

An Examination of the Desirability or Otherwise of Limited Liability Partnerships Law Firms in Nigeria

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Abstract

The recognised forms of doing business in Nigeria are sole proprietorship, partnership and companies. Legal practice is however restricted to sole proprietorships, sole practitionerships and partnerships thereby excluding companies registered under the Companies and Allied Matters Act since the Legal Practitioners' Act prohibits the doing of legal business as a Corporation. Limited liability partnerships which is acknowledged to be a hybrid of corporate personality and partnerships have been known to exist in advanced jurisdictions like the U.K and the U.S and even emerging markets in Asia especially in law and accounting practice. The aim of the article is to examine the basis for the existence of Limited Liability Partnerships in some of those jurisdictions particularly in legal practice with a view of discovering if a call for such mode of legal practice can be made in Nigeria.

1. Introduction

The Limited liability Partnership Act 2000(LL.P Act) was enacted in the United Kingdom as joint venture vehicle where the liability of the partners is limited in the event of insolvency. It was created in order to permit professional organisations such as solicitors' and accountancy firms to carry on business with the benefit of limited liability, in an environment where the partners increasingly faced financial ruin in the event of negligence claims for which provision could not be made by insurance.¹

In a conventional practice each member bears liability for any contractual or tortuous liability incurred by his fellow partners. This

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¹ See R. Hollington, *Shareholders' Rights* (London: Sweet & Maxwell, 2007), p.418.

could result in the winding up or bankruptcy of all the partners. Meanwhile in other places such as Jersey, Guernsey and the Isle of Man it was possible to incorporate limited liability businesses. The Limited liability Partnership Act was enacted so as to avoid a situation whereby some large firms would be induced to incorporate in such places as a means of getting away with the agency problem inherent in conventional partnership.²

A Limited liability partnership is a hybrid combining some features of a company and a partnership. The partnership has a distinct legal personality while the liability of all its members is limited. Limited liability partnerships must be registered with the Registrar of Companies while partnerships are not obliged to do so.³ The owners are confusingly not called partners but members.⁴ The relationships between members of LLPs are usually contained in a Limited Liability Partnership Agreement which is equivalent to the article of association of a company and partnership agreement of a partnership.

On the other hand in consonance with partnership principles all the members are regarded as partners for the purpose of taxation. All the members are also able to participate in the management of the partnership thus blurring the distinction between members and directors as established in corporate Law.⁵

LLPs do not have directors but designated members but some of the provisions of the Companies Act 1985 which are applicable to LLPs are to be modified so as to be read as if “designated members” of LLPs are substituted for “directors” of companies.⁶

LLPs do not have shares so they are neither subject to the provisions of the Companies Act dealing with the relationship between shareholders and the company nor the rule of capital maintenance.⁷

A lot of professionals have embraced this new form of doing business.⁸ It is however believed that the title of the Act is misleading

² See M. Griffiths, *ICSA Study Text on Corporate Law*, (5th edn.), (London: ICSA Publishing, 2006). p.6

³ *Ibid.*, p.5.

⁴ *Ibid.*

⁵ P. L. Davies, *Gower's Principles of Modern Company Law* (8th edn.), (London: Sweet & Maxwell, 2008), p. 6.

⁶ Hollington *op.cit.*, note 1, p.418.

⁷ *Ibid.*, p. 419.

because it is considered to be more adapted to company law than partnership Law.⁹

This article aims at finding out if the vehicle of limited liability partnership is desirable or suitable for law firms in Nigeria. Since LLPs are a hybrid between partnerships and companies, this paper shall examine their features. The different vehicles that already exist in Nigeria for doing professional business shall also be investigated since LLPs were created in response to the need of professionals. In particular Limited Partnerships which ‘appear’ to have some resemblance with Limited Liability would be appraised. The enactments regulating the practice of law firms would also be examined to see if they are compatible with the concept of limited liability partnership.

2. Types of Business Organisations

There are three forms of business organisations recognised in Nigeria. A business may be conducted by a sole owner or proprietor or as a company registered under the Companies and Allied Matters Act¹⁰ or as a partnership in accordance with the Partnership Laws applicable in the various states of the Federation.¹¹

The three forms of participation in business no doubt have their distinct features, advantages and disadvantages. A sole owner using his true surname, or true surname and initials or his true forename(s) and surname without any other additions is not required to go through

⁸ As at the end of 2005/2006 about 13,500 LL.P’s have been registered in the U.K., see Gower, *op. cit.*, note 5 above.

