



EXAMINING LIMITED PARTNERSHIPS UNDER CAMA 2020

Limited partnerships are a form of partnerships that are now regulated under the Companies and Allied Matters Act 2020 (CAMA). Partnerships were generally hitherto only regulated federation wide by the Partnership Act 1890 (PA) - a statute of general application not having provisions for Limited Partnerships. Lagos state enacted a law for Partnerships including regulations for Limited Partnership by the Lagos State Partnership Law 2009. States in the South west, including Delta and Edo state, also passed a Partnership Law which is modelled after the Partnership Act 1890 but also made provisions for Limited Partnerships applicable only within the state of enactment.

Upon registration with the Corporate Affairs Commission, Limited Partnerships shall be recognized all over Nigeria. By Section 795 of CAMA, a Limited Partnership is an association of 20 persons or less, set up with the aim of going into business to make profit and in which the liability of one or more members (Limited Partners) to the debts and obligations of the Partnership is limited to their contribution to the capital or property of the association while the liability of the rest of the members (General Partners) remains unlimited.

DISTINUISHING A LIMITED PARTNERSHIP FROM A LIMITED LIABILITY PARTNERSHIP

A Limited Partnership is distinguishable from Limited Liability Partnership because by virtue of Section 746 (1) of CAMA, a Limited Liability Partnership is a body corporate and has a separate legal entity from its partners provided that such partners have subscribed their names to an incorporation document, filed same in prescribed form at the Commission and paid the required fees. A Limited Partnership is not a body corporate and the

partnership firm is sued in the name of the partners and more particularly the general partners are liable for the debt and obligations of the partnership. Also all partners of a limited liability partnership may take part in its management and have powers to bind the Partnership in the course of the business of the Limited Liability Partnership or with its authority, but in a limited partnership, limited partners shall not take part in the management of the partnership business.

OVERVIEW OF LIMITED PARTNERSHIP

Partnerships which require capital injection only in exchange for interests in the profits could quite easily opt for Limited Partnerships. This forms the main reason for the adoption of Limited Partnership. Such contributors acquire interests in the profits and may influence the management of the Partnership. Statutorily, Limited Partners shall not take part in the management of the firm or partnership and shall not have power to bind the Partnership but may inspect the books and examine the prospects of the firm. A limited partner is however, also not precluded from giving persuasive advice to the general partners on the management of the Partnership. In accordance with Section 795(4) of CAMA, Limited Partners cannot withdraw or receive back part or all of their contributions to the Limited Partnership otherwise such Limited partner shall be liable for the debts and obligations of the partnership up to the amount so drawn out or received back. Corporate entities may also be limited partners or general partners and where they are limited partners they may conveniently negotiate agreements with general partners on management of the Partnership. As general partners, corporate entities with limited liability still enjoy their status as such. For taxation purposes, the operation of the principle of tax transparency applies to Limited Partnerships, so the partnership is not taxed but partners are taxed as individuals on profits from the Partnership. Private equity funds, venture capitals and professional services firms are apt to register this form of partnerships.

REGISTRATION OF LIMITED PARTNERSHIP

By virtue of 797 of CAMA, all Limited Partnerships have to be registered in prescribed form with the Corporate Affairs Commission. Any Partnership which purports to be Limited but

is not registered as prescribed by CAMA shall be deemed a general partnership and the liability of its partners shall be unlimited.

Limited Partnership Agreement

Although not expressly required by CAMA, an essential detail before the registration of a Limited Partnership is a Limited partnership agreement. It is imperative and implied by CAMA that the members of a partnership intending to register a Limited Partnership agree and convey such agreement in writing in the form of a Limited Partnership Agreement. This aids registration and ensures that members are at consensus ad idem touching all matters of a Limited Partnership.

Registration under CAMA

As stated earlier, a Limited Partnership is deemed a general partnership until it is registered in accordance with the provisions of Part D of CAMA. General Partners are responsible for complying with the provisions of CAMA on Limited Partnerships including its registration and post-registration matters. The Partners must endeavour to ensure that all details as filed before the Commission are true and honest. An application for a Limited Partnership shall be in the prescribed form by the Commission and shall specify the name of the Limited Partnership. The Name must end with the word Limited Partnership or the acronym LP otherwise it shall not be registered. Included in the application is a statement signed by the partners containing the following details of the general nature of the Limited partnership:

- a) The name of the Limited Partnership;
- b) The general nature of the business of the Limited Partnership;
- c) The principal place of business of the Limited Partnership;
- d) The full name and address of each general partner;
- e) The full name and address of each limited partner;
- f) The term if any and commencement date of the Limited Partnership;
- g) A statement that the Partnership is Limited and description of every limited partner as such;
- h) The agreed contribution of each limited partner and whether such contribution has been paid or to be paid in cash or in another specified form.

In accordance with Section 799 (4) of CAMA, upon registration, a certificate shall be issued by the Corporate Affairs Commission which shall be prima facie evidence that a limited partnership has been formed on the date of registration.

Post – Registration Changes

General Partners are also responsible for the notification and registration of changes in the Limited Partnerships at the Commission. Material changes in the general nature of the Partnership which occur during the term of the Partnership shall be stated in a signed statement and delivered to the commission within 7 (seven) days of the effect of such change. Such material changes include: changes in the firm; the general nature of the business; principal place of business; partners or the name of any partner; terms or character of the partnership; sum contributed by any limited partner; or liability of any partner by reason of a change in status from a limited partner to a general partner and vice versa.

A notice of any transaction or arrangement whereby a general partner becomes a limited partner in a Limited Partnership or the share of a limited partner will be assigned to any person shall be filed with the Commission within 5 (five) days of such change otherwise such a transaction or arrangement shall be deemed to be of no effect.

DISSOLUTION OF LIMITED PARTNERSHIPS

According to Section 806 (2) of CAMA, A limited partnership shall not be dissolved by reason of the death and bankruptcy of a Limited Partner. Except where the share of a lunatic Limited Partner cannot be ascertained or realised, the unsoundness of mind of a Limited Partner shall not be a ground for dissolution of the Limited Partnership by the court. General partners are responsible for the dissolution of a Limited Partnership except otherwise ordered by a Court of competent jurisdiction. Dissolution of a Limited Partnership are generally similar to that of general partnership and may take place by Order of Court upon establishing reasonable grounds, by conclusion of the objects of the partnership, expiry in the case of a fixed term and by agreement of the parties.

CONCLUSION

Limited Partnerships afford for flexibility and can be adapted to fulfil the needs of investors during negotiations and drafting of a Limited Partnership Agreement. They are quite easily dissolved, afford investors a limitation of their liability and very favourable to venture capitals, private equity funds and professional services undertakings that permit partnerships with persons who are not industry professionals. It is advised that Limited Partnerships hitherto registered under Partnership laws of states in Nigeria should register under the Corporate Affairs Commission and novate the rights, interests and assign liabilities of the previously registered state limited partnerships to CAMA recognised Limited Partnerships.

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