

ADOPTING A LIMITED LIABILITY PARTNERSHIP FOR THE LEGAL PROFESSION: A CRITICAL REVIEW FROM NIGERIA'S PERSPECTIVE*

Abstract

Legal profession/practice has for a long time thrived in Nigeria basically as a sole proprietorship and general partnership in some cases. Under these two forms of business organizations, the sole legal proprietor or each partner in a general partnership may be personally liable to third parties for any damages caused in the course of rendering professional services. Efforts to limit the liability of partners in such a partnership by professionals led to the emergence of limited liability partnership. The paper is a comparative study of the different forms of legal practice business in Nigeria as exemplified by sole-practitioner-ship, sole proprietorship and partnership, with a view to ascertaining the relative advantages and disadvantages inherent in each of them. The paper finds that with the introduction of limited liability partnership under CAMA 2020, legal practitioners can now form limited liability partnership so as to maximize the benefits of flexibility of a company. In this paper, we adopt the doctrinal method of legal research approach. The paper finds that limited liability partnership confers liability protection on partners of a firm of legal practitioners. The paper concludes by recommending that limited liability partnership as a new form of business organization be adopted as one of the ideal forms for legal practice in Nigeria.

Keywords: Partnership, Limited Liability Partnership, Legal Practice, Limited Partnership

1. Introduction

The Companies and Allied Matters Act 2020¹ was signed into law by President Muhammadu Buhari on the 7th day of August 2020². The new Act repealed the thirty year old Companies and Allied Matters Act 1990³. The defunct Companies and Allied Matters Act 1990, which is the precursor to the current Act made provisions for general partnerships. This type of partnership permits individuals to register partnership as a business name under Part B of CAMA 1990⁴. It became increasingly glaring the urgent need for other forms of partnership in Nigeria in order to cure the obvious defect of a general partnership whereby the partners are personally liable for the liabilities of the partnership firm. The newly enacted CAMA 2020 introduced measures to ensure efficiency in the registration and regulation of corporate vehicles for businesses, reduce the compliance burden of small and medium enterprises and generally promote a more friendly business climate in Nigeria. The new Act is made up of 870 sections (as opposed to the 613 sections of the 1990 Act) and is divided into seven (7) parts. Part A deals with the composition of the Corporate Affairs Commission, Part B deals with the incorporation of Companies, Part C provides for Limited Liability Partnership, Part D provides for Limited Partnership, Part E covers the registration of Incorporated Trustees and Part E deals with general provisions and the establishment of quasi-judicial body known as Administrative Proceedings Committee. The introduction of the Limited Liability Partnership and Limited Partnership as recognized business models in Nigeria is a landmark innovation of the CAMA 2020.

2. Organization of Law Firms in Nigeria

There are no laid down rules and laws guiding or specifying ways legal practice is to be carried out in Nigeria. The only limitation is that it is unlawful to carry out legal practice as a corporation⁵. However, from observation and practice, law practice/firms in Nigeria are usually organized as either of the following.

Sole Proprietor/Sole Practitioner

This is a predominant form of legal practice in Nigeria. Under this heading the legal practitioner practice either alone with one or two support staff or establishes a law firm and employs other lawyers and support staff to work in the law firm. The business of legal practice is owned by one individual and the firm/business is not different from its owner. In other words, the assets and liabilities of the business are also assets and liabilities of

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¹ Hereinafter referred to as CAMA 2020.

² Buhari Signs Amended Companies and Allied Matters Bill CAMA 2020. Available at <https://www.vanguardngr.com> Accessed on 13th March 2022.

³ Cap C20 Laws of the Federation of Nigeria 2004.

⁴ C Unini, CAMA 2020 and the New Face of Partnership Structure: An Overview of Limited Liability Partnerships in Nigeria. Available at <https://www.thenigerialawyer.com>. Accessed on 14th March, 2022.

