

**Limited Liability Partnership and Limited Partnership as Vehicles for Business in Nigeria:
Challenge and Prospects**

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ABSTRACT

In a bid to improve the ease of doing business in Nigeria by ensuring that entrepreneurs can form partnerships and also enjoy reduced personal liability, the Companies and Allied Matters Act 2020 (CAMA 2020) in Nigeria, provided for the establishment of Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs) as vehicles for business in Nigeria. Similarly, it is indisputable that in 2009 the Lagos State Government had enacted the Partnership (Amendment) Law of Lagos State which made provisions for the creation of LLPs and LPs; and was only applicable within the territory of Lagos State. Nonetheless, with the enactment of the CAMA 2020, it is abundantly evident that Nigeria now has holistic legislation for the practice and procedure of LLPs and LPs in Nigeria. This paper which adopted the doctrinal methodology analyzed the concept of LLP and LP as vehicles for business organizations in Nigeria; benefits of LLP in Nigeria; the viability of LLPs in the United Kingdom (UK) and India; the challenge and prospects of LLP under the extant laws in Nigeria. This paper observed that there exists a jurisdictional challenge in the determination of matters arising from LLPs and LPs domiciled in Lagos State. Thus, this paper recommended that the provisions of section 83 of the Lagos State Partnership (amendment) Law 2009 should be amended in tandem with the unequivocal provisions of sections 1(1) (3); 251 (1) (e) of the Constitution of the Federal Republic of Nigeria 1999, as amended and section 868 (1) of the CAMA 2020 to be brought to fruition the commercial imperativeness of establishing LLPs and LPs.

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I. INTRODUCTION

In the course of floating a business organization in Nigeria, there are a plethora of corporate vehicles that can be adopted by the ‘promoters’ of a prospective business organization, these corporate vehicles include the practice of partnership, which may take the shade of a limited liability partnership or a limited partnership company. Essentially, a limited partnership is a hybrid of a general partnership and the concept of limited liability. It is a kind of partnership in which some partners have limited liability similar to the shareholders of a company.¹ It contrasts with the principles of general partnership in that a limited partner is not responsible for the conduct or acts of the other partners.² It is worthy of note that several professionals have long used this vehicle to float their businesses due to ease of formation, tax reduction, and organizational flexibility. Despite these benefits, it remains an area of concern that business entities are not separate from the partners. As a result of these partners’ assets are unprotected and also, they are exposed to liability for the actions of other partners. In addition, partnerships are dissolved upon the death or withdrawal of one of the partners, thereby endangering the business.³

Before the enactment of the CAMA 2020,⁴ partnerships in Nigeria were regulated by the United Kingdom Partnership Act of 1890⁵ while the Companies and Allied Matters Act, Cap C20 LFN 2004 (repealed) which regulated the operations of companies did not repeal the UK Partnership Act rather it limited the number of people allowed in a partnership to twenty (20) persons.⁶ Furthermore, in 2009 the Partnership Law was incorporated into the laws of Lagos State as an alternative to the weaknesses of the existing forms of business organizations. Following the views of developed countries like the United States of America and the United Kingdom, Lagos State incorporated the law of limited liability partnership.⁷ Nonetheless, its application was restricted to Lagos State and this ultimately led to the introduction of Limited Liability Partnerships in CAMA 2020.

Fundamentally, this paper seeks to critically examine the concept of limited partnership and limited liability partnership as vehicles for business organizations in Nigeria; the benefits and features of limited liability partnership in Nigeria; examine the viability of limited liability partnerships in the UK and India; the challenge and prospects of limited liability partnership under the Partnership (Amendment) Law of Lagos State, 2009 and the CAMA 2020.

II. LP AND LLP AS VEHICLES FOR BUSINESS ORGANIZATIONS IN NIGERIA

A limited partnership (LP) is a business organization that consists of not more than 20 persons in which one or more persons known as general partners are liable for all debts and obligations of the

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1. “Limited Partnership: A Focus on Registration under the Lagos State Partnership Law by Offshore Entities,” Adeyemi B, accessed 16 November, 2020, https://www.dcsl.com.ng/data/content/_1357638361_TN84X70FE7.pdf.

2. “Limited Partnership.”

3. “CAMA 2020 and the Introduction of Limited Liability Partnership,” Nexia, accessed 16 November, 2020, <https://nexianigeria.com/cama-2020-and-the-introduction-of-limited-liabilitypartnership/>.

4. Companies and Allied Matters Act 2020, (CAMA 2020), ss. 746-810.

5. Which constitutes part of the Statute of General Application that was in force in England on 1st January, 1900; “A Review of Limited Liability Partnership under the Partnership Law of Lagos State 2019” Ajibade S P A, accessed 16 November, 2020, <http://www.spajibade.com/resources/areview-of-limited-liability-partnerships-under-the-partnership-law-of-lagos-state-2009/>.

