

A COMPARATIVE ANALYSIS OF THE LIMITED ENTITIES UNDER COMPANIES AND ALLIED MATTERS ACT 2020

1. Introduction

1.1 CAMA 2020 (the “Act”) is the long-awaited legislation which repealed Companies and Allied Matters Act (CAMA) Cap C20 Laws of the Federation 2004 as the principal legislation for the regulation of business and non-business organisations in Nigeria.

1.2 The Act introduces several novel and commendable provisions in recognition of the need for the inclusion of modern commercial trends, the facilitation of the ease of business, protection and promotion of Micro, Small and Medium-Scale Enterprises.

1.3 This article seeks to comparatively analyse the three limited entities under the Act, which are namely; Limited Partnerships (“LPs”), Limited Liability Partnerships (“LLPs”) and Limited Liability Companies (“LLCs”).

2. Limited Liability Companies

2.1.A limited liability company is a corporate entity vested with a separate legal personality which is distinct from the personalities of its members, wherein the liabilities of members are limited to their contributions to the capital of the company.

2.2. The Act includes additional provisions to regulate LLCs such as the reduction of the minimum requirement for the formation of company from two members to one. This flexibility will radically promote the incorporation of solely owned micro, small and medium scale enterprises.

2.3. The Act also increased the minimum share capital of private companies from N10,000 to N100,000, and for public companies N500,000 to N2,000,000.¹

2.4. The Act further attempts to water down existing formalities, such as exclusion of the compulsory requirement of a common seal², appointment of company secretaries,³ holding of annual general meetings⁴ and statutory audits⁵ for small companies and single member companies.

2.5. In a bid to reflect technological advancements, the Act expands the definition of certain terms to include the electronic versions such as electronic registers⁶, signatures⁷, venue of meetings⁸ and the publication of accounts.

1 Section 27(2) of CAMA 2020.
2 Section 99, 171 of CAMA 2020
3 Section 330 of CAMA 2020
4 Section 237 of CAMA 2020.
5 Section 271(1) of CAMA 2020
6 Section 176(1) of CAMA 2020.
7 Section 101 of CAMA 2020
8 Section 240(2) of CAMA 2020

3. Limited Liability Partnerships

3.1. Limited Liability Partnership is a legal business entity for the purpose of profit making, where the entity bears responsibility for the debts and liabilities of the business.

3.2. The Act creates a framework for the incorporation of LLPs⁹. Prior to the enactment of CAMA 2020, the concept of Limited Liability Partnerships was relatively foreign to the Nigerian jurisdiction. However, LLPs were recognised in the Partnership (Amendment) Law of Lagos State 2009, yet there had been no nationwide legislation regulating LLPs in Nigeria.

3.3. LLPs are vested with a legal personality separate from the partners; therefore, the liability of the partners are limited to the contributions of each partner. Partners do not bear the responsibility for the liabilities of the partnership. Neither can the personal assets of the partners be used in the settlement of the partnerships' debts.

4. Limited Partnerships

4.1. Limited partnership refers to an association of two or more persons for the purpose of carrying on business with a view to make profit wherein at least one partner's liability is limited to his contribution to the partnership.

4.2. The Act provides for the registration of LPs¹⁰. Generally, partnerships entail that all partners are responsible for the liabilities of the partnership. The personal assets of partners can be applied towards the settlement of debts owed as their liabilities are unlimited. However, in LPs, there are two categories of partners: general partners and limited partners.

4.3. General partners are responsible for the management of the partnership business and have unlimited liability, and are thereby liable for the losses incurred by the partnership.

4.4. The result of the failure to register a limited partnership is the conversion of every limited partner to a general partner bearing unlimited liabilities for the losses of the partnership.¹¹

4.5. Certain provisions of the Act supersede the express agreements of the partners, for instance, contrary to the general position of law, the Act provides that the death or any legal incapacity of a partner is not a ground for the dissolution of partnership by the court.¹²

4.6. However, where there is no contrary agreement, the Act provides that ordinary matters of business are to be decided by majority of general partners. A limited partner may with the written consent of general partners assign his shares and a new partner may be introduced without consent of limited partners. Furthermore, a limited partner is not entitled to dissolve the partnership by notice.¹³

⁹ Section 753 of CAMA 2020.

¹⁰ Section 795(1) of CAMA 2020.

¹¹ Section 797(2) of CAMA 2020

¹² Section 806 (2) of CAMA 2020

¹³ Section 806(e) of CAMA 2020



4.7. Part D of the Act (LPs) does not make extensive provisions as compared with Part C (LLPs) of the Act and which would ultimately have led to a lack of adequate provisions for LPs. However, the Act averts this outcome through the inclusions of sections 807 and 808, which state that all provisions of part C and the Partnership Act 1890 are applicable to LPs except where there are expressly inconsistent provisions.¹⁴

5. Comparison of the Limited Entities

5.1. Legal Personality

5.1.1. LLCs and LLPs enjoy a distinct personality separate from their members and partners¹⁵. This is the major distinction between companies and LLPs on the one hand and LPs on the other hand.