⁵ See Rule 5(5) of the Rules of Professional Conduct 2007.

the owner⁶. This is the simplest and most flexible business structure. It is usually employed by small and medium enterprises where the volume of investment and risks are minimal. Some advantages of this form of business organization is that it's easy to set up, it's easy to close down the business/firm; decision making is faster as the sole proprietor has total control; profits from the business will be taxed at the sole proprietor's marginal tax rate which is lower than the corporate (limited company) tax rate.⁷ Notwithstanding the advantages of sole practitioner-ship/sole proprietorship, it also has its disadvantages. A legal practitioner practicing alone may result in personal bankruptcy; the death or prolonged illness of the legal practitioner will lead to the end of the firm/business.⁸ Due to the limitations of a one-person business, the legal practitioner may not be able to raise additional capital from outside sources to expand the business/firm. Another disadvantage is that no liability protection is given to the sole proprietor, hence his liability is unlimited. He is exposed to liabilities and lawsuits arising from the business of law practice.⁹

Associateship

Legal practitioners in Nigeria practice under this heading. In associateship, two or more legal practitioners jointly contribute the capital to provide facilities required for a law firm.¹⁰ There is no legal framework or backing in Nigeria for associateship, it only emerged as a result of practice. Under this heading, the legal practitioners have their separate clients and do not share profits or fees, thus they maintain their independent practice. It is pertinent to state that this is not a partnership *stricto sensu*¹¹, as the legal practitioners are only bound together by their shared pull resources and nothing more. Advantages of associateship as a form of business organization for legal practitioners includes; knowledge sharing between the legal practitioners involved in different areas of law, ability to hire more conducive office spaces, pay higher salaries to juniors and the provision of more office facilities due to the sharing of overhead, maintenance and other incidental costs¹². Associateship has its own disadvantages. Just like sole proprietorship/sole practitionership, there is no liability protection for the associates, everyone is personally liable for the debts and obligations arising from their legal practice, management of office space and paying of salaries of the juniors may be cumbersome and can also cause conflicts among the associates.

Partnership

Partnership is one of the oldest forms of business organizations. It is the relationship which subsists between persons carrying on business in common with a view of making profit¹³. To qualify as a partnership, there must be three characteristics, they include:

- 1) There must be a business.
- 2) The business must be carried on in common by two or more persons and
- 3) The intention must be to make profit.

The Supreme Court of Nigeria reiterated the above in the case of *Okin v. Okin*¹⁴ and stated that if any of these three requirements is missing, then it is not a partnership. It is pertinent to note that for legal practitioners to carry out their practice as a partnership, the above three conditions must be met. However, it is worthy to note that joint tenancy, common property or part ownership does not itself create a partnership. It is important to also note that sharing of gross returns does not also create a partnership.¹⁵ The question whether a partnership does or does not subsist between any group of people (legal practitioners) is a mixed question of law and fact, and not a mere question of fact.

⁶ C Callaway, D Wolf & D Kramer, 'Choosing a Business Structure' ASHRAEE Journal 44(4) 42 2002.

⁷R Mann & B S Roberts, 'Unincorporated Business Associations: An Overview of their Advantages and Disadvantages', *TULSA Law Journal* Vol. 14, 1978.

⁸ *Ibid*

⁹J Woodruff, 'The Disadvantages of Sole Proprietorship Business, available on <https://www.smallbusiness.chron.com>, accessed on 13th March, 2022.

¹⁰N Efobi & N Ekop, 'Regulation of the Legal Profession in Nigeria: Overview,' available at <https://www.uk.practicallaw.thomsonreuters.com>. Accessed on 13th March, 2022

¹¹ *Stricto Sensu* means in the strict sense of the word.

¹²Establishment, Management and Structure of Partnership (with reference to law firms) available at <https://www.aelex.com>, accessed on 13th March, 2022.

¹³ See section 3(1) Partnership Law of Lagos State, Cap P1 2009 Section 1(1) Partnership Act 1890.

¹⁴ (2020) All FWLR pt 441.

¹⁵ Y H Bhadmus, *Bhadmus on Corporate Law Practice*, (Enugu: Chenglo Limited) p 510.

