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An Appraisal of Limited Liability Partnership and Limited Partnership Under Nigerian CAMA 2020

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Abstract
The dynamic business environment we live in presently calls for constant change to meet up with international best practices. In order to remain relevant, there is a growing need for business structures that appeals to business and service sector alike with less restrictions, disadvantages and government intervention. Nigeria's 30 years wait for a holistic and an all encompassing law was brought to an end by the passage of the Companies and Allied Matters Act 2020. The Act introduced novel provisions aimed at improving the ease of doing business in Nigeria. Amongst a plethora of innovations and reforms introduced by the Act is the provision for the incorporation and registration of Limited Liability Partnership (LLP) and Limited Partnership (LP) respectively. The LLP is a blend of the attributes of an incorporated company and a partnership, while the LP is a blend of general and limited partner. This paper also explored the significance, attributes, similarities and differences between LLP and LP. The methodology adopted in this work is doctrinal while the approach used is narrative and comparative. The result indicated that LLP and LP are beneficial to professional firms as well as small and medium businesses. Both provided additional forms of business structures in Nigeria.

Key words: Limited Liability Partnership, Liability, Partnership, Limited Partnership, Business Structure.

Introduction
Limited liability partnership (LLP) is a form of partnership that has the coloration of a limited liability company.LLP is a body corporate which is distinct from its partners. It combines the features and attributes of a limited liability company and that of a partnership. It is a partnership structure where each partner's liabilities are limited to the amount they put into the business. Partnership and incorporated companies have been primary forms of business structure in Nigeria.[1]Although, partnership is one of the oldest forms of business structure, it did not produce the desired effect. The available legal frameworks were somewhat limited in application and weak. However, limited liability companies have to some extent replaced partnership firms in complex businesses, though partnerships are still preferred by professionals.

Before the new CAMA 2020, provision was only made for general partnerships which can be registered under the then Part B of CAMA as a business name and the various Partnership Laws of the various states. Professionals used this avenue to float their businesses due to ease of

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[1] T Tobun & K Alade, Nigeria: New Partnership Structures as Vehicles for Ease of Doing Business in Nigeria, available at http://www.mondaq.com. Accessed on 30th December, 2021.

formation, tax reduction and organizational flexibility.[2] The general partnership is no longer in vogue as a result of its obvious disadvantages; the major disadvantage being unlimited liability of its partners for business debts and legal consequences notwithstanding each partner's holding since firm is not a juristic person. Under general Partnership, the members are collectively and individually liable for the firm's debts and obligations and in the event of any liability arising, each partner has risk of exposure to personal assets.

However, with the new CAMA 2020, LLP was introduced as a new legal concept in Nigeria following its wide acceptance and usage across some other jurisdictions like United Kingdom, United States of America, India and many other jurisdictions. While the LP was modified and new features added to make it flexible and attractive for a 21st century business owners.

Definition of Partnership

Partnership is a form of business organization whereby two or more people come together for the purpose of carrying on a business with the aim of making profit. [3] According to the Supreme Court of Nigeria in the case of **Okin v Okin,**[4] it was held that a partnership is a voluntary association of two or more persons who jointly own and carry on a business for profit. Three basic Requirements of a Partnership are:

a) There must be more than one person
b) There must be a business
c) It must be for profit making

The Supreme Court further stated in the case of **Okin v Okin**[5] that a partnership is presumed to exist if the persons agree to share proportionally the business's profits or losses. The essential element common to all partnership is the pulling together of resources, capital, labour and skill for the common benefit of all the partners.