5.1.2. The legal personality entitles LLCs and LLPs to sue and be sued in corporate name, acquire and own property, possess a common seal (optional), and powers to act as corporate bodies may lawfully do.¹⁶

5.2. Capacity for Membership/Partners

5.2.1. The Act provides that individuals and corporate bodies can be partners. The only limitations to capacity for the formation of a partnership (LLPs¹⁷ and LPs¹⁸) are undischarged bankrupts and persons adjudged to be of unsound mind.

5.2.2. The LLCs have restrictions prohibiting individuals less than 18 years of age from acting as shareholders (save, where there are two adult shareholders/-subscribed to the memorandum)¹⁹ and directors²⁰. Notably, minors are not restricted in the formation of LLPs and LPs.

5.3. Limit on Number of Partners/Members

5.3.1. The maximum number of partners permissible for LPs and LLPs is 20 partners²¹. The Act stipulates any partnership or association with more than 20 members is to be incorporated into a company.

5.3.2. The maximum number of members of LLC is dependent on whether the company is private or public. Private limited companies have the limit of 50 members²² while there is no provision for the maximum number of memberships for public companies.

5.3.3. The minimum number of partners required for LLPs and LPs are two individuals or corporate bodies. The Act requires that there must be at least one general partner and one limited partner in an LP, while there must be at least two designated partners. Where there are less than 2 designated partners,²³ each partner is deemed to be a designated partner.²⁴

5.3.4. Under the 1990 Act, the minimum number of members for a company was two, however the 2020 Act in a bid to promote micro, small and medium-scale enterprises reduced the minimum to one for private companies²⁵. Undoubtedly, this is one of the most celebrated additions to the Act.

14 Section 807 of CAMA 2020

15 Section 42; 746

16 Section 42; 756

17 Section 747

18 Section 796

19 Section 20(2)

20 Section 20

21 Section 19(1) and 795(2)

22 Section 22(3)

23 Section 749

24 Section 751

25 Section 18(2)



5.4. Winding Up

5.4.1. Similar modes of winding up exist for LLPs and LLCs (voluntary and court ordered winding up).²⁶ However, there is a third option of winding up that is exclusive to LLCs – court supervised winding up.

5.4.2. The grounds for court ordered winding up in LLPs and LLCs are relatively the same, such as inability to pay debts, just and equitable rule, decision by all partners (special resolution for companies) for court ordered winding up, and the number of partners/members is reduced below two (for a period more than 6 months in LLPs).²⁷

5.4.3. Notably, the Act provides an additional ground for court ordered winding up of LLPs, which is acts contrary to the interests of the sovereignty and integrity of Nigeria or against her security or public order.²⁸ While this ground is not covered for companies, the just and equitable rule encompasses grounds for the protection of public interest.

5.4.4. The winding up of LPs is more distinct as the Act simply provides that it is to be wound up by the general partners save for a contrary order of the court.²⁹ This provision seeks to preserve the ease of business of partnerships, and to ensure that LPs are not burdened with the formal rigours of a stringent winding up process.

5.5. Extent of Liability

5.5.1. An offshoot of the legal personality vested on LLPs and LLCs is to separate liabilities from the individual personalities of the partners, members and shareholders.

5.5.2. The liability of members in an LLC is limited by the memorandum of association to the amount, if any, unpaid on the shares respectively held by its members.³⁰

5.5.3. Obligations and liabilities of an LLP is the sole responsibility of the LLP and its liabilities are to be offset with its properties.³¹ LLPs bear the liability arising from the wrongful act or omission of a partner in the course of the business of the limited liability partnership or with its authority.³² The liabilities of an LLP do not extend to acts done by partners having no authority to act and where such third party is aware of the lack of authority. Partners are not personally responsible for any obligation of the LLP except any liability arising for his own wrongful act or omission.³³

5.5.4. In the event of an act done with the intent to defraud creditors of the LLP by the LLP or any or all of the partners, the liability of the LLP and partners shall be unlimited unless such act was done by a partner without the knowledge or authority of the LLP³⁴ and in that case such partner shall be liable to compensate the victim of the fraud.

5.5.5. On the other hand, the extent of liabilities under LPs are dependent on the type of partner in question. A general partner bears unlimited liabilities for the debts and obligations of the partnership while the liabilities of a limited partner is limited to his contributions to the partnership. A limited partner bears liability similar to shareholders in an LLC.

