

An Exposition Of Limited Liability Partnerships (LLPs) And Limited Partnerships (LPs) Under The Companies And Allied Matters 2020 – The New Age Business Structure In Nigeria.

Introduction

The dynamic business environment we live in today calls for constant change and upgradation. In order to remain relevant, there is need for a business structure that appeals to business and service sectors alike with lesser restrictions and government intervention. The company form of business structure is one such favourite but not without its inherent limitations. It is now a Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs) form of business entities introduced by Companies and Allied Matters Act 2020 are coming into reality in Nigeria.

The scope and nature of business enterprise in Nigeria is now set to experience new dynamism with the creation of Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs) under the Companies and Allied Matters Act 2020. The introduction of LLPs & LPs has given impetus to the general law of Partnerships in Nigeria. The Companies and Allied Matters 1990, which is the precursor to the current Act, was amended in 2020 to provide for LLPs & LPs in sections 746 – 810 of CAMA 2020. The defunct Companies and Allied Matters 1990 made provisions for general partnerships. This type of partnership permits individuals to register partnership as a business name under Part B of CAMA 1990.

The need for a more dynamic form of partnerships in Nigeria to address the increase in litigation resulting in personal liability by partners and the consequent threat to partnership entities and their partners has necessitated the in-

troduction of a form of partnership that would provide a limitation of liability analogous to that enjoyed by directors of a limited liability company. This is timely and important especially for individuals and groups providing professional services. In the same vein, the desire to protect investors and keep the trend of LPPs in growing economies around Nigera encouraged the federal government to push for the creation of limited liability partnerships as a business entity.

This article discusses the basic features of an LLP, the nature of an LPP, the requirements for incorporating an LLP, the benefit of an LLP, the status and liability of members and cessation of membership, and the general provisions of an LP under the Companies and Allied Matters Act 2020.

What is a Limited Liability Partnerships (LLPs)?

Section 746(1) of CAMA 2020 defines a Limited Liability Partnership as a body corporate with legal personality separate from its members. It is a hybrid business form that infuses two types of business; a partnership and a limited liability company. The formation of an LLP is particularly an appropriate vehicle for accountants, lawyers, doctors, architects and other professionals who tend to rely heavily on reputation. This option is suited to a group of professionals with lots of experience and clients between them, as it allows them pool resources together, thereby lowering the cost of doing business while increasing the LLPs capacity for growth.

Key Features of Limited Liability Partnerships

A Limited Liability Partnership (‘LLP’) is an alternative corporate vehicle that combines the flexible structure of a partnership with the benefits for its partners or members. An LLP is a corporate business vehicle that enables professional expertise and entrepreneurial initiative to combine and operate in flexible, innovative and efficient manner, providing benefits of limited liability while allowing its members the flexibility for organizing their internal structure as partnership.

An LLP is a relatively new entity in Nigeria, the legislation creating it having come into existence in 2020. Some of the key features of LLPs are:

1. They are a separate legal entity from their members.
2. They have perpetual succession
3. They have the benefit of limited liability for their members.
4. They have the organisational flexibility of a partnership.

5. Any agreement ("LLP agreement") between the members governing the operation of the LLP is a private document, which is confidential to the members.
6. They must have at least two "designated" members.
7. Their "trading disclosure" requirements are similar to those of a company.
8. They must be registered at the Corporate Affairs Commission
9. Their accounting and filing requirements are similar to those of a company.
10. Having LPPs means spreading the risk, leveraging individual skills and expertise, and establishing a division of labour
11. LLPs are common in professional business like law firms, accounting firms, and wealth managers etc.

