

Limited Liability Partnership under Companies and Allied Matters Act, 2020

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Abstract

Limited liability partnership (LLP) like limited partnership has been in existence in most countries for some time now. It was only introduced in Nigeria as one of the business entities by Companies and Allied Matters Act 2020 (the Act). It combines characteristics of partnership and company, particularly in the area of limited liability as all the partners have limited liability. The business community in Nigeria for years desired for a hybrid of partnership and company to carry on business and with the introduction of LLP, it is believed that their desire has been met. The Act made provisions for registration of limited liability partnership before commencement of business as well as provisions on management and winding up of the limited liability partnership. The Act also provides for appointment of designated partners and person(s) with significant control that are distinguishing attributes of LLP from other types of partnership. This paper examined the entire provisions of the Act on limited liability partnership like foreign limited liability partnership, investigation of LLP, returns limited liability partnership makes to Corporate Affairs Commission (the Commission), books the Commission and the limited liability partnership keep among others and came to the conclusion that the drafters did a good job though it can be improved upon. This paper is aimed at determining the adequacy of the provisions of the Act in respect of LLP and made some recommendations; like the amendment of the Act to adequately provide for voluntary winding up and distribution of assets upon dissolution of limited liability partnership by the partners.

Keywords: Limited Liability Partnership, Nigeria, Companies and Allied Matters Act, Corporate Affairs Commission, Designated Partner, Person with Significant Control, Foreign Limited Liability Partnership, Investigations

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1. Introduction

Limited liability partnership like limited partnership is one of the innovations of Companies and Allied Matters Act, 2020 (the Act). It filled the lacuna in Companies and Allied Matters Act, 1990 (CAMA 1990) which provided for only general partnership under Business Names in Part B of CAMA 1990. With the introduction of limited liability partnership and limited partnership (LP), three types of partnership are now recognised in Nigeria and they are: limited liability partnership; limited partnership; and general partnership.

Limited liability partnership is a newer form of partnership where all the partners participate in the management and everyday operations of the partnership. The partners of LLP are agents of the limited liability partnership and not of the other partners. Therefore, the partners are not responsible for the errors, omissions, misconduct, negligence, incompetence, or malpractice committed by other partners or employees of the firm rather; the partner involved in wrongful or negligent acts is personally liable. This is in contrast with the position in limited partnership where as a general rule; the actions of a partner bind the other partners.

LLP is also different from limited partnership in so many ways. LLP has limit to the liability of the partnership unlike; limited partnership where only limited partners have limit to the liability of limited partnership. Designated partners and person with significant control are some of the features of LLP which are not features of limited partnership, among other differences.

LLP is similar to limited partnership as both must register with the Commission before commencement of business; must have partnership agreement and have limited liability for the debts of the firms among other similarities.

LLP is different from general partnership because it has distinct legal personality from its partners and has limit to the liability of the partnership unlike general partnership that does not have distinct legal personality from its partners and has no limit to the liability of the partnership; among other differences. It is similar to general partnership because both are business entities and have minimum of two partners.

This article on limited liability partnership will look at definitions, characteristics/features of LLP, registration, post registration alterations, foreign limited liability partnership, investigation, winding up and dissolution, cessation of business, conclusion and recommendations among others.

2. Definitions

The term limited liability partnership means a business entity registered with the Commission as a limited liability partnership that; consists of minimum of two persons and no maximum partners of which at least two of the partners are designated partners; and has limit to the liability of all its partners. The partners can be individual or corporate persons.¹

Designated partners are individual partners or nominees of corporate bodies that are partners of LLP, who have consented in writing to be so appointed; at least one of the designated partners must be resident in Nigeria; and they have additional responsibility from other partners.²

Person with significant control (PSC) means any person who directly or indirectly holds: at least 5% of the shares or interest in a limited liability partnership; or at least 5% of the voting rights in LLP; or the right to appoint or remove majority of partners in LLP; or otherwise have the right to exercise or actually exercising significant influence or control over LLP; or have the right to exercise, or actually exercising significant influence or control over the activities of LLP.³

3. Characteristics/Features of Limited Liability Partnership

The following are some of the characteristics or features of limited liability partnership:

- i. Must be registered before commencement of business;
- ii. Has distinct legal personality from its partners;
- iii. Can enter into contracts in its own name;
- iv. Can acquire and dispose property;
- v. May have common seal (if it desires);
- vi. Has perpetual succession;
- vii. Name must end with the words “limited liability partnership” or “LLP”;
- viii. Partners contribute to the capital of the firm;
- ix. Must carry on lawful business in common with the view of making profit;
- x. Must have minimum of two partners and no maximum partners;
- xi. Partners can be corporate bodies or/and individuals;
- xii. Must have at least two designated partners;
- xiii. Partners have limited liability for the debts of the LLP;
- xiv. Partners are agents of the LLP and not of the other partners.
- xv. Partners are not responsible for the errors, omissions, misconduct, negligence, incompetence, or malpractice committed by other partners or employees of the LLP;
- xvi. Partner involved in wrongful or negligent acts in the running of the LLP is personally liable;
- xvii. All partners may participate in the management of the affairs of the LLP;
- xviii. Must have partnership agreement;
- xix. Registration gives priority to use of the name;
- xx. No partner shall be entitled to remuneration for acting in the partnership business unless otherwise agreed by the partners;
- xxi. Partner shall not draw out or receive back any part or all his contribution while the LLP subsists;
- xxii. Differences in the cause of partnership business is decided by majority of the partners;
- xxiii. All partners are entitled to one vote;
- xxiv. Partner may transfer or assign his share in the partnership to another person;
- xxv. Will not be dissolved as a result of a partner transferring his shares to another person; and
- xxvi. New partner may be introduced by a partner with the consent of existing partners.

4. Incorporation of Limited Liability Partnership

For an entity to carry on business as limited liability partnership, that entity must first be incorporated as LLP with the Commission by two or more partners for a lawful purpose.⁴ Limited liability partnership is incorporated with the Commission by any partner of the LLP or a legal practitioner who is briefed by any of the partners to register the limited liability partnership.