6. CAMA (repealed), s. 19 (1).

7. CAMA 2020, s. 795 (2); Amadike N, “The Introduction of Limited Liability Partnership Law in Lagos State of Nigeria as an Alternative to the Existing Forms of Business Organization: Echoes of a New Dawn?,” *Global Journal of Politics and Law Research* 8, no 1 (2020): 69.

partnership, and one or more persons described as limited partners who at the time of joining the partnership contributes thereto a sum or sums as capital or property valued at a specified amount who are not liable for debts or obligations arising from the partnership beyond the amount of contribution made.⁸ It therefore logically follows that a limited partnership occupies a middle-point between a partnership and a limited company in that it is an amalgam of limited and unlimited partnership.⁹

As a general rule, a limited partnership must be registered and where such a mandatory registration is not done, the limited partnership will be considered a general partnership, and each of the limited partners will be a general partner. Also, a limited partner must not participate in the management of the partnership business and cannot bind the firm, although he can provide advice to the partners on the state and prospects of the partnership after he or his agents has inspected the books of the partnership. Where a limited partner takes part in the management, he will be liable for debts and obligations arising from the partnership during the period that he engages as if he was a general partner.¹⁰ Accordingly, in the absence of any express or implied agreement between the partners, a majority of the general partners may decide on any difference relating to the ordinary matters that connect with the partnership business; the share of a limited partner in the partnership can, with the consent of the general partners, be assigned by him and the assignee will become a limited partner having all the rights of the assignor; where a limited partner suffers his share to be charged for his separate debt, the other partners does not have the right to dissolve the partnership; the introduction of a new person into the partnership can be done without the consent of the existing partners, and the limited partnership cannot be dissolved by the limited partner giving a notice.¹¹ Taxation under this form of organization is subject to the Personal Income Tax Act.¹²

In the same stead, the CAMA 2020 for the registration of a limited partnership (LP);¹³ in comparison, while a limited liability partnership (LLP) limits liability for all partners, an LP only limits its liability for some partners.¹⁴ Essentially, section 795(3) of the CAMA 2020, provides that a limited partnership shall consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons called limited partners, while an LLP does not have such limitation under Nigerian corpus juris. Additionally, the limited partner cannot have significant money invested in or hold major decision making power in the business; where they do, they risk losing their status as a limited partner and forfeiting their limited liability status.¹⁵

In Nigeria, limited liability partnerships like limited partnerships are governed by the general rules on partnerships unless there are specific provisions in the laws creating them to the contrary.¹⁶ Under section 67 of the Partnership (Amendment) Law of 2009, it is self-evident in its proviso that:

Provided always that in the event of a conflict between any provisions of any general law relating to partnerships and the specific provisions of this Law as may be amended from time to time, the provisions of this Law shall supersede and the provisions of the general law relating to

8. Amadike, "The Introduction of Limited Liability Partnership Law in Lagos State of Nigeria as an Alternative to the Existing Forms of Business Organization," 77.

9. Okany M C, *Nigerian Commercial Law* (Africana First Publishers Plc, 2009), 630.

10. Amadike, "The Introduction of Limited Liability Partnership Law in Lagos State of Nigeria as an Alternative to the Existing Forms of Business Organization," 78.

11. Ejiofor, Okonkwo and Iloegbune, *Nigerian Business Law* (London: Sweet & Maxwell 1982) 256- 257.

12. Personal Income Tax Act (as amended) 2011, s. 1.

13. CAMA 2020, s. 746 (1).

14. CAMA 2020, ss. 767; 795 (3).

15. Olaniyi O and Akhator J, "A Review of Limited Liability Partnerships under the Companies and Allied Matters Act, 2020," *Business Day*, October 27, 2020, 13.

16. "Limited Liability Partnership as Veritable Vehicles of Carrying on Business," Adeyemi, O, accessed 20 November, 2020, <https://aolulaw17.medium.com/limited-liability-partnerships-as-veritable-vehicles-of-carrying-on-business-fa8edb0d55d9>.

partnerships shall be considered modified to the extent of any inconsistency with respect to its application to Limited Liability Partnerships.

Thus, it is an ineluctable fact that the laws governing partnerships in Nigeria relate to and govern limited partnerships and limited liability partnerships incorporated in Nigeria.¹⁷ Consequently, it suffices to state that an LLP is a dynamic business vehicle attractive to professionals and others who seek to do business and limit their liability without going through the process of formally incorporating a limited liability company.¹⁸

III. BENEFITS AND FEATURES OF LLP IN NIGERIA

Owing to the need for a more dynamic form of partnerships in Nigeria to address the increase in litigation resulting in personal liability by partners and the consequent threat to partnership entities and their partners has necessitated the introduction of a form of partnership that would provide a limitation of liability analogous to that enjoyed by directors of a limited liability company. More so, the benefits of a Limited liability partnership in Nigeria are as follows:

A. Liability of Partners

Ordinarily, it is trite law that the liabilities of members of a company are usually limited to the number of shares they own in the company or/and the amount they have guaranteed the company upon the dissolution of the company and nothing more or less.¹⁹ This state of affairs finds a strong footing in Limited Liability Partnerships. Limited Liability Partners are not ordinarily liable to be sued for partnership debt.²⁰ This is in tandem with section 58(4) of the Partnership (Amendment) Law of 2009 which provides inter alia:

A Limited Liability Partnership may sue and be sued in its registered name however a limited liability partnership will be liable to be sued in his personal capacity for acts of the partnership in... cases of fraud, misrepresentation, and other improper conduct alleged to have been committed by the limited liability partner; and with the written consent of the Commissioner where it is established that it is in the reasonable interest of the public for an action to be maintained against an individual or a limited liability partner.

