition to draft clear internal rules and objectives so that ordinary Kenyans can understand what to expect from the coalition between parties.

A “coalition” means an alliance of two or more political parties formed for the purpose of pursuing a

common goal and is governed by a written agreement deposited with the Registrar of Political Parties.

Coalitions enable constituent political parties to pursue a common goal. Coalitions are different from mergers in that parties in spite of their cooperation remain independently identifiable legal entities with their own leadership, constitutions, members etc.

### 3.1 Types of Coalitions

According to the Act, political parties may sign coalition agreements before elections (pre-election coalitions) or after elections (post-election coalitions)

In a pre-election coalition, parties agree to form a government with each other if they receive enough votes in the up-coming elections. Pre-election coalitions can also entail:

- Working together
- Electoral cooperation, such as encouraging voters to vote for an ally

- Joint policy platform
- Coalitions negotiate mutual withdrawals: meaning candidates of the different parties in the coalition, do not compete against each other in the same electoral area.

Post-election coalitions are formed after elections and determine:

- i. Government formation :
- ii. Who will be their partners in government and under what terms they will cooperate; and
- iii. The joint policies that the government will implement.

Coalition agreements typically include components such as portfolio allocation, government formation, coalition decision rules, mechanisms of collective decision-making, the government's policy programme, electoral cooperation and cabinet duration and termination.

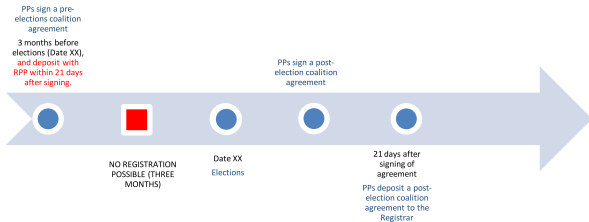
## 3.2 Why Parties Form Coalitions

Parties form coalitions to enhance chances of achieving a certain goal such as winning elections and forming a government. Post-election coalitions are geared towards enabling the government or the opposition parties to speak in one voice on issues of interest.

## 3.3 Requirements of coalitions

The requirements for coalition agreement are set out in the Third Schedule of the Act and require that the agreement be:

- sanctioned by the governing body of the political parties entering into the coalition and shall;
- be in writing and duly executed by authorized national party officials; and
- Commissioned by a Commissioner of Oaths.



### 3.4 Consequences of Forming a Coalition

Each political party in the coalition is still recognised as a legal entity and has an independent legal existence from that of its coalition partner(s).

Parties are still entitled to rights and have to fulfil responsibilities and liabilities under the Act and other laws.

A coalition:

- shall not register a coalition name, but may use such name in popularizing the coalition;
- shall not register a coalition slogan, logo or colours but may use such particulars in popularizing the coalition
- may use the logo, symbol and colours of its constituent political parties;

- will not receive funds from the political parties fund but each party will;
- may only admit as its members registered political parties;
- shall not recruit individual members except through its constituent political parties; and
- No candidate shall be nominated on a coalition ticket.

### 3.5 Amending of the Coalition Agreement

A coalition agreement can be amended and must follow the Act provisions for coalition agreement and the provisions spelt out in the original coalition agreement.

### 3.6 Ending of Coalition

A coalition may end by following the provisions spelt out in the coalition agreement.







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