After online filing of the incorporation documents with the Commission and payment of the filing fee online, the Commission shall within 14 days of receipt of the documents, register the LLP, issue certificate of registration and enter the name of the LLP in the register of limited liability partnerships and index of limited liability partnerships.⁵

¹ Section 747 of Companies and Allied Matters Act, 2020.

² *Ibid*, section 749.

³ *Ibid*, section 791.

⁴ *Ibid*, sections 753(1).

⁵ *Ibid*, sections 754(1).

4.1 Steps to take in Registering Limited Liability Partnership

The steps a person incorporating LLP must take to incorporate the LLP are as follows: taking instructions; conducting search for availability and reservation of name online; preparation, filling and filing of the incorporation documents online and obtaining, downloading and printing of the certificate of incorporation of the LLP and other documents sent online to the person incorporating the limited liability partnership.

4.2 Instructions to Obtain in Registering Limited Liability Partnership

The instructions a person incorporating LLP must obtain from the partners in order to register the LLP are as follows: name and alternative name of the partnership; type of partnership; business of the LLP; registered address and head office (if any) of the LLP; partners details (for example, name, nationality, gender, date of birth; phone number; email address, identity type, identity number, occupation and partner's status); partners usual address; partners service address; details of designated partners (for example, name, nationality, gender, date of birth; phone number; email address, identity type, identity number, occupation and partner's status); details of person with significant control (for example, name, nationality, gender, date of birth; phone number; email address, identity type, identity number, occupation and details of interest held); contribution of partners; profit and loss sharing; remuneration; management of the partnership; powers, rights and duties; accounts; partnership property; retirement (retirement of a partner will not absolve him of liabilities of the limited liability partnership that has accrued before his retirement); expulsion; dispute resolution; dissolution and winding up.¹

4.3 Procedure for Conducting On-Line Availability Check and Reservation of Name of Proposed Limited Liability Partnership

As provided in the User Manual of Company Registration Portal,² availability check and reservation of name of a proposed limited liability partnership can be conducted as follows:

- i. Log onto CAC portal – pre.cac.gov.ng, using your account already created with the Commission either as a public user or an accredited agent. If you have not created an account with the Commission, take steps to create the account;
- ii. Select the tab – new reservation;
- iii. Click and enter the preferred name and the alternative name;
- iv. Click next page to select limited liability partnership;
- v. Click on preview;
- vi. Click to make on-line payment through Remita;
- vii. After about 24 hours, check your account and e-mail for the status of the availability.

If the name is available, it will be reserved for 60 days. If the proposed LLP fails to incorporate with the Commission before the expiration of the 60 days that the name is reserved, the proposed LLP will go through the process of availability check and reservation of name all over again.

Reservation of name of an entity by the Commission implies that; during the 60 days period of reservation of name, any other entity seeking registration from the Commission shall not be registered under the reserved name or under any name which, in the opinion of the Commission nearly resembles the reserved name until the expiration of the 60 days and the entity was not able to register within this period.

The Commission is empowered by the Act to cancel or withdraw a reserved name of a proposed limited liability partnership on the following grounds:

- i. Where the Commission discovers that the reserved name is identical with the name; or so nearly resembles the name of an existing entity that is already registered; and is likely to deceive, it may at any time before a certificate of incorporation is issued, withdraw or cancel the reserved name of the limited liability partnership;
- ii. Where the Commission discovers that the approval was fraudulently, unlawfully or improperly procured, it may withdraw or cancel approval for reservation of name; and
- iii. If at the expiration of the 60 days of reservation of name the proposed LLP did not register, the Commission will withdraw or cancel approval for reservation of name.³

It must be pointed out that; if any name becomes available in the event of a change of name or otherwise, the Commission shall have the power to approve the name for use by another entity after 60 days from the date of approval of such change of name.⁴

4.4 Documents Required for Incorporation of the Limited Liability Partnership

In registering a LLP, the following documents are required:

¹ *Ibid*, section 753 (2).

² Produced by Corporate Affairs Commission on 1st of January, 2021

³ Section 31 of the Act; *op. cit.* p. 3.

⁴ *Ibid*, section 31(4).

- i. Availability and Reservation of Name Form;
- ii. Form CAC/LLP 01 – Application to Register a Limited Liability Partnership;¹
- iii. Recent passport photographs of all partners;
- iv. Copy of recognised and valid photo identification (for instance: data page of international passport, driver’s license, national identity card, voter’s card or birth certificate (in case of a minor) must be submitted for every individual partner;
- v. Partnership agreement; and
- vi. Evidence of on-line payment of filing fee.²

Where a foreign corporate body or a foreigner is a partner of a LLP, the following additional documents are required for the registration of the LLP:

- i. Evidence of registration of the corporate body registered outside Nigeria duly translated if not in English language; and
- ii. Copies of residence permit of foreign partners using Nigerian addresses. Other foreign partners not resident in Nigeria should use their residential addresses in their country of residence.

4.5 Partnership Agreement of Limited Liability Partnership

A limited liability partnership is required to have a partnership agreement which is one of the documents required for its registration with the Commission. The partnership agreement should contain the following: name of the partners; name of the limited liability partnership; name of designated partners, name of person(s) with significant control, registered office or head office, commencement date; duration; capital contribution; profit and loss sharing; property of the partnership; salary/remuneration; powers, rights and duties; bankers and signatories to bank account; suspension; expulsion; arbitration; retirement and dissolution.

4.6 Documents Corporate Affairs Commission will issue upon Registration of a Limited Liability Partnership

The Commission will issue the following documents upon registration of a LLP:

- i. Certificate of registration;³
- ii. Status Report; and
- iii. Partnership Agreement.

The documents issued by the Commission are sent on-line by the Commission to the person that registered the LLP to download, print and keep for their records. If the certificate of registration, status report and partnership agreement are not downloaded and printed within 7 days that the Commission sent them on-line to the person that registered the LLP, they will be wiped off and additional fee paid to the Commission to resend the documents to the person that registered the limited liability partnership.