Furthermore, under a general partnership, every partner is liable jointly with other partners for all debts and obligations of the firm incurred while he is a partner and after his death, his estate is also severally liable in due course of administration for such debts and obligations in so far as the debts and obligations remain unsatisfied, subject to the prior payment of his separate debts.⁶⁵ It is upon this premise that section 75(3) of the Partnership Law of Lagos State 2009 provides that “a limited liability partner shall not be liable for the debts or action or inaction of the partnership or limited liability partnership beyond the amount subscribed by such limited liability partner under the current registration and/or partnership agreement”. The general implication of this is that partners in an LLP are immune personally to lawsuits if an entity decides to take them to court. This is quite at variance with what obtains in limited partnerships which must consist of one or more persons called general partners where there is at least one general partner with unlimited liability, the same cannot be said of the LLP as no such provision is made.²¹

17. “Limited Liability Partnership as Veritable Vehicles of Carrying on Business,”.

18. “Limited Liability Partnership,” Lagos State Government, accessed 20 November, 2020, <http://www.lagosstate.gov.ng/>.

19. “Limited Liability Partnership as Veritable Vehicles of Carrying on Business”.

20. *Fawehinmi v Nigeria Bar Association* (NBA) (No.2) [1989] 2 NWLR (pt 105) 558.

21. *Ibid.*

Thus, it has been argued that the most impactful benefit of an LLP is that the partners enjoy limited liability.²² In other words, in an event where the entity is sued, the liability of its partners would be limited only to the amount contributed by each partner for the formation of the LLP.²³ Nonetheless, it is imperative to note that the limited liability protection enjoyed in an LLP will be broken if the liability originates from an intentional, fraudulent, and unauthorized act of the partner.²⁴

B. Legal Personality

Akin to a business name, a partnership has no independent corporate legal existence, distinct from that of its members, because partnership law is based on the law of agency with each partner becoming an agent of the others. However, by section 58 (4) of the Partnership Law of Lagos State 2009, an LLP is conferred with legal personality, as it can sue and be sued in its registered name.²⁵ A significant aspect of the LLP however is that a partner in an LLP will be liable to be sued in his personal capacity for acts of the partnership in cases of fraud, misrepresentation, and other improper conduct alleged to have been committed by such partner. The LLP partner will also be liable where it is established that it is in the reasonable interest of the public for an action to be maintained against such individual. Such action, however, can only be maintained through written consent by the Commissioner for Justice.²⁶ In the same vein, by section 765 of CAMA 2020, a partner of an LLP is an agent of the LLP, and not of other partners. Hence, a partner cannot be liable, directly or indirectly for an obligation carried out following the partnership agreement. He cannot be liable for the wrongful act or omission of any other partner of the LLP.

Conversely, under a general partnership where every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member, binds the firm and his partners unless the partner so acting has no authority to act for the firm in the particular matter and the person with whom he is dealing with either knows that he has no authority or does not know or believe him to be a partner.²⁷

Submissively, it is pertinent to note that the main feature of a partnership is the relationship between the members, whereas with an LLP it is the act of association that creates the entity. This can be gleaned from the fact that in a partnership, every member is an agent of the partnership and an agent of the other partners whereas in an LLP every partner is an agent of the LLP itself but not of the other partners.

C. Generational Wealth Transfer

Owing to the salient features of limited liability partnership in Nigeria, it has been argued that LLPs have the proclivity to serve as a veritable tool for generational wealth transfer.⁷³ Primarily, the rights of a partner to a share of the profits and losses of an LLP and to receive distributions per the LLP agreement are transferable either wholly or in part, subject to the provisions of the partnership deed. Accordingly, this level of flexibility enables an LLP to act as a catalyst for effective generational wealth transfer.

22. "CAMA 2020 and the Introduction of Limited Liability Partnership".

23. CAMA 2020, s.766.

24. CAMA 2020, s. 769 (3); "A Review of Limited Liability Partnerships under the Companies and Allied Matters Act, 2020,".

25. CAMA 2020, ss. 746(1); 756 (a).

26. Partnership (amendment) Law 2009, s. 58 (4).

27. "A Review of Limited Liability Partnership under the Partnership Law of Lagos State 2009,".

D. Perpetual Succession

Limited liability partnerships like every company continually exist despite the death of its partners.²⁸ Thus, the life of the LLP is not affected by the demise, retirement, insolvency, or withdrawal of any of the partners.²⁹ As a corollary, by section 763 (1) CAMA 2020, a person may cease to be a partner of a limited liability partnership following an agreement with the other partners or, in the absence of an agreement with the other partners as to the cessation of being a partner, by giving a notice in writing of at least 30 days to the other partners of his intention to resign as a partner.