⁹ See Limited Liability Partnerships Regulations 2001 of UK. Section 3 of the regulations provides that the accounts and audit provisions of the 1985 Companies Act shall apply to limited liability partnerships. Section 4 provides for the application of the remainder of the 1985 Act and the provisions of the Companies Directors. Disqualification Act 1986 to limited liability partnerships. See also Griffiths *op.cit.*, note 2 above, p.6.

¹⁰ See Cap C.20 Laws of the Federation of Nigeria (LFN) 2004.

¹¹ See Partnership Act 1890 which is applicable in all the States comprising the former Northern and Eastern Regions. The states comprising the former Western Region have their own Partnership Laws modelled after the Partnership Law of the Former Western Region.

the process of registration under the Companies and Allied Matters Act (CAMA) or The Act.¹² This means that he is shielded from the many controls, regulations as may be stipulated under the Act. It however appears that even if he is required to register, apart from fulfilling all the requirement of registration he would practically only be indebted to the Commission to the tune of filing his Annual returns every 30th day of June of each year¹³ except if he wants to do any alteration like change of name, object.¹⁴etc.

A firm or partnership which is carrying on business with a name other than the true surnames, forenames & surnames or initials and surnames of the partners is also required to register under the CAMA.¹⁵

The Act however stipulates that partnership consisting of more than 20 members must be registered as a company under CAMA except co-operative societies registered under any enactment in force in Nigeria, partnerships for the purpose of carrying on practice as legal practitioners by persons each of whom is a legal practitioner or accountants by persons each of whom is entitled by law to practice as accountants.¹⁶ The exemption granted to Solicitors and accountants apart from the personal nature of their services which indicate personal responsibility and liability to their clients is also enhanced by the fact that very large partnerships of Solicitors and Accountants have evolved in recent times.¹⁷

This means that while a partnership of engineers or doctors consisting of more than 20 partners must register as a company thus having the advantage of corporate personality.¹⁸ However the maximum limit of 20 partners no longer exists in the United

¹² See the Companies and Allied Matters Act, (CAMA) *supra*, note 10, s.573(b).

¹³ *Ibid.*, s. 587.

¹⁴ *Ibid.*, s. 577.

¹⁵ *Ibid.*, s. 573(a).

¹⁶ *Ibid.*, s. 19.

¹⁷ See Gower, *op.cit.*, note 5 above at p. 5.

¹⁸ *Akinlose v AIT* (1961) WNLR 213

Kingdom.¹⁹ This means that a partnership of engineers or doctors having more than 20 members is now permitted in the UK.

Be that as it may, partnerships are generally suitable for a small group of persons who have some trust and confidence in each other and are required to be agents of one another with powers to bind each other. This is aside from the fact that it is cheaper to register and maintain.²⁰

It is however settled that the attraction to corporate law is the corporate personality it offers to the artificial entity called a company. This is heightened by the fact that the liability of the members is limited by an amount unpaid on the shares issued to them out of the capital of the company²¹ or the any amount which they undertake to pay in the event of winding up.²² While registration of an individual or a partnership or firm under Part B of the Act²³ merely apprises the public of the identity of persons each with unlimited liability who are registered under the Act as having a business name, registration of a company under Part A of the Act confers on the company formed a personality different from that of the members.

Thus a lot of people find it more convenient to do business through the medium of a company not minding the legal restrictions and controls which it is subjected to under the various legislations. A company being a complicated form of association is recommended for amorphous and fluctuating membership.

There is however a type of company known as unlimited liability which appears to be a hybrid between partnerships and companies because it combines the unlimited liability of partnership with the corporate personality. This company is more adaptive to a private company where the members are likely to have some close filial relationship necessary to undertake the risk of unlimited liability together. This type of company is suitable for enlarged partnerships.

¹⁹ See The English Companies Act 2006 which does not contain an equivalent of section 716 of the 1985 Act.

²⁰ See Gower, *op.cit.*, note 5 above.

²¹ In the case of a Company Limited by guarantee

²² in the case of a company limited by guarantee

²³ which deals with Business Names

However the law compensates the unlimited risk of the members by not requiring the company to fulfil certain regulations that are demanded from other companies.²⁴

3. Limited Partnerships

A limited partnership is regulated by the Limited Partnership Act 1907 in the UK. Since the Act is not a Statute of General Application, it is not applicable in Nigeria. This means that states in the former Eastern and Northern Nigeria, whose partnership law is regulated solely by the Partnership Act of 1890 of the United Kingdom, would not have limited liability partnership applicable to them.²⁵

Limited partnership in Nigeria is a creation of the Partnership Laws of former **Bendel**, Lagos and former Western States of Nigeria.²⁶ A limited partnership is required to be registered in the registry of limited partnerships. Otherwise it would be deemed to be a general partnership and every limited partner would be deemed to be a general partner.²⁷ It is however uncertain if the Limited Partnership Registry is yet to take off in Lagos State. There appears to be no available record about the registration of any Limited Partnership in Nigeria.