3. History of Partnership Law in Nigeria

Partnership law in Nigeria can be traced back to the English Partnership Act of 1890,¹⁶ which applied in Nigeria as a Statute of General Application. Later, the Western States with the exception of Lagos and the then Bendel (now Edo) State enacted their partnership law in 1959 and 1976 respectively. These laws were a reproduction of the English Partnership Act of 1890 except that it contained additional provisions on limited partnership. The English Partnership Act 1890 continued to apply as a Statute of General Application in the Northern States of Nigeria, Eastern States and Lagos before many other states subsequently enacted it as law in their respective states thus making each state law similar to the other. These state laws were still intrinsically adaptations of the English Act of 1890. As such, the English Act remained the prevailing law in the Federation. However in 1987, the Nigerian Law Reform Commission was formed and following the consideration of the Consultative Assembly on Company law in 1988, the Companies Act of 1968 was repealed by the Companies and Allied Matters Act 1990.¹⁷ The then new Act was divided into three major parts, A,B,C and made provisions for companies, business name and incorporated trustees respectively. The 1990 Act endorsed common law principles and doctrines of equity with necessary amendments where desirable. The Corporate Affairs Commission was also established to administer the Act. Under the erstwhile CAMA, partnerships were to be registered in Nigeria under the Companies and Allied Matters Act, to operate lawfully or to be recognized by law. Under the 1990 CAMA partnership consisting of more than 20 persons was to be formed for purpose of carrying on business or profit unless it was incorporated as a company in Nigeria¹⁸. The only exception to the above is if the partnership was: (a) A co-operative society registered under the laws of any state in Nigeria¹⁹ (b) Formed as a partnership for carrying on of business as legal practitioners or chartered accountants provided each of the partners is a legal practitioner or chartered accountant as the case may be²⁰.

The provisions of the partnership Act and CAMA were quite narrow and partnership business was very much traditional. In 2009, an attempt to expand the scope of the partnership law was made by the Lagos State Government with the enactment of the Partnership (Amendment) Law of Lagos State²¹. The new law made provision for limited liability partnership having acknowledged it is an essential legal vehicle for persons who intend to engage in a joint trade or business for profit, allowing them to enjoy the benefits afforded to limited liability companies. However, the U.K Partnership Act 1890 which is a Statute of General Application continued to apply to other parts/ states of the federation. On Tuesday, 15th May, 2018, the Senate of the Federal Republic of Nigeria passed the Companies and Allied Matters Act, 1990 (Repeal and Re-enactment) Bill 2018²². The House of Representatives on the 4th of March 2020 also passed the bill which was later concurred to by the Senate on 10th March, 2020²³. Consequently, on August 7, 2020, President Muhammadu Buhari signed into law the Companies and Allied Matters Act 2020²⁴. The new CAMA is Nigeria's most significant business legislation in three decades and it introduced novel provisions, including a comprehensive provision for Limited Partnership and Limited Liability Partnership.

4. Partnership Law of Lagos State 2009

The Lagos State Government became the first to introduce and incorporate the limited liability partnership structure in Nigeria. In 2009, the Lagos State Government enacted the Partnership (Amendment) Law of Lagos State. The partnership law, which was only applicable within the territorial countries of Lagos State, made provisions for the creation of limited partnerships and limited liability partnerships²⁵. The issue that thus arises is whether partnership arrangements already registered under the Partnership Law of Lagos State 2009 ought to be re-registered in accordance with the provisions of CAMA 2020. The answer to the above question can be

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Section 19(1) CAMA 1990.

¹⁹ Section 1(2) (b) (i), (ii), (iii) CAMA 1990.

²⁰ *Ibid.*

²¹ N Amadike, The Introduction of Limited Liability Partnership Law in Lagos State of Nigeria as an Alternative to the existing Firms of Business Organization: Echoes of a New Dawn? Available at <https://www.eajournals.org> accessed on 14th March 2022.

²² WK Obayomi, 'Key Highlights of the CAMA Bill, 2018. Available at <https://www.kpmg/ng/en/home>. Accessed on 14th March, 2022.

²³ Senate Passes the CAMA Bill 2020. Available at <https://www.proshareng.com> accessed on 14th March, 2022.

²⁴ J Agbakwuru, 'Buhari signs Amended Companies and Allied Matters Bill CAMA 2020' Available at <https://www.vanguardngr.com> accessed on 14th March, 2022.