5. Registers kept by the Commission

The following registers are kept by the Corporate Affairs Commission at its registry in respect of limited liability partnership:

- i. Register of Limited Liability Partnerships;⁴
- ii. Index of Limited liability Partnerships; and
- iii. Register of Persons with Significant Control⁵

6. Effects of Incorporation of Limited Liability Partnership

The following are the effects of incorporation of LLP:

- i. Incorporation of LLP gives it legal personality separate from its partners;
- ii. LLP will have limited liability;⁶
- iii. Incorporation gives it right to sue and be sued in its corporate name;
- iv. Incorporation gives LLP right to acquire, own, hold and develop or dispose of property;
- v. Incorporation of LLP makes it have perpetual succession;⁷
- vi. LLP may have a common seal (if desires);
- vii. Incorporation gives LLP the right to do and suffer such other acts and things as bodies corporate may

¹ *Ibid*, sections 753 & 758

² *Ibid*, sections 753; & Notes on Form CAC/LLP 01 – Application to Register a Limited Liability Partnership. This Form is contained in Companies Regulations, 2021 produced by the Commission.

³ Section 754(1) of the Act; *op. cit.* p. 3.

⁴ *Ibid*, section 793

⁵ *Ibid*, section 791(3)

⁶ Limited liability means that, in event the partnership is indebted to some people, the liability of its partners would be limited only to the amount contributed by each partner during the formation of the partnership.

⁷ Perpetual succession means that; the life of the limited liability partnership is not affected by the demise, retirement, insolvency or withdrawal of any of the partners.

- lawfully do and suffer;¹
- viii. The certificate of incorporation shall be prima facie evidence that the LLP came into existence on the date of incorporation;²
- ix. The certificate of incorporation shall in all legal proceedings (civil and criminal) be received in evidence;
- x. Incorporation of LLP gives it priority to use the name against any entity including registered companies; and
- xi. Incorporation will not be construed as authorising the use of the name, if apart from such registration; the use of the name could be prohibited

7. Publication of Name of Limited Liability Partnership

The permissible means of publishing the name of limited liability partnership are as follows:

- i. The invoices, official correspondence and publications of the LLP must bear the name, address of its registered office and registration number of the limited liability partnership;
- ii. A statement that it is registered with limited liability;³ and
- iii. Display of certificate of incorporation conspicuously in its registered office, head office (if any) and in all its branches where it has branch offices.

8. Books that Limited Liability Partnership must Keep

A limited liability partnership after its registration keeps the following books at its registered office or any other place it chooses:

- i. Register of Members;⁴
- ii. Register of Persons with Significant Control;⁵
- iii. Books of Account/Accounting Records;⁶ and
- iv. Minutes Book.⁷

9. (i) Qualifications of Partners of Limited Liability Partnership

An individual or body corporate is qualified to be partners in LLP provided the individual shall not become a partner of a LLP, if he is:

- i. of unsound mind and has been so found by a court in Nigeria or elsewhere; or
- ii. an un-discharged bankrupt.⁸

10. Rights of Limited Liability Partner

The rights of a limited liability partner are as follows:

- i. Right to take part in the management of the limited liability partnership;
- ii. Right to share in the profits of the limited liability partnership;
- iii. Right to notice of meeting;
- iv. Right to vote and be voted for;
- v. Right to transfer or assign shares in the partnership;
- vi. Right to introduce and to consent to introduction of a new partner;
- vii. Right to access to, inspection and copy of partnership books;
- viii. Right to bind the limited liability partnership as its agent; and
- ix. Right to retirement.⁹

10.1 Obligations of Partner of Limited Liability Partnership

The following are the obligations of a partner of limited liability partnership:

- i. Contribute an agreed sum as capital of the limited liability partnership;
- ii. Share in the losses of the limited liability partnership;
- iii. Liable for the debts of the LPP to the sum contributed or agreed to contribute;¹

¹ *Ibid*, section 756.

² *Ibid*, section 754(5)

³ *Ibid*, section 760(1).

⁴ *Ibid*, section 791(4).

⁵ *Ibid*, section 791(3).

⁶ *Ibid*, section 772(1).

⁷ *Ibid*, sections 779(1), 762(4) & paragraph 9 of schedule fifteen of the Companies and Allied Matters Act, 2020.

⁸ *Ibid*, section 747.

⁹ *Ibid*, section 747 & schedule fifteen of the Act, *op. cit.* p. 12.

- iv. Not to draw out or receive back any part or all his contribution while the LLP subsists;
- v. Personal liability for wrongful or negligent acts in the running of the LLP;
- vi. Account to the limited liability partnership for any benefit or private profits derived by him without the consent of the other partners from any transaction concerning the LLP, or from any use by him of the LLP property, name or business connection.
- vii. Account for and pay to the limited liability partnership all profits made by him in carrying on any business of the same nature and competing with that of the limited partnership, without the consent of the other partners; and
- viii. Indemnify the LLP for any loss caused to it by his fraud in the conduct of the business of the limited liability partnership.²

10.2 Obligations of Limited Liability Partnership to Partners

The obligations of a limited liability partnership to partners include:

- i. Indemnifying a partner in respect of payments made and personal liabilities incurred in the ordinary and proper conduct of the business of the LLP or, in or about anything necessarily done for the preservation of the business or property of the LLP;³ and
- ii. Not to sell assets having a value of more than 50% of the total value of assets of the limited liability partnership without the consent of all partners.⁴

10.3 Obligations of a Partner of Limited Liability Partnership to Other Partners

- i. Rendering true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representatives;
- ii. Not to sell or agree to sell interest in the LLP to non-partner without first offering his interest to existing partners;
- iii. Partner or group of partners acting together, shall not sell or agree to sell more than 50% of interest or combined interest in the partnership unless the non-partner has offered to buy all of the partners' interests and on the same terms; and
- iv. Not to expel any partner except the partnership agreement provides for it.⁵