Definition of a Limited Liability Partnership

A limited liability partnership is a body corporate formed and incorporated under the Act and is a legal entity separate from the partners. A limited liability partnership shall have perpetual succession. Any change in the partners of a limited liability partnership does not affect the existence, rights or liabilities of the limited liability partnership.[6]

As can be gleaned from the foregoing statutory definition, a limited liability partnership combines the benefits of a corporate structure such as a limited liability company together with the advantages of a basic/ general partnership at a low compliance cost.[7] This is a blend of the provisions of Companies and Allied Matters Act and Partnership Act. The LLP in Nigeria seems

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[2] D Ray, The Emergence of Limited Liability Partnerships, (2012) available at https://ssrn.com/abstract=2117240 accessed on 28th December, 2021.
[3] Partnership Law Lagos State, CAP P1 2009.
[4] (2020) All FWLR pt 441
[5] *Ibid*
[6] See Section746 of CAMA 2020.
[7] A M Sachdevva & S Sachdeva, The Indian LLP: Some Concerns for Lawyers and Chartered Accountants, SEBI & Corporate Law, Vol 92 2009 available at http://ssrn.com/abstract=1423766 accessed on 20th August, 2021.

to be more similar to Limited Liability Company but with some of the advantages of a partnership. LLP is a hybrid between an incorporated company and a partnership. Prior to the inception of Limited Liability Partnerships, a partnership could not benefit from the protection accorded to Limited Liability Company by the law. As stated by the court in the case of **Cox v Hickman,**[8] the liability of one partner for the acts of his co-partners is one of the disadvantages of a partnership. In the 1990's, some of the larger professional partnerships were becoming increasingly concerned with the risk of substantial personal liability of their partners. Following wide consultations and in line with what is obtainable in some other jurisdictions, the legislature came up with a new form of entity called Limited Liability Partnership.[9] It retained the internal flexibility of a partnership while also limiting the liability of partners.

Basically, the objective of the LLP is to free the mind of a professional from the fear that his personal assets maybe attached for the negligent and other wrongful acts of his co-partners of whom he has no control over whatsoever. The law achieves this by providing the shield of limited liability by virtue of separate legal personality. In other words, it enables professional expertise and initiative to combine with financial risk taking capacity in an innovative and effective manner.[10]

Features of a Limited Liability Partnership

Persons who can/ are Disqualified from being Partners

Any individual or body corporate may be a partner in a limited liability partnership provided that an individual shall not be capable of becoming a partner or a limited liability partnership, if he is –

a) of unsound mind and has been so found by a court of Nigeria or elsewhere
b) an undischarged bankrupt.[11]

Number of Partners

Every limited liability partnership shall have at least two partners. This is in tandem with the general provisions pertaining to partnerships. No partnership shall have less than two partners. It is important to note that if at any time the number of partners of a limited liability partnership is reduced below two and the limited liability partnership carries on business for more than six months while the number is so reduced, the person, who is the only partner of the limited liability partnership during the time that it carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, is liable personally for the obligations of the limited liability partnership incurred during that period.[12] There is no provision or limit on the maximum number of partners.

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[8] (1860) 8 HL CAS 268
[9] D Ray, *Op cit.*
[10] V S Malik, The Latest Hybrid in India: Limited Liability Partnership, SOAS Centre for International Studies and Diplomacy Conference Available at http://silo.tips/download/the-latest hybrid in India, accessed on 15th December, 2021.
[11] See Section 747 of CAMA 2021.
[12] See Section 748 (1) & (2) CAMA 2020.

Designated Partner

Designated partner is a novel term introduced by CAMA 2020. Every Limited liability partnership must have at least two designated partners who are individuals and at least one of them shall be resident in Nigeria. However in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of the limited liability partnership or nominees of the bodies corporate shall act as designated partners.[13] The question arises as to who is a designated partner. Thankfully, the Act defined a designated partner as a partner who is:

(a) Responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and other report under this Act as may be specified in the limited liability partnership agreement; and

(b) Liable to all penalties imposed on the limited liability partnership for any contravention of the provisions.[14] However, if the incorporation document specified who are to be designated partners, the person is designated partner on incorporation, or stated that each of the partners of a limited liability partnership is to be designated partner, every such partner is a designated partners on incorporation, or that any partner who becomes a designated partner in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with the limited liability partnership agreement.