²⁵ O Olaniyi & J Akhator, Nigeria: A Review of Limited Liability Partnership under the Companies and Allied Matters Act, 2020. Available at www.moday.com. Accessed on 14th March, 2022.

found in the judgment of the Supreme Court in *A.G Ogun State & Ors v. A.G Federation*²⁶, where it was held that; ‘where a matter legislated upon is in the concurrent list and the Federal Government has enacted legislation in respect of the same matter and the legislation of the State is inconsistent with the legislation of the Federal Government, such legislation is indeed void and of no effect ...’ The Supreme Court further held that ‘where however, the legislation enacted by the State Government is the same as the one enacted by the Federal Government, and the two legislations are in *pari materia*, the State legislation is in abeyance and becomes inoperative for the period the Federal legislation is in force. With the above authority, existing partnership arrangements registered under the Partnership Law of Lagos State 2009 may have to re-register with the Corporate Affairs Commission to be fully recognized under Federal law²⁷.

5. Types of Partnership

There are various forms of partnership, they include;

Traditional/Basic/General Partnership:

Under this heading, there is usually no partnership agreement and the liability of each partner is unlimited. This means that every partner is personally responsible and as such, can be held to account for any obligation which another partner incurs on behalf of the partnership. The general partnership is the prototype of company of persons and functions based on the personal qualities of the associates, who know each other and trust each other, reason for which they agree to be unlimitedly and jointly bound by the obligations of the partnership²⁸. The provision of the law does not require any special steps to be taken to set up a general partnership. As soon as one or more legal practitioners carry on business of practice of law together with the intent of making profit, they are said to be in partnership. A general partnership need not a written agreement, however it is important that a partnership agreement be drawn before commencement of doing business as partners²⁹. A partnership agreement determines the rights of the partners and the partnership. Some of the important clauses to be contained in a partnership agreement in Nigeria include; name of partnership, names of parties involved, nature of business, place of business, time of commencement, capital and capital contribution, sharing of profits and losses, partnership properly, duration, dispute resolution etc³⁰. Thus, from the foregoing two or more lawyers wishing to establish a law firm can contribute capital to provide facilities and run the firm as partners.

Limited Partnership: This is a type of partnership registered under Part D of CAMA 2020 in which the liability of a partner or parties for the debts and obligations of the partnership may by law be limited to the extent of their contribution to the partnership while the liability of the other partner(s) is unlimited. A limited partnership shall not consist of more than 20 persons³¹. A limited partnership is a form of partnership similar to general partnership except that a general partnership must have at least one general partner and at least one limited partner³². The general partner(s) are involved in the daily management of the partnership and are liable for all debts and obligations of the partnership³³. A general partner may be an individual or an entity such as a corporation³⁴. The Limited Partner(s) do not participate in the management of the business entity. They are expected to contribute or agree to contribute a sum as capital or property valued at a stated amount and shall not be liable for the debts of the firm, beyond the amount so contributed or agreed to be contributed³⁵ where the partners have so agreed in writing, the limited partner is under no obligation to contribute capital or property to the partnership³⁶. It is important to note that any individual or body corporate may be a partner in a limited partnership. However, an individual shall not become a partner of a limited partnership, where such individual is of unsound mind and has been so found by a court in Nigeria or elsewhere; or where such individual is an

²⁶ (1982) NSCC vol. 13 p. 35

²⁷ A Summary of Changes under the New Companies and Allied Matters Act CAMA 2020. Available at <https://www.Kasunmuschambers.com.ng>. Accessed on 15th March, 2022.

²⁸ A.M Lupulescu, Some Considerations on the General Partnership, *Tribuna Juridica* 7 (14), 6 2017.

²⁹ N Swais, Understanding the Partnership Structure: The General Partnership (Part 1), *Law Now* 23, (1998) 59 Available at www.heinonline.org. Accessed on 14th March, 2022.

³⁰ Nigeria: Overview of partnership Agreement in Nigeria Available at <https://www.monday.com>. Accessed on 16th March, 2022.

³¹ Section 795(2) CAMA 2020.

³² O Arthur & SM Sheffion, *Economics: Principles in Action* (Needham: Practice Hall, 2003) p 190.

³³ Section 795(3) CAMA 2020.

³⁴ Harvard Business Services Inc, ‘Limited Partnership Definition’ Available at <https://www.delawareinc.com> accessed on 15th March 2022.

³⁵ Section 795(3) CAMA 2020.