11. Designated Partner

Designated partners are partners of limited liability partnership with additional responsibility from other partners which include: compliance of the LLP with the provisions of Companies and Allied Matters Act like: filing of any document; return; statement and other report under the Act and as may be specified in the limited liability partnership agreement. They are liable to penalties imposed on the LLP for any contravention of the provisions of the Act.⁶

At least two designated partners who are individuals and at least one of them shall be resident in Nigeria is a requirement for every LLP. If the partners of a limited liability partnership are all bodies corporate or has one or more partners as individuals and bodies corporate, it is required that at least two individuals who are partners of the LLP or nominees of the bodies corporate shall act as designated partners. It is worthy of note that nothing stops a limited liability partnership from appointing all partners of the LLP as designated partners.⁷

First designated partners are appointed at incorporation by the partners and specified in the incorporation documents as such. Subsequent designated partners are appointed by the partners in accordance with the LLP's partnership agreement. For a person to be appointed a designated partner, he must give his prior written consent to act as such to the LLP. Within 30 days of appointment of a designated partner, the LLP shall file with Corporate Affairs Commission the particulars of the individual who has given his consent to act as designated partner.⁸ A partner ceases to be a designated partner of LLP once he ceases to be a partner of the LLP.⁹

Where there is vacancy in the position of a designated partner, the limited liability partnership shall appoint a designated partner within 30 days of the vacancy arising. If no designated partner is appointed after the vacancy

¹ Sections 769(1) of the Act; *op. cit.* p. 3. It must be pointed out that, the liability of the limited liability partnership and partners shall be unlimited for all or any of the debts or other liabilities of the limited liability partnership where the LLP and its partners acted with intention to defraud creditors or for any fraudulent purpose.

² *Ibid.*, section 771(1) & schedule fifteen of the Act, *op. cit.* p. 12.

³ The liabilities of LLP can be satisfied from its property.

⁴ Schedule fifteen of the Act, *op. cit.* p. 12

⁵ *Ibid.*

⁶ Sections 750 of the Act; *op. cit.* p. 3.

⁷ *Ibid.*, section 749.

⁸ *Ibid.*

⁹ *Ibid.*, section 749(5).

occurs, or if at any time there is only one designated partner, each partner is deemed to be a designated partner.¹ Where default is made in complying with the provisions of the Act in respect of designated partners, the limited liability partnership and each of its partners are liable to a penalty to be prescribed by the Commission.²

12. Person with Significant Control

Person with significant control is any person:

- i. directly or indirectly holding at least 5% of the shares or interest in a limited liability partnership;
- ii. directly or indirectly holding at least 5% of the voting rights in a limited liability partnership;
- iii. directly or indirectly holding the right to appoint or remove a majority of the partners in a limited liability partnership;
- iv. otherwise having the right to exercise or actually exercising significant influence or control over a limited liability partnership; or
- v. having the right to exercise, or actually exercising significant influence or control over the activities of a firm whether or not it is a legal entity, but would itself satisfy any of the first four conditions if it were an individual.³

Where a partner becomes a person with significant control over a LLP, he shall within 7 days of becoming such a person, indicate to the LLP in writing the particulars of such control.⁴

Upon a limited liability partnership receiving or being in possession of the information that a partner has become a person with significant control, the LLP shall within 1 month from the receipt of the information or any change therein, notify the Commission of that fact. The LLP is also required to disclose information on PSC in every annual return it files yearly. The LLP shall subsequently inscribe against the name of every member who has become a person with significant control in the register of members, the information received in respect of being PSC.⁵

Where the Commission receives information by way of filings from a LLP in respect of PSC, the Commission shall keep and maintain a register of persons with significant control over the LLP in which information received from the LLP or any change therein shall be entered.⁶

13. Extent Actions of a Partner can bind Limited Liability Partnership and Other Partners

The actions of a partner can bind the limited liability partnership but not the other partners because a partner is an agent of the LLP and not agent of the other partners. As a general rule, the act of every partner carried on in the usual way and in the course of the business of the firm binds the LLP because; every partner is an agent of the LLP for the purpose of the business of the partnership. The exceptions to this general rule are as follows:

- i. Where the partner so acting has no authority to act for the LLP in the particular matter;
- ii. Where the person he is dealing with knows that he has no authority; and
- iii. Where the person he is dealing with does not know or believe him to be a partner of the LLP.⁷

In case of breach of contract between a third party and a partner of limited liability partnership, who is acting on behalf of or in the course of the business of the LLP; it is the LLP that is liable and any liability of the LLP shall be settled out of the LLP property. A partner is not personally liable for any obligation of the LLP or for the wrongful act or omission of any other partner of the limited liability partnership just because he is a partner of the LLP. Rather, a partner is personally liable for his wrongful act or omission.⁸

14. Cessation of Partner of Limited Liability Partnership

The different ways a partner of a limited liability partnership can cease to be a partner of the LLP is as follows:

- a. By agreement with the other partners of the LLP;
- b. By giving 30 day notice in writing of his intention to resign as a partner of the LLP to the other partners of the LLP in the absence of agreement;
- c. Upon the death of the partner;
- d. When a partner is declared to be of unsound mind by a competent court;
- e. Where a partner has applied to be adjudged or declared as an insolvent; and
- f. Upon dissolution of the partnership.⁹

It is interesting to note that:

¹ *Ibid*, section 751.

² *Ibid*, section 752.

³ Notes contained in Form CAC/LLP 01 – Application to Register A Limited Liability Partnership.

⁴ Sections 791(1) of the Act; *op. cit.* p. 3.

⁵ *Ibid*, section 791(2) & (4).

⁶ *Ibid*, section 791(3).

⁷ *Ibid*, sections 765 & 766(1).

⁸ *Ibid*, section 766.

⁹ *Ibid*, section 763(1) & (2).