For one to be a designated partner in any limited liability partnership he must have consented to act as such to the limited liability partnership. The limited liability partnership shall file with the Commission the particulars of every individual who has given his consent to be appointed as such. It follows by parity of reasoning that once a person ceases to be a designated partner, he automatically ceases to be a partner.

A limited liability partnership is to appoint a designated partner within 30 days of a vacancy arising for any reason and shall file with the Commission the particulars of every person who consented to act as a designated partner within 30 days of his appointment. [15] However, if no designated partner is appointed, or if at any time there is only one designated partner, each partner is deemed to be a designated partner.[16]

Incorporation of Limited Liability Partnership

For a limited liability partnership to be incorporated, two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document; and the incorporation documents shall be filed in the manner and with the fees, as

[13] Section 749 of CAMA 2020.
[14] See Section 750 of CAMA 2020.

[15] Section 749(4) CAMA 2020.
[16] Section 751 CAMA 2020.

may be prescribed by the Commission from time to time.[17] The incorporation documents shall contain the following information-

(a) The name of the limited liability partnership
(b) The proposed business of the limited liability partnership
(c) The address of the registered office of the limited liability partnership;
(d) The name and address of each of the persons who are partners of the limited liability partnership on incorporation;
(e) The name and address of the persons who are to be designated partners of the limited liability partnership on incorporation.
(f) Contain other information concerning the proposed limited liability partnership as the Commission may prescribe. [18]

Incorporation by Registration:
When the requirements imposed under Section 753(1) and (2)[19] have been complied with, the Commission shall, within 14 days register the incorporation documents; and shall issue a certificate that the limited liability partnership is incorporated by the name contained in the certificate. The certificate issued shall be signed by the Commission and authenticated by its official seal. The certificate shall contain the following:

a. The name of the limited liability partnership given in the incorporation document;
b. The limited liability partnership's registration number;
c. The date of registration and
d. That the limited liability partnership is incorporated as a limited liability partnership under CAMA.

The certificate shall be *prima facie* evidence that the limited liability partnership is incorporated by the name specified in it.[20]

Effect of Registration of a Limited Liability Partnership
Once a LLP is registered, it automatically acquires the incidences of incorporation of a limited liability company. The limited liability partnership may; sue and be sued in its name, acquire, own, hold and develop or dispose of property, whether movable or immovable, tangible or intangible; If it decides to have one, have a common seal; and do and suffer such other acts and things as bodies corporate may lawfully do or suffer. All these are the incidences of incorporating a limited liability company. It is pertinent to note that **e**very limited liability partnership shall have the words, "limited liability partnership" or the acronym, "LLP" as the last words of its name. However, a limited liability partnership shall not be registered by a name which, in the opinion of the Commission is -

(a) Undesirable; or

[17] See Section 753(1) CAMA 2020.
[18] Section 753(2) CAMA 2020.
[19] CAMA 2020.
[20] Section 754(5) CAMA 2020.

(b) Identical or too nearly resembles that of any other partnership, business name, limited liability partnership, body corporate, or a registered trade mark.[21]

Qualification to be Partners:
On the incorporation of a limited liability partnership, the persons who subscribed the names to the incorporation documents shall be its partners and any other person may become a partner of the limited liability partnership in accordance with the limited liability partnership agreement.

The mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners. The limited liability partnership agreement and any changes, made in it shall be filed with the Commission in the form and manner and accompanied by the fees as may be prescribed.[22] From the foregoing provisions, a LLP must have a partnership agreement.

Cessation of Partnership:
A person may cease to be a partner of a limited liability partnership in accordance with an agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, giving a notice in writing of at least 30 days to the other partners of his intention to resign as partner.[23] It is important to note that the cessation of a partner from the limited liability partnership does not by itself discharge the partner from any obligation to the limited liability partnership, the other partners or any other person which he incurred while being a partner.[24]

Disqualification
A person shall cease to be a partner of a limited liability partnership on the happening of any of these; death or dissolution of the limited liability partnership, declaration of unsound mind by a competent court; or on the application to be adjudged or declared as an insolvent by a partner.[25]

LLP and its Partners
A partner of a limited liability partnership is, for the purpose of the business of the limited liability partnership, the agent of the limited liability partnership, but not of other partners.[26] This means that a partner cannot bind another partner by his conduct under a LLP. A partner can only bind the LLP while acting as an agent of the LLP. This point further buttresses the juristic personality of LLP's.