²⁶ Section 564 and 789

²⁷ Section 571 and 790

²⁸ Section 790 (d)

²⁹ Section 806 (3)

³⁰ Section 21(1a)

³¹ Section 766

³² Section 766(2)

³³ Section 767

³⁴ Section 769(1)



5.6. Dual Classification/ Role of Partners

5.7.1 In LLPs and LPs there are two classification of partners. In LPs, there must be at least one general partner and one limited partner. The liabilities of general partners for the debts and obligations of the partnership are unlimited. The liability of general partners is extended beyond their individual contribution to the partnership, and personal resources can be used in the settlement of debts.³⁵ Limited partners' liabilities are restricted to the amount of their individual contribution to the partnership.

5.7.2 However, in LLPs there is no such distinction between limited and general partners. Partners in an LLP may be designated partners, but not all partners in an LP can be general or limited partners, each partner must fall into either of the category. Also, no partner in an LLP is precluded from the management of the partnership business while in an LP, a limited partner is precluded and in the event of his participation, he becomes liable for the debts and obligations incurred by the firm at the material time of his involvement and management.³⁶

5.7.3 Designated partners in LLPs are vested with the responsibility of compliance to the provisions of the Act such as filings, returns, reports as provided under the Act and the partnership agreement and in the event of default, the liability for penalties.³⁷

6. Similarities between LLPs, LPs and LLC

6.1. Amidst the various differences, several similar provisions are made for the regulation of limited entities these include, the publication of names³⁸, filing of resolution for change of address³⁹, reservation and change of name⁴⁰, notification of changes in particulars of partners.⁴¹

6.2. There is also a restriction on foreign LLPs from carrying on business in Nigeria, exercising powers of corporate bodies, having a place or business or address for service of documents and processes in Nigeria unless they have taken all due steps necessary for incorporation under the Act or have been exempted by the Minister charged with trade.⁴² The restriction on foreign LLPs is similar to the restrictions placed on foreign companies in Nigeria .⁴³

6.3. LLPs are similarly vested with financial responsibilities of companies such as the maintenance of proper books of accounts at the registered office, preparation and filing of annual return, statement of account and solvency for the financial year⁴⁴ and maintenance of a register of partners with significant control⁴⁵ and striking off from the register of LLPs⁴⁶ similar to companies under section 692 of CAMA.

7. Which is the Better Option – LLP/LP or LLC?

7.1. Limit on the number of members: LLCs have lesser restrictions on the number of members, while LLPs and LPs are restricted to a minimum of two and a maximum of 20 partners.

7.2. Taxation: LPs are taxed in a similar manner to general partnerships, i.e the payment of personal income tax by the partners, while LLCs and LLPs are taxed as corporate bodies.

35 Section 795 (3)

36 Section 806

37 Section 750

38 Section 760

39 Section 755

40 Section 758; 803

41 Section 764; 800(1)

42 Section 788

43 Section 78 and 80

44 Section 772 and 773

45 Section 791(3)

46 Section 793



7.3. Qualification of Members: there is no restriction in the Act for the registration of LLPs & LPs for minors, on the other hand in LLCs, minors can only incorporate a company as shareholder where there are at least two other persons not disqualified under the Act.

7.4. Decision Making: A single partner in LLPs can take decisions binding the partnership whilst a single member can do likewise in a One-Person Company (OPC) of LLCs.

7.5. Lesser Formalities: LLPs and LPs enjoy the privilege of lesser regulations and fewer formalities in the operation of businesses as provided under the Act.

7.6. Ease of Winding Up/Dissolution: LLPs and LPs enjoy a greater ease of winding up, while the winding up process under LLCs involves a cumbersome procedure.

8. Which is the Better Option – LLP/LLC or LP?

8.1. The Existence of Separate Legal Personality: LLCs and LLPs enjoy the benefits of a separate legal personality vesting them with the capacities to sue and be sued in their name, acquire properties and perpetual succession. LPs are not conferred with a separate legal personality

8.2. Management of Partnership: All partners in an LLP have no limitation on their powers to manage the partnership business. In LPs, general partners are vested with the management of the business while limited partners are not so entitled. Limited partners also bear personal liabilities for losses that occur in the course of managing the business.

8.3. Limited Liability: All members/partners in LLPs/ LLCs have their liabilities limited to their contribution to the business' capital. Only limited partners in LPs have the benefit of limited liability.

9. Conclusion

Remarkably, the Act has made head way for the inclusion of several provisions to advance modern commercial transactions in Nigeria. The introduction of LLPs and LPs are truly a welcome development in the Nigerian business sphere. The choice of the type of corporate structure to register will be highly dependent on the intended business to be carried out, the composition of the partnership or company, and the risks in which members and partners alike are willing to take.

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