- a) Where a person has ceased to be a partner of a limited liability partnership (former partner), the former partner is to be regarded, in relation to any person dealing with the LLP as still being a partner of the limited liability partnership unless:
 - i. the person has notice that the former partner has ceased to be a partner of the limited liability partnership; or
 - ii. notice that the former partner has ceased to be a partner of the limited liability partnership has been delivered to the Commission.
- b) The cessation of a partner from the limited liability partnership does not by itself discharge the partner from any obligation to the LLP, the other partners or any other person which he incurred while being a partner.
- c) A former partner or a person entitled to his share as a result of death or insolvency of the former partner shall not have any right to interfere in the management of the limited liability partnership.¹

14.1 Entitlements of a Former Partner of Limited Liability Partnership

A former partner of LLP or a person entitled to his share as a result of death or insolvency of the former partner is entitled to the following unless, otherwise provided in the LLP agreement:

- i. To receive from the limited liability partnership an amount equal to the capital contribution of the former partner to the limited liability partnership; and
- ii. To share in the accumulated profits of the LLP, after the deduction of accumulated losses of the LLP, determined as at the date the former partner ceased to be a partner.²

15. Post Incorporation Alterations of Limited Liability Partnership

The Act allows for certain changes to take place after the incorporation of a limited liability partnership. The post incorporation alterations provided for by the Act in respect of limited liability partnership include but not limited to: change of name of LLP;³ change in registered address or head office of the LLP⁴ and change of name or address of a partner.⁵ These writers will proceed to discuss the procedure of these post incorporation alterations.

15.1 Procedure for Change of Name of the Limited Liability Partnership

The procedure for change of name of limited liability partnership is as follows:

- a. Convene meeting of the partnership where decision to change the name of the LLP will be taken;
- b. Go to the Commission's portal and do the following online:
 - i. Fill the availability and reservation of name form;
 - ii. Fill Form CAC/LLP 03 – Application for Change of Name;
 - iii. Upload a copy of the resolution passed by the partners for change of name of the limited liability partnership;
- c. Upload the original certificate of registration of the LLP;
- d. Upload the partnership agreement as altered to reflect the new name; and
- e. On-line payment of filing fees;
- f. Obtain a new certificate of registration reflecting the new name of the LLP;
- g. Alter invoices, certificates, letter heads and publications of the LLP after the change;
- h. Partnership agreements issued after the change of name to embody the alteration;
- i. The Commission shall enter the new name in the Register of Limited Liability Partnership, Index of Limited Liability Partnership and Register of Persons with Significant Control of Limited Liability Partnership in place of the former name;
- j. Publication of change of name of the limited liability partnership by the Commission in a national daily newspaper and on its website periodically;⁶ and
- k. Publication of change of name of the limited liability partnership by the Partnership itself.

It must be noted that the change of name does not affect any right or obligation of the LLP, or render defective any legal proceeding by or against the LLP. Any legal proceedings that could have been continued or commenced against or by it in its former name may be continued or commenced against or by it in its new name.⁷

¹ *Ibid*, section 763(3) – (6).

² *Ibid*, section 763(5).

³ *Ibid*, sections 30, 31 & 758.

⁴ *Ibid*, section 755(3) & (4).

⁵ *Ibid*, section 764(1) & (2).

⁶ *Ibid*, sections 30, 31 & 803.

⁷ *Ibid*, sections 30(6).

15.2 Procedure for Change in Registered Address or Head Office Address of Limited Liability Partnership

The procedure for change in registered address or head office address of the LLP is as follows:

- a. Convene meeting of the partnership where decision to change the registered office or head office address of the LLP will be taken;
- b. Go to the Commission's portal and do the following online:
 - i. Fill Form CAC/LLP 02 – Notice of Change in Registered Office or Head Office Address of Limited Liability Partnership;
 - ii. Upload a copy of the resolution passed by the partners for the change; and
 - iii. On-line payment of filing fees.
- c. Partnership agreements issued after the change to embody the alteration.¹

The Commission shall keep at the registry, in proper books to be provided for the purpose, the statement registered in relation to change of the registered address or head office address of the limited liability partnership.

15.3 Procedure for Change of Name or Address of a Partner of Limited Liability Partnership

The procedure for change of name or address of a partner of LLP is as follows:

- a) Partner notifies the partnership of his/her change of name or address;
- b) Go to the Commission's portal and do the following online:
 - i. Fill Form CAC/LLP 04 – Notice of Change in Particulars of Partner;
 - ii. Upload supporting documents for the change of name or address of the partner; and
 - iii. On-line payment of filing fees.

The Commission shall keep at the registry, in proper books to be provided for the purpose, the statement registered in relation to change of the particulars of partners.

16. Returns Limited Liability Partnership Makes to the Commission and the Duration of Making the Returns

Any time there is change in a limited liability partnership, the LLP must notify the Commission of such change within a specified period for such change to be effective as provided in Companies and Allied Matters Act, 2020. Some of the returns to be made by the LLP to the Commission when there are post incorporation changes and the duration of making the returns are as follows:

- | | | |
|-------|---|--|
| i. | Change of registered address or Head Office | 14 days |
| ii. | Change of address or name of any partner | 15 days |
| iii. | Cessation of partner of limited liability partnership | 30 days |
| iv. | Admission of partner of limited liability partnership | 30 days |
| v. | Appointment of designated partner | 30 days |
| vi. | Return on person with significant control | 1 month |
| vii. | Annual Return | 60 days after closure of financial year. |
| viii. | Annual Report by Exempted Foreign Limited Liability Partnership | Once a year |
| ix. | Notice of Exemption of Foreign Limited Liability Partnership | 30 days |
| x. | Change of name of Limited Liability Partnership | |
| xi. | Notice of assignment of share of partner of LLP to any person | |
| xii. | Statement of Account and Solvency | |
| xiii. | Changes in the content of limited liability partnership agreement | |

17. Annual Return of Limited Liability Partnership

A limited liability partnership shall once a year apart from the year of its registration; file a return that is known as annual return with the Commission. The annual return is filed within 60 days after closure of the financial year of a limited partnership in a prescribed form that is: Form CAC/LLP 07 – Annual Return of Limited Liability Partner. The annual return while being filed with the Commission will be accompanied by the statement of account and solvency for the year of return. A limited liability partnership will make on-line payment of the prescribed filing fee for filing the annual return.²

The LLP and the designated partners are liable for failure to file annual returns of the LLP within the prescribed period. Failure to file annual return and statement of account and solvency for 10 consecutive financial years is one of the grounds for winding up of a LLP by the court.