A separate legal entity

Section 746 (1) of CAMA 2020 describes an LLP as a legal entity separate from its members. On incorporation, the Corporate Affairs Commission will issue an LLP with a unique registration number, in the same way as a limited company. This registration number will stay the same throughout the lifetime of the LLP, even if the LLP changes its name. An LLP itself has unlimited capacity and it can do anything that a natural person or body corporate can do, including suing and being sued, acquiring, owing, holding and developing or disposing property whether movable or immovable, tangible or intangible, entering into contracts, as well as having a common seal. **See Section 756 of CAMA 2020.**

Perpetual Succession

Section 746 (2) & (3) of CAMA 2020 describes an LLP as a business entity with perpetual succession. Perpetual succession means that any change in the membership or death of any of the Partners of an LLP will not affect its continued existence. However, if the membership of the LLP falls below two Members, and the LLP continues to trade for more than 6 months with just one Member, only that member would be liable for the obligations of the partnership incurred during that period. **See Section 748 of CAMA 2020.**

Limited Liability

Section 765 of CAMA 2020 provides that a partner of an LLP is an agent of the LLP, and not of other partners. A partner cannot be liable, directly or indirectly for an obligation carried out in accordance with the partnership agreement. He cannot be liable for the wrongful act or omission of any other partner of the LLP.

The members of an LLP act as its agents and only have liability up to the amount they have contributed to the LLP – in particular their capital contribution and undrawn profits. This is a significant advantage over a traditional partnership where the part-

ners generally have unlimited liability. However, the liability of a member maybe extended If the members of an LLP allow the LLP to continue trading after they knew (or ought to have known) that it had no reasonable prospect of avoiding insolvency; or allow it to continue trading with a view to defrauding creditors, they may be personally liable. The degree to which each member was involved and the degree of control in the business will both be relevant.

Designated Partners

Section 749 of CAMA 2020 provides that an LLP must have at least two designated partners. The designated partners must have the same rights and duties towards the LLP as any other member but with extra responsibilities. These include duties such as signing and delivering the accounts and annual returns and notifying Corporate Affairs Commission of any changes in membership, registered office address or name.

Designated members are accountable in law for failing to carry out these legal responsibilities. **See Section 750(b) of CAMA 2020.**

Organizational Flexibility

An LLP has the organisational flexibility of a partnership and the provisions dealing with the day-to-day running of the LLP will normally be contained in a written LLP agreement. An LLP agreement will typically deal with matters such as profits and losses, drawings, ownership of property, meetings/decision making, admission of new members, retirement/expulsion of members, indemnities and insurance, restrictive covenants.

Any written LLP agreement is a private document, which is confidential to the members.

Professionals who use LLPs tend to rely heavily on reputation. Most LLPs are created and managed by a group of professionals who have a lot of experience and clients between them. By pooling resources, the partners lower the costs of doing business while increasing the LLP's capacity for growth. Most important, reducing costs allows the partners to realize more profits from their activities than they could individually.

The partners in an LLP may also have a number of professional workers in the firm who work for them in the hopes of someday making full partner. These professional workers are paid a salary and often have no stake or liability in the partnership. The important point is that they are designated professionals qualified to do the work that the partners bring in. This is another way that LLPs help the partners scale their operations. Professional workers take away the detail work and free up the partners to focus on bringing in new business.

The internal structure of LLPs is flexible because of the easy platform to bring partners in and let partners out. Because a partnership agreement exists for an LLP, partners can be added or retired as outlined by the agreement. This comes in handy as the LLP can always add partners who bring existing business with them. Usually, the decision to add requires approval from all the existing partners.

It is the flexibility of an LLP for a certain type of professional that makes it a superior option to an LLC or other corporate entity. Like an LLC, the LLP itself is a flow-through entity for tax purposes. This means that the partners receive untaxed profits and must pay the taxes themselves. Both an LLC and LLP are preferable to a corporation, which is taxed as an entity and then its shareholders are taxed again on distributions.

Formation of Limited Liability Partnership

Two or more people associated, and carrying on a lawful business with a view to profits must form an LLP. **See Section 753 (1) (a) of CAMA 2020.** It is worth noting that some regulatory bodies may prevent their members from operating as LLPs.