A limited partnership shall not consist of more than 20 persons. One or more of such partners must be general partner(s) who shall be liable for all the debts and obligations of the firm. It shall also consist of one or more persons who shall be called Limited partner(s) who shall at the time of entering into the partnership contribute a certain amount as capital and shall have no further liability or obligation to the partnership.²⁸

²⁴ See Section 345(4) CAMA where it is stipulated that the directors of an unlimited company need not deliver a copy of the Company's Accounts to the Corporate Affairs Commission if the conditions stipulated therein are met.

²⁵ See *Ozodo v Okwuanizor* (1961)5 E.N.L.R. 29 where it was held that the Partnership Act 1890 is a Public Act of General Application and was so on the 1st January, 1900 and by the application of S.14 of the High Court Law of Eastern Nigeria, 1955, it applies to Eastern Nigeria.

²⁶ D.J. Bakibinga, *Nigerian Law of Partnership*, (Ile Ife: Obafemi Awolowo University Press Ltd, 1989), p.114.

²⁷ See s.47 Partnership Law of Lagos State 1994 Cap 139.

²⁸ *Ibid.*, s. 46(2).

A limited partner who draws out or receives back any part of his contribution during the continuance of the partnership automatically becomes a general partner and shall become liable for all the debts and obligations of the partnership.²⁹

A limited partner may not take part in the management of the firm and shall not have power to bind the firm.³⁰ If he does he becomes a general partner during the period. He can however give advice and inspect the books of the firm.

The death, lunacy or bankruptcy of a limited partner shall not be a ground of dissolution of the partnership by the court.³¹ Subject to agreement express or implied a limited partner need not be notified of the introduction of a new partner to the firm and he is not entitled to dissolve the partnership by notice.³²

A limited partner is expected to play a sleeping or dormant role as a sleeping or dormant partner in the affairs of the partnership while the general or active partners play very active roles.³³

4. Limited Partnership/ Limited Liability Partnership

It is clear from the above that a limited partnership is a partnership in the true sense. An LP is regulated and controlled by the Partnership Act. The partnership has no legal personality and has no attachment to Company Law regulations unlike LLPs. A limited partner has limited liability like a member under an LLP but a member under an LLP arrangement can take part in the management of the partnership whereas the later is prohibited. A partner under an LLP can bind his co-partner but subject to the limit of the other partners liability to the partnership while a limited partner cannot bind his co-partner at all.

It is observed that the number of persons who can form a limited partnership cannot be more than 20. This is an indication that the law envisages that an LP's to be conducted within the framework

²⁹ *Ibid.*, s. 46 (3).

³⁰ *Ibid.*, s. 54(1).

³¹ *Ibid.*, s. 54(2).

³² *Ibid.*, s. 54(4).

³³ Bakibinga, *op.cit.*, note 27 at p.15.

of a small unit of people not involved in large scale enterprise. LLPs on the other hand appear to target sophisticated professional firms probably doing business on a larger or perhaps global scale.³⁴

The **comparism** between LPs and LLPs in Nigeria at the moment is largely academic. In the first instance LPs are not available in most parts of the country.³⁵ Secondly even in States where the Law allows LPs, they are yet to take off because Government is yet to establish the framework for its promotion and establishment.³⁶

It would appear that a Limited partnership is more suitable for venture capital³⁷ while Limited liability partnerships are more suited for joint ventures.

This paper is of the opinion that the promotion and establishment of LPs in Nigeria would lead to the development of venture capital which would in turn enhance business development. The various State Governments are therefore enjoined to enact the necessary laws and set up the framework for its enhancement.

5. Professional Business/ Limited Liability Partnerships

It has been revealed earlier that LLPs were established in the UK in response to the need of professionals like Accountants. **Attempt would be made in this paper to see if the law regulating the practice of the legal profession and the accountancy profession is in favour of LLPs.**

It has been said that there are four ways of carrying on legal business in Nigeria.³⁸

Sole practitionership; whereby a legal practitioner practices alone but makes use of support staff.

³⁴ The limit on the number of persons who can form an LLP has been removed in UK.

³⁵ In all the States where the Partnership Act 1890 is applicable.

³⁶ Compare with UK where there are at least 17,500 limited partnerships in existence in 2006. See Gower, *op.cit.*, note 5 at p.7.