18. Foreign Limited Liability Partnership

¹ *Ibid*, section 755.

² *Ibid*, section 773(1) & 772(3).

Section 788 (1) of the Act provides that any foreign limited liability partnership (FLLP) coming into Nigeria to carry on business must first register a limited liability partnership in Nigerian with the Commission. The section further provides that, the FLLP cannot exercise any of the powers of a corporate body registered under this Act; and shall not have a place of business or an address for service of documents or processes in Nigeria; for any purpose other than to receive notices and documents for registration.

Section 788 (2) of the Act provides for exceptions when a FLLP can carry on business in Nigeria without registering a limited liability partnership in Nigeria. The exceptions are as follows:

- i. Limited liability partnership invited to Nigeria by or with the approval of the federal government to execute any specified individual project;
- ii. Limited liability partnership in Nigeria for the execution of specific individual loan projects on behalf of a donor country or international organisation;
- iii. Limited liability partnership owned by a foreign government and engaged solely in export promotion activities; and
- iv. An engineering and technical expert engaged on any individual specialist project under contract with any of the governments in the federation or any of their agencies or with any other body or person, where such contract has been approved by the federal government.¹

All that the foreign limited liability partnership has to do if it falls under exempted foreign limited liability partnership is to apply in writing to the Minister of Industry, Trade and Investment (Minister) for exemption from registration with Corporate Affairs Commission.² Where the Minister grants an exemption order, the exemption order shall specify the period or, as the case may be, the project or series of projects, for which exemption is granted and shall lapse at the end of such period or upon the completion of such project or series of projects.

The Minister after granting the exemption order, shall publish the name of the FLLP to which an exemption has been granted and the period or, as the case maybe, the project or series of projects for which the exemption is granted in the federal government gazette.

A FLLP within 30 days of the grant of exemption shall deliver to the Commission upon payment of a prescribed fee a notice of its exemption.³ Every exempted FLLP shall deliver to the Commission, in every calendar year, a report in the form prescribed by the Commission.⁴

A foreign limited liability partnership can sue or be sued in its name or in the name of its agent; and shall not disregard any enactment or rule of law of Nigeria.⁵ An exempted FLLP shall have the status of an unregistered limited liability partnership. The provisions of the Act applicable to an unregistered LLP shall apply in relation to an exempted limited liability partnership.⁶

The Minister may at any time revoke any exemption granted to any FLLP if he is of the opinion that the FLLP has contravened any provision of the Act or has failed to meet any condition contained in the exemption order or for any other good or sufficient reason. The Minister after the revocation of the exemption granted to any FLLP; shall publish in the federal government gazette that the exemption order has been revoked and the effective date of such revocation.⁷

19. Investigation of Limited Liability Partnership

Limited liability partnership maybe investigated by the Commission when called upon to investigate any LLP or the Commission suo moto may investigate any LLP. In such situations, the Commission may appoint one or more competent persons as inspectors to investigate the affairs of any LLP.⁸ The Commission in appointing inspector(s) to investigate any LLP shall not appoint firm, body corporate or other association as inspector(s).⁹ The inspector(s) in the course of the investigation and with the approval of the Commission can demand for any document from the designated partners, partners or associated entity of the LPP, enter any premises to inspect and seize any document it requires for the investigation, request anybody to appear before him, examine any person on oath, and even investigate any related entity as the need arises.

20. Application for investigation of Limited Liability Partnership

The following may request for investigation of any limited liability partnership:

- i. The court by its order;

¹ See also section 25 of the Companies Regulations, 2021; *op. cit.* p. 9

² Sections 80(2) of the Act; *op. cit.* p. 3.

³ *Ibid*, section 80(3) – (7).

⁴ *Ibid*, section 81(1)

⁵ *Ibid*, section 84.

⁶ *Ibid*, section 82.

⁷ *Ibid*, section 80(5) & (6).

⁸ *Ibid*, section 775(1) & (2).

⁹ *Ibid*, section 777.

- ii. Corporate Affairs Commission on its own motion;
- iii. At least one-fifth of the total number of partners; and
- iv. The limited liability partnership itself.¹

The application for investigation of a LLP by at least one-fifth of the total number of the partners shall be accompanied by evidence that the applicants have good reason for requesting for the investigation. To accompany the application also; is evidence of security of such amount as may be prescribed by the Commission for payment of costs of the investigation before the Commission may appoint inspector(s) to investigate the affairs of the LLP.²

21. Grounds for Investigation of Limited Liability Partnership

The grounds for investigation of a limited liability partnership by the Commission are as follows:

- a) Where the Commission is of the opinion 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;
- b) Where the Commission is of the view that 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 LLP was formed for any fraudulent or unlawful purpose;
- c) Where the Commission believes that the affairs of the limited liability partnership are not being conducted in line with the provisions of the Act; or
- d) On receipt of a report of the Commission or any other investigating or regulatory agency, the Commission is of the opinion that there are sufficient reasons to show that the affairs of the limited liability partnership ought to be investigated.³

22. Powers of Inspector(s) during Investigation of Limited Liability Partnership

Inspector(s) investigating the affairs of a LLP where he thinks it necessary and with the approval of the Commission shall investigate and report on the affairs of an entity which has been associated in the past or is presently associated with the LLP or any present or former partner or designated partner of the LLP, so far as he thinks that the results of his investigation are relevant to the investigation of the affairs of the LLP. The Commission before giving approval to an inspector to investigate an entity which has been associated in the past or is presently associated with the LLP or any present or former partner or designated partner of the partnership, shall give the entity, partner or designated partner a reasonable opportunity to show cause; why the approval should not be given.⁴ An inspector with the approval of the Commission may require any entity that has associated with the LLP or any partner or designated partner of the LLP to provide such information to, or produce such books and papers before him or any person authorised by him.⁵