Section 747 of CAMA 2020 provides that a person is not qualified to join an LLP as a partner if he has been declared to be a person of unsound mind by a court in Nigeria or elsewhere or if he is an undischarged bankrupt. During Incorporation or change of name of an LLP, there are certain restrictions on the choice of name to be registered at the Corporate Affairs Commission. An application for registration or change of name of an LLP could be rejected if the Commission finds it undesirable or if it is identical or nearly resembles that of any other partnership, business name, limited liability partnership, body corporate, or a registered trademark. **See Section 757 (2) of CAMA 2020.**

Importantly, all LLPs must end with the words ‘Limited Liability Partnership’ or their abbreviations ‘LLP’. **See Section 757 (1) of CAMA 2020**.

LLP Partnership Deed/Member’s Agreement

It is important to prepare an LLP agreement or partnership deed, which will govern the rights and duties of the members (the equivalent of articles of association for a company). An LLP agreement is a private document that does not have to be disclosed to the outside world. The agreement can be tailored precisely to suit the requirements of the members (subject to statutory requirements).

Another important function of an LLP agreement is to determine the means of resolving any disputes that may arise between members. In the absence of a well-drafted agreement, there could be some uncertainty as to how disputes might be resolved.

The relevant clauses in LLP Agreement or Partnership Deed includes but not limited to the following clauses.

1. **Equal shares:** All members are entitled to share equally in the capital and profits of the LLP. There is no mention of losses because, unless specified otherwise, the LLP bears its own losses. The losses may or may not be allocated to members by the LLP agreement. Care should be taken to ensure that the members' limited liability is not jeopardised.

2. **Indemnity for payments and personal liabilities:** The LLP must indemnify each member for payments made by him and personal liabilities incurred by him in the ordinary and proper conduct of the business or anything necessarily done for the preservation of the business or property of the LLP.

3. **Involvement in management:** Every member may take part in the management of the LLP. Exclusion from management could result in a member bringing a claim for unfair prejudice.

4. **No remuneration:** No member is entitled to remuneration for acting in the business or management of the LLP.

5. **Consent of members required for new members and assignments:** No person may be introduced as a member or may voluntarily assign an interest in an LLP without the consent of all existing members.

6. **Decision-making:** A majority of the members may decide any difference arising on ordinary matters connected with the business. Any proposed change to the nature of the business requires the consent of all members.

7. **Access to books and records:** Books and records must be made available for inspection. Every member may, when he thinks fit, have access to the books and records to inspect and copy them.

8. **Duty to give true accounts and full information:** Each member must give true accounts and full information of all things affecting the LLP to any other member or his legal representatives.

9. **Duty of good faith:** The Act does not indicate whether the members' relationships with each other and the LLP are of a fiduciary nature. As the members are agents of the LLP, it is likely they will be held to owe fiduciary duties to the LLP but it is not clear whether they owe any such duties to each other. Members may wish to provide for fiduciary duties in the LLP agreement.

10. **Duty to account for profits from competing business:** If, without the consent of the LLP, a member carries on any business of the same nature that

competes with the business of the LLP, that member must account for and pay to the LLP all profits made by him in that other business.

11. **Duty to account for benefits derived:** A member must account to the LLP for any benefit derived by him, without the consent of the LLP, from any transaction concerning the LLP or any use of the property of the LLP, or any use of the name of the LLP or any use of a business connection of the LLP

12. **Third parties and members' liability:** The basic rule is that every member is an agent of the LLP and can therefore bind it. There are limits, however, where the member is not authorised to act, or has ceased to be a member

13. **Debentures:** An LLP may issue debentures and give fixed charges and floating charges over its assets in the same way as a company.