³⁷ See *Uredi v Dada* (1988) 1 NWLR 237. The plaintiff gave the defendant a sum of money which was to be returned upon the execution of the contract which the later was executing. The Plaintiff was promised a share of the contract and it was held by the court that there was a partnership between the parties. See also *Ojeimen v Okaofuda* (1977) N.C.L.R. 192.

³⁸ See O. Doherty, *Legal Practice and Management in Nigeria*, (London: Cavendish Publishing Limited, 1998), pp 39-42.

Sole proprietorship; which involves a legal practitioner establishing a law firm but employing other legal practitioners to work with him.

Associateship; whereby two or more legal practitioners contribute capital to provide facilities such as accommodation and support staff which would be shared by all.

Partnership; whereby two or more legal practitioners do legal business in common with a view to sharing profit.³⁹

Under the Rules of Professional Conduct for Legal Practitioners,⁴⁰ a lawyer is permitted to practice law under the following settings-

A lawyer shall not form a partnership with a non lawyer or with a lawyer who is not admitted to practice law in Nigeria, if any of the activities of the partnership consist of the practice of law.⁴¹

Where a lawyer practices alone, he shall not hold himself out as a partner in a firm of lawyers using a firm name such as “A, B and Co” or such other names as may suggest that he is in partnership with others.⁴²

It shall be unlawful to carry out legal practice as a corporation.⁴³

A legal practitioner can practice law in partnership with other lawyers as described above and also as a sole practitioner.⁴⁴ It is however expressly stated that legal practice cannot be done using a medium of business having corporate personality. This provision is somewhat in tandem with Section 19 of CAMA which permits solicitors and accountants to continue to exist as a partnership where there are more than 20 members. Whereas other partnership in the same category of number are compelled to be registered as companies.

³⁹ See *Henshaw v Roberts* 1966 NNLR 158

⁴⁰ See *The Legal Practitioners’ Act LFN 2004, Cap L.*

⁴¹ Rule 5(1)

⁴² Rule 5(4)

⁴³ Rule 5(5)

⁴⁴ See also S. 13(1) (*which law*)

As has been observed, a limited liability partnership exists in the corporate form having a legal personality that is distinct from its members and is regulated by company enactments.

Going by the provisions of Rule 5(5) of the Rules of Professional Conduct a limited liability partnership would appear prohibited under Nigerian Law.

It is noted that it is the growth in the size of law firms especially through mergers which led to the phenomenal mega firm that led to the birth of limited liability partnerships. It is recorded that in the 1980s, law firms in the UK experienced about 20% per year compound growth. Consequently move from the old style of informal, illogical and often uniformed management structure towards a more corporatist management structure began.⁴⁵

When compared with advanced countries law firms are still relatively very small in Nigeria. A survey carried out in 1996 revealed that law firms in Nigeria can be classified into three:⁴⁶

Small: consisting of 1-4 legal practitioners;

Medium: consisting of 5-9 lawyers;

Large: consisting of 10 or more lawyers.

It is doubtful if the present size of law firms in Nigeria would reveal any remarkable difference in spite of the few mergers and partnerships⁴⁷ that have emerged in recent years. It is however admitted that legal business is now being conducted under some form of sophistication due to improved level of information, communication and technology (ICT).

This lends credence to the view that legal practice is not just a vocation but a business concern.⁴⁸

6. Conclusion

Since it is unlawful to do legal practice in the corporate form, it appears settled that there is at present no legal framework for limited

⁴⁵ See A. Pannett, *Legal Practice Handbook-Managing the Law Firm*, (London: Blackstone Press limited, 1991), pp.6-7.

⁴⁶ Doherty, *op.cit.*, note 39 above at p.38.

⁴⁷ Partnerships of law firms were hitherto uncommon in Nigeria. See, Doherty, *ibid.*, at p.46.

⁴⁸ A. Taiwo & Co., *Law Office Etiquette: Essential Habits of Successful Firms*, (Lagos: Academy Press, 1994), p.24.

liability partnership law firms in Nigeria (having established that an LLP like a company registered under the Companies and Allied Matters Act has a different legal personality different from its members).

Aside from the legal frame work the present level of legal practice in Nigeria cannot support the existence of LLPs. A greater percentage of law firms in Nigeria are managed by sole practitioners which is a huge far cry from law firms in the United States of America and United kingdom where there are mega law firms consisting of hundreds of lawyers.⁴⁹

It is hoped that legal practice in Nigeria would get to a level where Limited liability Partnerships would become very necessary.

⁴⁹

Baker & McKenzie in the United States has well over 1000 lawyers. See Doherty *op.cit*, note 39 at p.38.