However, it is worthy 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.³⁰ Again, by section 748 of the CAMA 2020, if the membership of the LLP falls below two members, and the LLP continues to trade for more than 6 months with just one member, only that member would be liable for the obligations of the partnership incurred during that period.³¹

E. Flexibility

A limited liability partnership has the organizational flexibility of a partnership and the provisions dealing with the day-to-day running of the LLP will normally be contained in a written limited liability partnership deed. Similarly, professionals who use LLPs tend to rely heavily on reputation. Most LLPs are created and managed by a group of professionals who have a lot of experience and clients between them. By pooling resources, the partners lower the costs of doing business while increasing the LLP's capacity for growth. Most important, reducing costs allows the partners to realize more profits from their activities than they could individually.³²

Essentially, these professional workers are paid a salary and often have no stake or liability in the partnership. The important point is that they are designated professionals qualified to do the work that the partners bring in. This is another way that LLPs help the partners scale their operations. Professional workers take away the detailed work and free up the partners to focus on bringing in new business.³³ Also, the internal structure of LLPs is flexible because of the easy platform to bring partners in and let partners out based on the letters of a partnership deed. This comes in handy as an LLP can always add partners who bring existing business with them.³⁴

In sum, it is the flexibility of an LLP for a certain type of professional that makes it a superior option to a limited liability company or other corporate entity. Akin to a limited liability company, an LLP itself is a flow-through entity for tax purposes.

F. Ease of Incorporation

Generally, by sections 753 to 754 of the CAMA 2020, a less herculean and well structured process for the incorporation of an LLP in Nigeria is provided.³⁵ Accordingly, by section 753 (1) CAMA 2020, an

28. Okara G C and Alikor Z, "Underpinning the Nitty Gritty of Companies: An International Law Perspective," *Journal of Property Law and Contemporary Issues*, 11, no 2 (2019): 262.

29. CAMA 2020, ss. 746 (2); 763 (2).

30. CAMA 2020, s. 763 (4).

31. "CAMA and the New Face of Partnership Structure: An Overview of Limited Liability Partnership (LLPs) in Nigeria," Akusobi M, accessed 20 November, 2020, <https://thenigerialawyer.com/cama-2020-and-the-new-face-of-partnership-structure-an-overviewof-limited-liability-partnerships-llps-in-nigeria/>.

32. "CAMA and the New Face of Partnership Structure."

33. "Limited Liability Partnerships: the Pros and Cons," Small Firms Services Ltd, accessed 20 November, 2020, <https://www.simpleformations.com/llp-benefits-and-disadvantages.htm>.

34. "A Review of Limited Liability Partnerships under the Companies and Allied Matters Act, 2020,".

35. *Ibid*.

LLP can be formed by two or more persons associated with carrying on a lawful business to maximize profit. The incorporation documents must state the: name of the limited liability partnership; the proposed business of the limited liability partnership; address of the registered office of the limited liability partnership; name and address of each of the persons who partners of the limited liability partnership on incorporation; name and address of the persons who are to be designated partners of the limited liability partnership on incorporation; and contain other information concerning the proposed limited liability partnership as the Corporate Affairs Commission may prescribe must be filed in the manner and with the fees, as may be prescribed by the Corporate Affairs Commission from time to time.³⁶

Furthermore, upon submission of the incorporation documents, within fourteen (14) days, the Corporate Affairs Commission is mandated to register the documents and issue a certificate of incorporation which must be signed by the Corporate Affairs Commission and authenticated by its official seal.³⁷ More so, it is pertinent to state that an LLP will not be registered in Nigeria by a name which, in the opinion of the Corporate is undesirable; or identical or too nearly resembles that of any other partnership, business name, limited liability partnership, body corporate, or a registered trademark.³⁸

G. Designated Partners

The provision of designated partners under the CAMA 2020 concerning LLPs in Nigeria serves as a major insignia of LLPs in Nigeria. It is against this backdrop that by virtue of section 749 of CAMA 2020, a limited liability partnership must have at least two designated partners, provided that 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.³⁹ Additionally, the designated partners must have the same rights and duties towards the LLP as any other member but with extra responsibilities. These include duties such as signing and delivering the accounts and annual returns and notifying the Corporate Affairs Commission of any changes in membership, registered office address, or name.⁴⁰

In happenstances of any vacancy among the designated partner, a limited liability partnership is statutorily mandated to appoint a designated partner within 30 days of a vacancy; provided that 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.⁴¹

IV THE VIABILITY OF LLPs IN THE UK AND INDIA

It is not in doubt that a limited liability partnership is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.⁴² Most importantly, the Limited Liability Partnerships Act 2000 and the Limited Liability Partnership Act 2008⁴³ respectively provide a template for the operational structure of LLPs in the jurisdictions of the UK and India. Therefore, this standpoint seeks to evaluate the viability of LLPs in the UK and India.