The inspector(s) is allowed to keep such books and papers for 30 days and shall return such books and papers to the LLP, other entity or individual who delivered the books and papers to him. If need be, the inspector(s) may recall the books and papers and shall return them including certified copies of the books after use to the appropriate person.⁶

The Inspector(s) may require a designated partner and partners of a LLP or any other person or entity that has associated with the LLP to personally appear before him; administer oath on them and examine them on oath.⁷

Inspector(s) may apply to the court for contempt proceedings against:

- i. any person required to produce any book or paper before him or any person authorised by him in that behalf, but fails without reasonable cause to produce such books and paper;
- ii. any person who refuses without reasonable cause to furnish any information to the inspector;
- iii. any person who refuses without reasonable cause to personally appear before an inspector;
- iv. any person who refuses to answer any question put to him by the inspector; or
- v. any person who refuses to sign the notes of any examination.⁸

Upon such application by the inspector(s), the court will enquire into the case and if the person is guilty, the court may punish him as if he had been found guilty of contempt of the court.⁹

¹ *Ibid*, section 775(1) & (3).

² *Ibid*, section 776.

³ *Ibid*, section 775(3).

⁴ *Ibid*, section 778(1) – (3).

⁵ *Ibid*, section 779(1) & (2).

⁶ *Ibid*, section 779(3).

⁷ *Ibid*, section 779(4).

⁸ *Ibid*, section 779(4)(c).

⁹ *Ibid*.

The inspector(s) in the course of the investigation of any LLP may apply to the court for an order to seize books and papers of the LLP, other entity, partner or designated partner of the LLP, where he believes that such books and papers may be destroyed, mutilated, altered, falsified or secreted.¹

The inspector(s) by the order of the court may enter into and search any place where such books and papers are kept as well as seize the books and papers which he considers necessary for the purposes of his investigation. He shall keep the books and papers so seized for not more than a continuous period of six months and not later than the conclusion of the investigation. He shall return the books and papers he seized to the entity or person he seized them from and shall inform the court of such return.²

The Inspector(s) if directed by the Commission may produce interim reports to the Commission, and shall, upon the conclusion of the investigation, present a printed final report to the Commission in such manner as the Commission may direct.³

23. Those Entitled to Receive Inspector's Report

Those entitled to receive the final inspector's report from the Commission after investigation of a limited liability partnership are:

- i. The limited liability partnership (which is sent to its registered office);
- ii. Any other entity or person dealt with or related to the report; and
- iii. On request and on payment of the prescribed fee, the Commission may if it deems fit, furnish a copy of the report to any person or entity related to or affected by the report.⁴

The court should have a copy of the final report of the inspector if the partnership was investigated by the order of the court; although the Act did not make express provision on this.

24. Uses of the Inspector's Report

The uses the inspector's report can be put to are as follows:

- i. Corporate Affairs Commission may institute civil proceedings in the name and on behalf of the limited liability partnership on the basis of the inspector's report, where it appears to the Commission that civil proceedings ought to be brought by the partnership in the public interest.⁵
- ii. Where from the inspector's report a person appears to have been convicted of an offence for which he is criminally liable, the report shall be referred to the Attorney-General of the Federation. Where the Attorney-General of the Federation considers that the case referred to him is one in which a prosecution ought to be instituted, he shall direct action accordingly.⁶
- iii. Where from the inspector's report, it appears to the Commission that proceedings ought, in the public interest, be brought by any corporate body dealt with by the inspector's report for the recovery of damages in respect of fraud, misfeasance or other misconduct in connection with the promotion or formation of the corporate body or the management of its affairs, or for the recovery of any property of the corporate body which has been misapplied or wrongfully retained, it may refer the case to the Attorney-General of the Federation for his opinion as to the bringing of proceedings for that purpose in the name of the body corporate.⁷
- iv. Where it appears to the Commission from the inspector's report that it is desirable in the public interest that a body corporate be wound up, the Commission may present a petition for it to be wound up if the court deems it just and equitable to do so, unless the body corporate is already wound up by the court.⁸
- v. Where it appears to the Commission from the inspector's report that it is desirable that the LLP be wound up, the Commission may present a petition for it to be wound up if the court deems it just and equitable to do so, unless the LLP is already wound up by the court.⁹

If proceedings are brought, all past and present officers and agents of the LLP, or other body corporate other than the defendants in the proceedings, must give to the Attorney-General of the Federation all assistance in connection with the proceedings.¹⁰ A copy of the inspector's report authenticated in such manner, as may be prescribed shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.¹¹

¹ *Ibid*, section 780.

² *Ibid*, section 780(2) & (3).

³ *Ibid*, section 781(1).

⁴ *Ibid*, section 781(2).

⁵ *Ibid*, section 782.

⁶ *Ibid*, section 783(1) & (2).

⁷ *Ibid*, section 783(3)

⁸ *Ibid*, sections 784.

⁹ *Ibid*, sections 786.

¹⁰ *Ibid*, section 783(2) & (3).

¹¹ *Ibid*, section 787.

25. Cost and Expenses incurred in Investigating Limited Liability Partnership

The expenses incurred by an inspector in investigating the affairs of any LLP, shall be defrayed in the first instance out of the Consolidated Revenue Fund, but the following persons shall, to the extent mentioned, be liable to repay:

- i. any person who is convicted in a prosecution instituted, as a result of the investigation report by the Attorney-General of the Federation, or who is ordered to pay damages or restore any property in proceedings brought by the Attorney-General of the Federation may in the same proceedings, be ordered to pay the said expenses to such extent as specified in the order;
- ii. LLP in whose name the proceedings are brought is liable to the extent of the amount or value of any sums or property recovered by it as a result of those proceedings; and
- iii. unless as a result of the investigation, a prosecution is instituted by the Attorney-General of the Federation, the applicants for the investigation where the inspector was appointed, shall be liable to such extent as the Commission may direct.¹

26. Winding Up and Dissolution of Limited Liability Partnership

Limited liability partnership can be wound up either voluntarily or by the court.² We will proceed to discuss the different modes of winding up of LLP.