14. **Unfair prejudice:** A member has the right to apply to court if the LLP or the other members are unfairly prejudicing his interests. The members can agree (unanimously in writing) to exclude this right in their LLP agreement for an agreed period of time. As this provision gives any disgruntled member the power to disrupt the LLP, many LLP agreements exclude this rights

15. **Cessation of the LLP:** Because the LLP has a separate existence from its members, unlike a partnership, it will not dissolve automatically if, for example the membership falls below a certain level. Instead, explicit steps must be taken to terminate an LLP.

Disclosure requirements/Publication of Name

Every LLP must paint or affix its name on the outside of every office or place of business (even if it is a member's home), in a conspicuous position and in legible letters. The LLP's name should also appear, in a legible form, on a number of business documents including:

1. Business letters and order forms.
2. Notices and other official publications.
3. Websites.
4. Cheques, invoices and receipts.

In addition, all business letters and order forms of the LLP, and all of the LLP's websites, must specify the following in legible letters:

1. The place of registration and registered number.
2. The registered office address
3. In the case of an LLP whose name ends with the abbreviation "LLP", the fact that it is a limited liability partnership.

Failure to comply with any of these statutory requirements may result in a fine for the LLP and/or for all Members in default. **See Section 760 of CAMA 2020**.

Accounting and filing requirements

LLPs are required to provide financial information similar to that required of companies. Examples of the documents that an LLP must file at Corporate Affairs Commission include:

1. An annual return.
2. Annual accounts.
3. Notification of changes to the LLP's membership, including changes to a member's status (from member to designated member or vice versa).
4. Notification of changes to the registered office address.
5. Details of any mortgage or charge created by the LLP.

Failure to file annual accounts or annual return on or before the due date will result in a fine being imposed by the Commission. **See Sections 772 & 773 of CAMA 2020**.

Benefit of an LLP

1. The liability of each partner is limited to his contribution as written in the LLP agreement
2. It has a low cost of formation and is easy to form
3. The partners are not liable for the acts of each partner and can be held liable only for their own acts
4. Less restrictions and compliance are enforced on LLPs by the government as compared to the restrictions enforced on companies.

Limited Partnership (LP)

Key Features

1. Fundamentally, Limited Partnerships create a distinction between General and Limited Partnership. In general partnership, partners are given the opportunity and privilege of being involved in the day to day management of the partnership. The partners also ordinarily have unlimited liability for the debt of the Limited Partnership. Limited Partners are denied this opportunity and privilege but they have a limitation of liability to the amount contributed by them

2. Limited Partnerships have lesser restrictions in relation to registrations. Section 795 (1) of CAMA 2020 provides that a limited partnership shall not consist of more than 20 persons.

3. Limited Partners have a limitation of liability to the amount they have agreed to pay as contribution in the event of the partnership ending unless they have taken part in the management of the Partnership. Consequent upon which, they will lose their Limitation of liability.

4. Additionally and this is important, a Limited Partnership is not a person in law. This characteristic distinguishes it from a Limited Liability Partnership, which is a person in law.

5. The death, bankruptcy, or lunacy of a Limited Partner does not constitute a ground for the dissolution of a Limited Partnership.

Conclusion

The statutory creation of LLPs & LPs have made it possible for investors, private funds, professional service firms or other entities to register as Limited Partnership or as Limited Liability Partnerships under the Companies & Allied Matters Act 2020. The Nigerian private equity and venture capital industry will benefit significantly from the recent creation of LLP & LP as they suits private equity investments at the fund formation level and at the investment (portfolio) level. From a fund formation perspective, a clear and predictable framework for establishing alternative investment and business formations structures will not only give more comfort to both local and foreign limited partners thereby attracting more foreign inflows, but will also enhance the competitiveness of the Nigerian private funds industry and further establish Nigeria as a centre for private equity and venture capital fund formation within the Sub-Saharan region. Most of all, alternative investment fund structures will do a lot in moderating the historical spate of regulatory arbitrage that sees local fund managers turn to foreign jurisdictions to pool investment funds.

References

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3. CAMA 2020 and the Introduction of Limited Liability Partnership – By Nexia Agbo Abel & Co.