³⁶ Section 795(4) CAMA 2020.

undischarged bankrupt³⁷. In a limited partnership, general partners are responsible for complying with the provisions of CAMA on LPs, including its registration and post registration matters. A limited partnership must be registered with CAC vide an application stating the name of the limited partnership³⁸. Note that where a group of legal practitioners intend to run a limited partnership, it must be registered in accordance with the provisions of CAMA otherwise it shall be deemed to be a general partnership³⁹. An application for registration as a limited partnership shall be made in the form prescribed by CAC and shall specify the name of the Limited partnership. The name of the law firm must end with the word Limited Partnership or the acronym LP otherwise it shall not be registered⁴⁰. Included in the application is a statement signed by the parties containing the following details of the general nature of the limited partnership, they include:

- The name of the limited partners
- The general nature of the business
- The principle place of business
- Full name and address of each partner
- Full name and address of each limited partner
- The term, if any, for which the partnership is entered and the commencement date of the limited partnership
- A statement that the partnership is limited and description of every limited partner as such
- The sum contributed or agreed to be contributed by each limited partner and whether such contribution has been paid or to be paid in cash or in another specified form.

Limited partnerships is regulated by the provisions of the Partnership Act 1890 and CAMA 2020, however where there is inconsistency between the provisions of the Acts, the CAMA 2020 will take precedence⁴¹.

Limited Liability Partnership

Limited Liability Partnership is one of the novel landmark innovations of CAMA 2020 amongst others. It is provided for under Part C of the Companies and Allied Matters Act 2020. Limited Liability partnership is a form of partnership that has features of a partnership coupled with the benefits of incorporation. It is a body corporate formed and incorporated under the Act and is a legal entity separate from the partners⁴². It is viewed as an 'alternate corporate vehicle' which seeks to attain the principal benefits of both forms of business organization – partnership and Companies⁴³. This is achieved by granting to partners of the limited liability partnership, the flexibility of organizing their internal managerial structure as a partnership based on mutual agreement, while limiting the liability of partners to the extent of their interest in the partnership, which is akin to the separate legal personality of a company and flexibility of a partnership. The liabilities of the partners of an LLP are limited to the amount agreed to be contributed or what is outstanding in the event of winding up. The offers the owners the same legal protections as a corporation but typically requires less paper work and fees. The introduction of this form of partnership is necessitated by the need for a more dynamic form partnership Nigeria. The LTP addresses the increase in litigation resulting in personal liability by partners and the consequent threat to partnership entities and their partners by providing a limitation of liability analogous to that enjoyed by directors of a limited liability company. This is timely and paramount especially for individuals and groups providing professional services. Like corporation, an LLP is characterized by perpetual succession which means that its existence is independent of any change in partners⁴⁴. The rights and duties of the partners, who may either be individuals or body corporate, are laid out by a mutually consented LLP agreement in accordance with the provisions of the law. Thus, they are different from traditional partnerships and the limited partnerships that are mostly created by contracts. In an LLP, each of the parties is responsible only to the extent of their individual contribution, as per the LLP agreement. This means that the partners are immune from the actions of other partners in case of negligence and fraud, which is distinguishing characteristics of an LLP. Section 765⁴⁵ states that a partner of an LLP is an agent of the LLP, for the purpose of carrying on its business, but is now an agent of the other partners. So, any act done by a partner purporting to further the business of the LLP would not

³⁷ Section 956 (a) & (b) CAMA 2020.

³⁸ Section 798 CAMA 2020.

³⁹ Section 979(2) CAMA 2020.

⁴⁰ Section 808 CAMA 2020

⁴¹ Section 808 CAMA 2020

⁴² Section 746 CAMA 2020

⁴³ Hoory, J Haskins & R Watts, 'LLC vs. LLP: Key Differences between the Two Business Structures,' Available at <https://www.forbes.com> accessed on 14th March, 2022.

⁴⁴ Section 746(2) CAMA 2020.

⁴⁵ CAMA 2020.

bind or affect the other partners in their personal capacity. This position is further reiterated by Section 766(3)⁴⁶ which states that ‘an obligation of the limited liability partnership where arising in contract or otherwise, shall be solely the obligation of the limited liability partnership’.