26.1 Winding Up of Limited Liability Partnership by the Court

The following are the grounds for winding up of limited liability partnership by the court:

- i. all the partners decided that the limited liability partnership be so wound up by the court;
- ii. for a period of more than six months, the number of partners of the LLP falls below two;
- iii. the limited liability partnership is unable to pay its debts;
- iv. the limited liability partnership has acted against the interests of the sovereignty and integrity of Nigeria or against her security or public order;
- v. the LLP has made a default in filing with the Commission, the statement of account and solvency or annual return for any 10 consecutive financial years; or
- vi. the court is of the opinion that it is just and equitable that the LLP be wound up.³

The following can bring petition for winding up of LLP as can be deduced from above:

- i. All partners of the limited liability partnership;
- ii. Creditors of the limited liability partnership; and
- iii. Corporate Affairs Commission.⁴

The application for winding up of limited liability partnership is by petition. The court with jurisdiction to entertain petition for winding up of limited liability partnership is the High Court of a State⁵ where the LLP has its registered office or carries on business. Where the LLP is dissolved by the court, the partnership stands dissolved on the date the court order is made unless the court mentioned a specific date that the partnership will be dissolved.

26.2 Voluntary Winding Up of Limited Liability Partnership

The Act merely mentioned that a LLP maybe wound up voluntarily and did not state the types of voluntary winding up, grounds for the winding up as well as the procedure for such winding up. This is one area of LLP that the writers will like the Act to be amended in order to fill the gaps.

27. Striking out the Name of Limited Partnership from Register

The Commission is empowered to strike out the name of any limited liability partnership from the register of limited liability partnership where the Commission is of the opinion that the LLP is no longer carrying on any business or has not been in operation for 10 years or has not filed annual returns or statement of account and solvency for 10 consecutive financial years.⁶

To be able to strike out the name of the firm from the register of limited liability partnership, the Commission will take the following steps:

- i. The Commission will publish in at least three national daily newspapers, a notice of its intention to strike off the name of the LLP from the register of limited liability partnership;

¹ *Ibid*, section 785.

² *Ibid*, section 789.

³ *Ibid*, section 790 (a) – (f).

⁴ *Ibid*, sections 784 & 786.

⁵ *Ibid*, section 868(1).

⁶ *Ibid*, sections 793 & 692(3).

- ii. The Commission will wait for 90 days from the last publication to see if the limited liability partnership will get back to the Commission informing it that the LLP is carrying on business or is in operation;
- iii. If at the expiration of the 90 days the Commission did not get any response from the LLP that, it is still in operation or carrying on business, the Commission will strike off the name of the LLP from the register of limited liability partnership;
- iv. The Commission after striking out the name of the LLP from the register of limited partnership shall publish in at least three national daily newspapers, the name and date of striking off the name of the limited liability partnership from the register;
- v. An aggrieved partner or creditor of the limited liability partnership struck off from the register may apply to the court before the expiration of 10 years from the publication of the notice striking out of the limited liability partnership from the register for an order restoring the LLP to the register;
- vi. Where the court is satisfied that at the time of striking off the name of the limited liability partnership, the LLP was carrying on business or in operation, or that it is just to restore the LLP to the register, it will order that the name of the LLP be restored to the register and can make consequential orders as the circumstance may warrant; and
- vii. The court order is thereafter registered with the Commission by delivery an office copy to the Commission and shall have effect according to its tenor.¹

Where a LLP has been struck out from the register of limited liability partnership, the liability, if any, of every designated partner and partner of the LLP shall continue and may be enforced as if, the LLP has not been struck off from the register. Also, the court can still exercise its power to wind up the LLP that the name has been struck out from the register.²

28. Conclusion and Recommendations

The introduction of limited liability partnership is one of the innovations of the Act and a welcome development that is long awaited. With its establishment, it became one of the business entities in Nigeria business sector that are available to businessmen to choose from in carrying on business in Nigeria. The Act made adequate provisions with respect to registration and management of limited liability partnership but some areas need to be amended.

One of such areas that need to be amended is voluntary winding up of limited liability partnership. The writers recommends that the Act be amended to adequately provide for voluntary winding up of LLP by stating the types of voluntary winding up, grounds for voluntary winding up and procedure for such winding up. By so doing, it eliminates inferences to be drawn from the provisions of the Act in respect of voluntary winding up of a company or be forced to fall back on the provisions of the Partnership Act 1890.

The Act also needs to be amended to include provisions on cessation of limited liability partnership. LLP should be able to notify the Commission, any person that transacts business with it and the general public that it has ceased to carry on business and not to wait for the Commission to go through the rigorous process of striking off the name of the LLP from the register of limited liability partnership.

The writers also recommend that a provision be made in the Act to include rules for distribution of assets on final settlement of accounts after winding up and dissolution of a limited liability partnership. This will help in the smooth winding up and dissolution of limited liability partnership.

We also recommend that awareness be created to the general public especially by the Commission, of the existence and advantages of limited liability partnership as a business entity in Nigeria; as some people are apprehensive of venturing into it.

The Commission should also embark on aggressive enlightenment and educative programmes to make the public to know about e-registration and on-line post registration alterations of limited liability partnership and other entities provided under the Act.

References

1. Companies and Allied Matters Act, 2020, [dare-think.com/.../is-the-international-criminal-court-icc-targeting-africa-inappropriate...accessed 25/08/2017](http://dare-think.com/.../is-the-international-criminal-court-icc-targeting-africa-inappropriate...).
2. Companies and Allied Matters Act, 1990
3. Companies Regulations, 2021
4. User Manuel Company Registration Portal, 2021
5. Partnership Act, 1890

¹ *Ibid*, sections 692(3) – (6).

² *Ibid*, sections 692(5) (a) & (b).