36. CAMA 2020, s. 753 (2).

37. CAMA 2020, s. 754.

38. CAMA 2020, s. 757 (2).

39. CAMA 2020, s. 749 (1).

40. CAMA 2020, ss. 749 (2)-(5); 750.

41. CAMA 2020, s. 751.

42. "FAQs on Nature of Limited Liability Partnership (LLP)," Ministry of Corporate Affairs, accessed 21 November, 2020, <http://www.mca.gov.in/MinistryV2/natureoflimitedliabilitypartnershipllp.html>.

43. Act No.6 of 2009.

Similar to how partnerships are treated in other countries, the UK Limited Liability Partnerships Act 2000 provides for individual members to be subject to taxes and not the partnership;⁴⁴ since an LLP is not a company or a corporation, or any other legal entity.⁴⁵ In India, a limited liability partnership enjoys having perpetual succession.⁴⁶ Thus, any change in the partners of a limited liability partnership in India does not affect the existence, rights, or liabilities of the limited liability partnership.⁴⁷

In the jurisdictions of the UK and India, for a limited liability partnership to be incorporated two or more persons associated for carrying on a lawful business to maximize profit must subscribe their names to an incorporation document⁴⁸ which must be delivered to the registrar either the incorporation document or a copy authenticated in a manner approved by the registrar.⁴⁹ Nonetheless, under the India Limited Liability Partnership Act 2008, where 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 so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, will be liable personally for the obligations of the limited liability partnership incurred during that period.⁵⁰ Although, such provision is absent in the United Kingdom.

In both jurisdictions, the applicable extant legislation provides for the establishment of designated partners,⁵¹ however, section 7 (1) India Limited Liability Partnership Act 2008 stipulates that every LLP in India must have at least two designated partners who are individuals and at least one of them must be a resident in India: provided that in case of an LLP 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 such limited liability partnership or nominees of such bodies corporate must act as designated partners. Furthermore, subject to the provisions of the Limited Liability Partnership Act 2008 a designated partner is mandated to be 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 with the provisions of the Act including filing of any document, return, statement and the like report as may be specified in the limited liability partnership agreement; and liable to all penalties imposed on the limited liability partnership for any contravention of the Limited Liability Partnership Act 2008.⁵²

Conversely, in the UK, there is no limitation in the number of designated members however, if there would otherwise be no designated members, or only one, every member is deemed to be a designated member.⁵³ Again, where the incorporation document states that every person who from time to time is a member of the limited liability partnership is a designated member, every member is a designated member.⁵⁴

44. UK Limited Liability Partnership Act 2000, ss. 11-12.

45. "UK Limited Liability Partnership," Offshore, accessed 21 November, 2020, <https://www.offshorecompany.com/company/uk-llp-2/>.

46. Limited Liability Act 2008, s. 3(2).

47. Limited Liability Act 2008, s. 3(3).

48. Limited Liability Partnership Act 2000, s. 2(1) (a); Limited Liability Act 2008, ss. 6(1); 11(a);

"UK Limited Liability Partnerships: Key Features and Benefits Explained," Pearse Trust, accessed 21 November, 2020, <https://www.pearse-trust.ie/blog/bid/67579/uk-limited-liability-partnershipskey-features-benefits-explained>.

49. Limited Liability Partnership Act 2000, s. 2(1) (b).

50. Limited Liability Act 2008, s. 6(2).

51. Limited Liability Partnership Act 2000, s. 8 (1); Limited Liability Act 2008, s. 7(1).

52. Limited Liability Act 2008, s. 8(a) (b).

53. Limited Liability Partnership Act 2000, s. 8 (2).

54. *Ibid.*, s. 8 (3).

In tandem with the position in most jurisdictions including Nigeria,⁵⁵ in India, every limited liability partnership must have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name. Also, no limited liability partnership can be registered by a name which, in the opinion of the Central Government is undesirable; or identical or too nearly resembles that of any other partnership firm or limited liability partnership or body corporate or a registered trademark, or a trademark which is the subject matter of an application for registration of any other person under the Trade Marks Act, 1999.⁵⁶ By section 20 of the Limited Liability Partnership Act 2008, where any person or persons carry on business under any name or title of which the words "Limited Liability Partnership" or "LLP" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons must unless duly incorporated as limited liability partnership, be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Additionally, concerning the extent of liability of an LLP in India and the UK, it must be stated that a limited liability partnership is not bound by anything done by a partner in dealing with a person if the partner has no authority to act for the limited liability partnership in doing a particular act; and the person knows that he has no authority or does not know or believe him to be a partner of the limited liability partnership.⁵⁷