A limited liability partnership is not bound by anything done by a partner in dealing with a person if the partner in fact has no authority to act for the Limited Liability Partnership in doing a particular act and a person knows that he has no authority, does not know or believe him to be a partner of the limited liability partnership.[27]

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[21] Section 757 CAMA 2020.
[22] Section 761 & 762 CAMA 2020.
[23] Section 763 CAMA 2020.
[24] Section 763 (4) CAMA 2020.
[25] Section 763 (2) a – c CAMA 2020.
[26] Section 765 of CAMA.
[27] See Section 766 of CAMA 2020.

Limited Partnership

Limited Partnership is one of the novel provisions of CAMA 2020. The Act made provisions for features that are interesting yet distinct. A limited partnership shall not consist of more than 20 persons and shall consist of one or more persons called general partners, who shall be liable for all the debts and obligations of the firm[28] and one or more persons called limited partners.[29] The limited partner is expected to contribute or agree to contribute money as capital or property valued at an amount and shall not be liable for the debts or obligations of the firm beyond the amount contributed or agreed to be contributed. However, it is pertinent to note that a limited partner is not under obligation to contribute if the partners have so agreed in writing.

It is worthy to note that a Limited Partnership is not a body corporate and does not enjoy separate legal personality. Where succession provisions are made in the partnership agreement, the partnership may outlive the existing partners. A limited partner under a Limited Partnership shall not take part in the management of the partnership business. Where they do so, they will also be liable for all debts and obligations incurred.[30] Limited partnerships are not subjected to detailed and extensive regulations; it is basically regulated by agreement of the partners and CAMA. However, the general partners continue to bear unlimited liability for the debts and obligations of the firm in exchange for the extensive managerial power over the firm. Limited partners enjoy full protection of the law in terms of liability protection from debts and obligations, but they are not to be involved in the management of the firm. However, once a limited partner takes part in the management of the partnership business, he is liable for all the debts and obligations of the firm incurred while he was part of the management, as though he was a general partner.[31]

Registration of Limited Partnership

A limited partnership must be registered by way of application to the Corporate Affairs Commission. The application must contain the following details:

a. Name of the limited partnership
b. General nature of the business
c. Principal place of business
d. Full name and address of each general partner
e. Full name and address of each limited partner
f. The term if any, for which the partnership is entered into and the commencement
g. A statement that the partnership is limited and description of every limited partner
h. The sum contributed, or agreed to be contributed by each limited partner whether paid or to be paid in cash

Once a limited partnership is registered, a certificate of registration shall be issued by the Commission stating the following: name of the limited partnership, the registration number, date of registration and that the limited partnership is registered as a limited partnership under the Act.

[28] See section 795 (3) CAMA 2020.
[29] See section 795(4) CAMA 2020.
[30] Section 806 CAMA 2020.
[31] Section 806 (1)b of CAMA 2020.

The certificate of registration shall be a *prima facie* evidence that a limited partnership came into existence on the date of registration.[32]

Relationship between the General Partner and Limited Partner under Limited Partnership

It is important to state that a limited partnership shall not be dissolved by the death, lunacy or bankruptcy of a limited partner neither will such be grounds of dissolution by the court except the lunatic's share cannot be ascertained.[33] It is the majority of the general partners that takes decisions pertaining to limited partnerships. A limited partner can only assign his share with the consent of the general partners. Without their consent, a limited partner cannot do so. A general partner reserves the right to bring/ introduce another partner without the consent of the existing limited partners. The CAMA made a striking provision to the effect that a limited partner shall not be entitled to dissolve the partnership by notice.[34] Nothing was said concerning the general partner. It follows by parity of reasoning that a general partner being the managing partner can dissolve the limited partnership by notice. The limited partner in an LP is somewhat advantageous, in that it provides platform for some persons who might want to partake in the profits of a business but may not want to be involved in the risk/ liabilities of the business. Thus, LP's can potentially foster the funding of small businesses as they can enable entrepreneurs to raise funds from profit sharing non-management investors who would bear equity risks but excluded from the liabilities of the firm.[35]