Under the Partnership Act of 1890 and the Lagos State Partnership Law of 2009, the partnership (traditional) and all the partners are liable jointly and personally for any obligation or debt arising out of the activities of the partnership, at the time they were partners⁴⁷. The Partnership Act states that even if the partner is dead, his estate will be severally liable for any obligation that accrued during his/her lifetime, if she/he was still a partner at the firm at the time the obligation arose. A group of legal practitioners can now be incorporated and registered as a Limited Liability Partnership, in which case, each partner is immuned from any liability that may arise from the poor judgment, negligent or reckless action of a partner/legal practitioner carrying on the business of LLP. This is because any obligation that will arise, will be satisfied with the LLP’s assets and not the personal assets of the legal practitioners (partners). It is pertinent to note that an individual or body corporate may join in the formation of an LLP except for persons of inbound mind who have been so fondly a court in Nigeria and an undischarged bankrupt⁴⁸. Furthermore, an LLP is mandated to have atleast two partners and where this is intentionally not complied with for more than six months, the corporate veil will be lifted and such ‘single partner’ will be held personally liable for the obligations of the partnership incurred during the stated period⁴⁹. LLPs are mandated to appoint a minimum of two designated partners and at least one of such partners is obliged to reside in Nigeria⁵⁰. LLP is incorporated by registration in compliance with the registration requirements as prescribed in compliance with the registration requirements as prescribed by CAMA 2020⁵¹. The incorporation document shall state concerning the LLP.⁵² Other information as the Commission may prescribe. Upon satisfaction of these incorporation requirements, the Commission shall, within 14 days, register the LLP’s incorporation document and issue certificate of incorporation of the LLP to its partners⁵³. The certificate shall be signed by the Commission, authenticated by its official seal and serves as prima facie evidence that the LLP has been incorporated⁵⁴. By virtue of Section 756 of the Act, incorporation of an LLP implies that all the incidences of incorporation will apply, which include:

- Sue and be sued in its name
- Acquire, own, hold and develop or dispose all movable, immovable, tangible and intangible property.
- Elect to have a common seal
- Do and suffer such other acts and things which bodies corporate may lawfully do and suffer.

Except as otherwise indicated in the Act, the mutual rights and duties of the partners of an LLP and the LLP itself and its partners shall be governed by the LLP agreement⁵⁵. Where there is a lacuna in the agreement regarding any matter or in the absence of the LLP agreement, the rights and duties of the LLP and her partners shall be determined by the provisions of the Fifteenth schedule to the Act⁵⁶. Thus, from the foregoing the advantages of LLP are enormous, it includes; ease of incorporation, limited liability of partners, tax exception, legal personality etc. The Limited Liability Partnership is the best form of partnership to be formed by professionals especially legal practitioners, as the advantages outweigh its disadvantages.

6. Conclusion

We have found in this paper the very laudable innovation made by CAMA 2020, which among others is the introduction of Limited Liability Partnership. It is aimed at improving the ease of doing business in Nigeria by ensuring that entrepreneurs and professionals form partnerships and also enjoy reduced personal liability in Nigeria. Legal practitioners in Nigeria can now set up their law firms to be incorporated as limited liability partnership as is obtainable in other jurisdictions. However, suffice it to hold that the provision of Rule 5(5) of the Rules of Professional Conduct 2007 which makes it unlawful to carry out legal practice as a corporation is laughable and outdated in the light of global realities of the introduction of limited liability partnership. A body corporate can be a partner in a limited liability partnership⁵⁷. This provision of the Rules of Professional Conduct has been overtaken by events and needs to be expunged to reflect present day global realities.

⁴⁶ *Ibid.*

⁴⁷ Section 9 Partnership Act 1890

⁴⁸ Section 747(a) (b) CAMA 2020.

⁴⁹ Section 748 (1) & (2) CAMA 2020.

⁵⁰ Who should be individuals or individual nominees of corporate partners.

⁵¹ Section 753(1) CAMA 2020.

⁵² Section 753(2) CAMA 2020.

⁵³ Section 754 (1) CAMA 2020.

⁵⁴ Section 754 (5) CAMA 2020.

⁵⁵ Section 764 (1) CAMA 2020.

⁵⁶ Section 762(4) CAMA 2020.

⁵⁷ Section 747 CAMA 2020.