However, a limited liability partnership domiciled in India is liable if a partner of a limited liability partnership is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the limited liability partnership or with its authority.⁵⁸ Also, an obligation of the limited liability partnership whether arising in contract or otherwise will be solely the obligation of the limited liability partnership.⁵⁹ Nonetheless, in event of an act carried out by a limited liability partnership, or any of its partners, with intent to defraud creditors of the limited liability partnership or any other person, or for any fraudulent purpose, the liability of the limited liability partnership and partners who acted with intent to defraud creditors or for any fraudulent purpose will be unlimited for all or any of the debts or other liabilities of the limited liability partnership; provided that in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the limited liability partnership that such act was without the knowledge or the authority of the limited liability partnership.⁶⁰

In a similar vein, to improve the viability of LLPs in India, a firm, private companies, and unlisted public company is permitted to convert into limited liability partnerships.⁶¹ Whereas the Central Government is empowered to make rules for the establishment of place of business by foreign limited liability partnerships within India and carrying on their business therein by applying or incorporating, with such modifications, as appear appropriate.⁶² Also, the Limited Liability Act of 2008 provides for some sort of reconstruction between LLPs in India. Accordingly, by section 60 of the Act, where a compromise or arrangement is proposed between a limited liability partnership and its creditors; or between a limited liability partnership and its partners, the National Company Law Tribunal may, on the application of the limited liability partnership or any creditor or partner of the limited liability

55. CAMA 2020, ss. 757 (1); 759.

56. Limited Liability Act 2008, s. 15(1)-(2); 20.

57. *Ibid.*, s. 27(1); Limited Liability Partnership Act 2000, s. 6 (2); "All About Limited Liability Partnership (LLP)- A Complete Guide," Legalraasta, accessed 21 November, 2020, <https://www.google.com/amp/s/www.legalraasta.com/limited-liabilitypartnership/amp/>.

58. Limited Liability Act 2008, s. 27(2).

59. *Ibid.*, s. 27(3).

60. *Ibid.*, s. 30(1).

61. Chapter X, Second- Fourth Schedule of the Limited Liability Act 2008.

62. Limited Liability Act 2008, s. 59.

partnership, or, in the case of a limited liability partnership which is being wound up, of the liquidator, order a meeting of the creditors or the partners, as the case may be, to be called, held and conducted in such manner as may be prescribed or as the National Company Law Tribunal directs.⁶³

In sum, it is pertinent to state that the UK LLPs combine the benefits of corporate status and unlimited capacity with the protection of limited liability for members and the ability to operate and be taxed as a partnership. As a result of the LLP's separate legal personality, it may contract and hold assets in its name where required, similar to a limited company.⁶⁴ The LLP structure in the UK is commonly used by accountants to retain the tax structure of traditional partnerships whilst adding some limited liability protection. Hence, the Limited Liability Partnership Act of 2000 is widely applicable in the UK, unlike Australia where partnerships are governed on a state-by-state basis.⁶⁵

V. CHALLENGE AND PROSPECTS OF LLP UNDER THE PARTNERSHIP (AMENDMENT) LAW OF LAGOS STATE, 2009 AND THE CAMA 2020

In 2009, the limited liability partnership became the newest type of business organization introduced in Lagos.⁶⁶ Accordingly, Lagos state followed suit with developed countries such as the US and UK in incorporating the limited liability partnership model;⁶⁷ although, the CAMA 2020 now provides holistic legislation for the practice and procedure of LLPs and Limited partnerships in Nigeria.⁶⁸ Most importantly, an LLP is an alternative corporate vehicle that combines the flexible structure of a partnership with the benefits for its partners or members. An LLP is a corporate business vehicle that enables professional expertise and entrepreneurial initiative to combine and operate in a flexible, innovative, and efficient manner, providing benefits of limited liability while allowing its members the flexibility for organizing their internal structure as a partnership.⁶⁹ The partners of a limited liability partnership shall be liable to contribute in event of it being wound up or dissolved. A limited liability partnership can sue and be sued in its registered name nonetheless a limited liability partner can be sued in his personal capacity for acts of the partnership in some restricted circumstances.⁷⁰ These include in cases of fraud, misrepresentation, and other alleged improper conduct by the limited partner; where the written consent of the Commission is obtained having established that it is in the reasonable interest of the public to take action against an individual or a limited liability partner. A judgment made against the limited liability partnership cannot be executed on the asset of a partner except a judgment is also made against the partner. Execution may not be levied on the assets of a limited liability partnership by a judgment creditor if the claim is against a partner except a judgment relating to the same claim has been obtained against the partnership.

It is a general proposition that the death of a partner or bankruptcy of a partner in the case of artificial persons brings a partnership to an end by operation of law.⁷¹ Hence, in the *locus classicus* case of *Gillespie v Hamilton*,⁷² it was held that a partnership for a fixed term is dissolved by the death of

63. *Ibid.*, ss. 2 and 60.

64. "UK Limited Liability Partnerships,".

65. "CAMA 2020 and the Introduction of Limited Liability Partnership,".

66. Amadike, "The Introduction of Limited Liability Partnership Law in Lagos State of Nigeria as an Alternative to the Existing Forms of Business Organization," 82.

67. Partnership (amendment) Law 2009, s. 59(1).

68. CAMA 2020, ss. 746-810.

69. "CAMA and the New Face of Partnership Structure: An Overview of Limited Liability Partnership (LLPs) in Nigeria,".