It is pertinent to note that the CAMA stated that the provisions of Part C relating to limited liability partnerships shall apply to limited partnership except so far as they are inconsistent with the express provisions of the Act.[36]It means that where the Act failed to make express provisions concerning the Limited Partnership, then the provisions of CAMA relating to LLP will be applied.

Similarities between Limited Liability Partnership and Limited Partnership

a, Both consists of not less than two persons.

b. Both must have a business and the sole aim of making profit.

c. An individual or body corporate may be a partner in both.

Differences between Limited Liability Partnership and Limited Partnership

a. Limited liability partnership must have the acronym "LLP" While Limited Partnership must have the acronym "LP" attached to their name.

b. Designated partners is to LLP, while limited and general partners are to LP

[32] See section 799 of CAMA 2020.
[33] Section 806 (2) CAMA 2020.
[34] See section 806(e) CAMA 2020.
[35] P Subai, The Nigerian Limited Partnership: An Unnecessary Proliferation of Business Forms*? (2021) Journal of Commercial and Property Law, Nnamdi Azikiwe University Awka*. Available at htpps://www.journals.unizik.edu.ng/index-php/jcpl assessed on 2nd January , 2022.
[36] See section 807 of CAMA 2020.

c. Maximum number of partners for LP is 20, while there is no maximum number of partners for LLP
d. LLP is incorporated while LP is registered
e. The liabilities of the partners are limited in the case of LLP while liabilities of the general partners under limited partnership are not limited.
f. LLP has perpetual succession, while LP does not have.

Difference between Traditional (Ordinary) Partnership and LLP

1. LLP is incorporated under the Act. Incorporation is compulsory, while traditional partnership is not compulsory to be registered.
2. Incorporation documents are needed under LLP, written agreement is not essential under traditional partnership.
3. Under LLP every partner is an agent of the LLP but not of other partners, while every partner is an agent of the firm and also of other partners under traditional partnership.
4. LLP is a legal entity distinct from its partners and having perpetual succession, while a traditional partnership is not a legal entity separate from its partners.
5. Under LLP filing of statement of account, statement of solvency and annual return is required. All the listed filings are not required under the traditional partnership.
6. Death of a partner does not dissolve LLP; however death of a partner dissolves a firm in the absence of any agreement.

Conclusion

This paper has shown that there are more business forms in Nigeria. This is evidenced by the robust provisions made under CAMA 2020 with respect to limited partnership and limited liability partnership. Limited Liability Partnership has received wide acceptance across the globe. It has been accepted in countries like United States of America, United Kingdom, India and Australia. The structure is designed not only to attract institutional investors but also to retain domestic investment with particular interest to small and medium size businesses. The LLP combines the advantages of the traditional corporate structure and the entrepreneur-centric proprietary/partnership structure within the small enterprise/business sector.[37] From the foregoing, it can be gleaned that LLP is a significant improvement from the general partnership as it confers liability protection on all the partners. Where a firm does not want a business structure that is either too corporate (LLP) or too simple (basic/traditional partnership) it can come under Limited Partnership which is also provided for under CAMA 2020. Hence, both the LP and the LLP affords an investor as well as a small and medium business enterprise the opportunity to thrive in Nigeria, with the robust and elaborate legal frame work provided by CAMA 2020.

[37] A K Kashyap & D Kashyap, Limited Liability Partnership as Advantage to Small Business: Indian Scenario. Available at htpps://papers.ssrn.com. accessed on 4th January , 2022.