70. Amadike, "The Introduction of Limited Liability Partnership Law in Lagos State of Nigeria as an Alternative to the Existing Forms of Business Organization," 83.

71. Partnership (amendment) Law 2009, ss. 59 (2) (4)-(6).

71. "Limited Partnership." .

72. [1818] 3 QB, 705.

either partner before the term has expired; in the same vein, the English Court in *Re Agriculturist Cattle Insee Co, Baird's Case*⁷³ held inter alia: "...in an ordinary partnership, the presumption is that the interest and the liability of a partner are terminated by a partner's death...". Flowing from the tenor of the above decision, section 34 of the Lagos State Partnership Law of 2003, had provided as follows: "subject to the provisions of Part 3 hereof and any agreement between the partners- every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner..." Nonetheless, it is pertinent to state that under section 69 (2) of the Lagos State Partnership (amendment) Law 2009, the death of a partner of a Limited Liability Partnership does not bring the partnership to an end by operation of law, although, the personal representative, trustees in bankruptcy, assignees, trustees under a trust deed may however not interfere or participate in the management or administration of any business or affairs of the Limited Liability Partnership or represent to members of the public that he is still a partner.⁷⁴

Presently, in Nigeria upon the incorporation of a limited liability partnership, the persons who subscribed their names to the incorporation documents are mandated to be its partners and any other person may become a partner of the limited liability partnership by the limited liability partnership agreement.⁷⁵ More so, 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. Thus, the limited liability partnership agreement and any changes, made in it must be filed with the Corporate Affairs Commission in the form and manner; and accompanied by the fees as may be prescribed by the Corporate Affairs Commission.⁷⁶ Similarly, an agreement in writing made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation documents may impose obligations on the limited liability partnership where such agreement is ratified by all the partners after the incorporation of the limited liability partnership.⁷⁷ However, it is pertinent to state categorically that in the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners must be determined by the provisions relating to that matter as are set out in the Fifteenth Schedule of the CAMA 2020.⁷⁸

Additionally, under section 770(1) CAMA 2020, a partner's contribution may consist of tangible, intangible, movable, immovable or property or other benefits to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed. Fundamentally, it is trite that the monetary value of the contribution of each partner must be accounted for and disclosed in the accounts of the limited liability partnership in the manner as may be prescribed.⁷⁹ It is against this backdrop that an obligation of a partner to contribute money, property, or other benefit or to perform services for a limited liability partnership must be in accordance with the limited liability partnership agreement.⁸⁰ Thus, a creditor of a limited liability partnership, which extends credit or otherwise acts in reliance on an obligation described in that agreement, without notice of any compromise between partners, may enforce the original obligation against such partner.⁸¹

Accordingly, where a court, by order, declare that the affairs of a limited liability partnership ought to be investigated, the Corporate Affairs Commission is statutorily mandated to appoint one or more

73. [1870] Ch App, 753.

74. CAMA 2020, s.763; Partnership (amendment) Law 2009, s. 69(2).

75. CAMA 2020, s.761.

76. *Ibid.*, ss. 762(1)-(2).

77. *Ibid.*, s. 762(3).

78. *Ibid.*, s. 762(4).

79. *Ibid.*, s. 770(2).

80. *Ibid.*, s. 771 (1).

81. *Ibid.*, s. 771(2).

competent persons as inspectors to investigate the affairs of a limited liability partnership and to report thereon in such manner as it may direct. However, it is not in doubt that the Corporate Affairs Commission is empowered to appoint one or more competent persons as inspectors to investigate the affairs of a limited liability partnership and to report on them in such a manner as it may direct.⁸² In the same strength, the appointment of inspectors may be made in happenstances where: at least one-fifth of the total number of partners of the limited liability partnership make an application along with supporting evidence and security amount as may be prescribed; the limited liability partnership makes an application that the affairs of the limited liability partnership ought to be investigated; or in the opinion of the Corporate Affairs Commission, there are instances which suggest that: the business of the limited liability partnership is being or has been conducted with an intent to defraud its creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose; the business of the limited liability partnership is being or has been conducted in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the limited liability partnership was formed for any fraudulent or unlawful purpose; the affairs of the limited liability partnership are not being conducted in line with the provisions of the CAMA 2020, or that, on receipt of a report of the Corporate Affairs Commission or any other investigating or regulatory agency, there are sufficient reasons to show that the affairs of the limited liability partnership ought to be investigated.¹³⁰

It is trite law that any matter that relates to the administration of the Companies and Allied Matters Act 2020 is a matter that falls within the exclusive jurisdiction of the Federal High Court. Imperatively, section 251(1)(e) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides as follows:

Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from the operation of the Companies and Allied Matters

Act or any other enactment replacing the Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act.

In *Babington-Ashaye v EAMG Ent. (Nig) Ltd*,⁸³ the Court of Appeal while considering this provision held among others that:

There is no doubt under provisions of the Constitution as amended that the exclusive jurisdiction conferred on the Federal High Court is limited to the operation of any Act or Decree relating to companies and allied matters and any other Common law regulating the operation of companies...The simple fact that a company or a body is registered under the Companies and Allied Matters Act does not qualify every action brought by or against it as “matters arising from the operations of that act or regulating the operations of that act or regulating the operation of Companies incorporated under the Companies and Allied Matters Act” as contemplated by the provisions of section 251(1)(e) of the 1999 Constitution. Neither is it the law that a consideration of the parties is required before vesting the Federal High Court with jurisdiction.

Thus, ordinarily, the Federal High Court has exclusive jurisdiction concerning matters relating to the administration of the Companies and Allied Matters Act. However, it would not have jurisdiction

82. *Ibid.*, ss. 775(1)-(2).

83. [2011] 10 NWLR (Pt. 1256) 108, 521-522.

merely because the party involved is a company. Lagos State High Court has exclusive jurisdiction in relation to the administration of the Law establishing the Limited Liability Partnerships. Section 83 provides in this light that “the High Court of Lagos State shall exercise jurisdiction with respect to the interpretation and application of the provisions of this Law relating to registered Limited Liability Partnerships and all matters arising from this Law”.

Flowing from the decision in *Babington-Ashaye v EAMG Ent. (Nig) Ltd*, it can be logically inferred that there exist certain jurisdictional challenges with respect to the practice and procedure of LLPs in Lagos State. With the enactment of the CAMA 2020, it is abundantly clear that there is now umbrella legislation that governs the practice and procedure of LLPs and LPs in Nigeria. However, a conscientious glean of section 83 of the Lagos State Partnership (amendment) Law 2009 gives rise to the poser of determining what court is empowered with the jurisdiction of entertaining matters arising from LLPs and LPs in Lagos State. Simply put differently, with the provision of LLPs and LPs under the CAMA 2020, is the Lagos State High Court still empowered with the jurisdiction of determining matters relating to LLPs and LPs domiciled in Lagos State?

It is elementary law that the Constitution of the Federal Republic of Nigeria 1999 (as amended) is supreme, thus any law that is inconsistent with the provision of the constitution must abate to the extent of its inconsistency.⁸⁴ Unequivocally, by section 251 (1)(e) of the CFRN, the Federal High Court is empowered to have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from the operation of the Companies and Allied Matters Act or any other enactment replacing the Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act, which explicitly refers to CAMA 2020. Similarly, by section 868 (1) CAMA 2020 which stands as the interpretation section to the CAMA 2020, it is clear that the phrase "Court" or "the Court" used concerning a company, means the Federal High Court, and to the extent to which application may be made to it as; court includes the Court of Appeal and the Supreme Court of Nigeria. Accordingly, it is the view of this paper that by juxtaposing the tenor of section 83 of the Lagos State Partnership (amendment) Law 2009 with a community reading of sections 251 (1)(e) of the CFRN and 868 (1) CAMA 2020; without any scintilla of doubt, there exist some jurisdictional challenge with respect to the determination of matters arising from LLPs and LPs domiciled in Lagos State and this by extension has the proclivity of thwarting the commercial relevance of establishing a limited liability partnership.

VI. CONCLUSION

Globally, the need for a more dynamic form of partnership to address the increase in litigation resulting in personal liability by partners and the consequent threat to partnership firms and their partners has necessitated the introduction of a form of partnership that would provide a limitation of liability analogous to that enjoyed by directors of a limited liability company. This is timely and important especially for individuals and groups providing professional services. In the same vein, the desire to protect investors and keep the trend of LLPs in growing economies around the globe encouraged the government of Lagos State to push for the creation of limited liability partnerships. Similarly, with the enactment of the Companies and Allied Matters Act 2020, by virtue of sections 746-810 of the CAMA 2020, limited liability partnerships and limited partnerships are now veritable vehicles for business in Nigeria, which is suited to a group of professionals with lots of experience and clients between them, as it allows them to pool resources together, thereby lowering the cost of doing business.

In summary, with the introduction of the CAMA 2020, local and foreign companies are at liberty to adopt LLPs and LPs as vehicles for running businesses in Nigeria. However, despite the great

84. CFRN, s. 1(1)(3); *Chief Olabode George v FRN* [2013] LCN/4063 (SC).

prospects of LLPs and LPs in Nigeria, this paper identified the jurisdictional challenge of determining matters about LLPs domiciled in Lagos State owing to the purports of section 83 of the Lagos State Partnership (amendment) Law 2009 and sections 251 (1)(e) of the CFRN and 868 (1) CAMA 2020. It is the light of the above stated that this paper recommends that to strengthen the commercial relevance of establishing LLPs and LPs in Lagos State, the provisions of section 83 of the Lagos State Partnership (amendment) Law 2009 should be amended in tandem with the unequivocal provisions of sections 1(1) (3); 251 (1) (e) of the CFRN and 868 (1) CAMA 2020 owing to the attendant provisions for the practice and procedure of LLPs and LPs in Nigeria under the CAMA 2020.