**Partnership Business in Nigeria: An Overview**

Rhodes-Vivour J.S.C in *Alade v. Alic (Nig.) Ltd*[[1]](#footnote-1) defines partnership business as “a voluntary association of two or more persons who jointly own or carry on a business with the sole aim of making profit.” Geoffrey Morse says partnership is “a business, carried on in common and with a view of profit”.[[2]](#footnote-2) Furthermore, section 1(1) of the Partnership Law of Lagos State of Nigeria, 2015 defines partnership as “the relationship which subsists between persons carrying on a business in common with a view to profit.” Professor Akintunde Emiola defines it as “a relationship between two but not exceeding twenty persons who have entered into agreement, oral or written, to contribute to the capital of a business which they intend to carry or are carrying on in common with a view to sharing profit.”[[3]](#footnote-3)

From the definitions above, essential valid elements of partnership can be identified. They are:

1. It is a “business”, not charity.
2. It involves an agreement between two or more people (but not more than 20) with a common interest of carrying on a business. This agreement may be oral or written, express or implied. In *Tugbobo v. Adelagun*[[4]](#footnote-4)the Supreme Court held that a partnership is a relationship based upon mutual agreement and that it is agreement that must form the basis of the rights and obligations of members.[[5]](#footnote-5)
3. It is profit oriented. The primary purpose of entering into partnership must be to make and share profit.

The court will presume an existence of partnership arrangement between parties once the above elements are present, notwithstanding that the nomenclature is not referred to as partnership. According to section 19 of Companies and Allied Matters Act, 2020, the maximum number of persons required to operate a partnership agreement is twenty (20) with exceptions to law and accounting firms.

The legal framework that governs partnership in Nigeria include:

1. Partnership Act of 1890, a statute of General Application (SOGA).
2. Partnership Law of various states, such as Partnership Law of Oyo State, 1959, Partnership Law of Lagos State, 2015, etc.
3. Companies and Allied Matters Act 2020 (CAMA).

Whilst, the Partnership Act of 1890 and CAMA are applicable throughout the country, the Partnership Law of each state is applicable in a respective state. Further, where there is a conflict between the 1890 Act and the Partnership Law of each state, the former will prevail. So also, where there is a conflict between the 1890 Act and CAMA, CAMA will prevail. It is also elementary that where there is conflict between Partnership Law of a state and CAMA, the latter prevails.

Although a partnership agreement may be in writing, or oral or even by the conduct of the parties, it is a more efficient approach to have the terms of the partnership in writing and signed by the parties to the partnership. Every partnership formed may differ in terms of the objectives and the agreement suitable to the parties, however, for drafting and executing a valid partnership agreement, certain terms and clauses should be expressly detailed in the agreement. The important clauses to be contained in a partnership agreement in Nigeria include the following:

* Name of the partnership (i.e. the name contained in the certificate of registration issued by the Corporate Affairs Commission).
* The full names and descriptions of all parties involved in the partnership.
* The general and specific nature of partnership business to be operated.
* Place of business of the partnership and branches, if any.
* Time of commencement of the partnership.
* Capital & Capital contribution: there is a presumption of equality in the absence of a contrary intention. All the partners are entitled to share equally in the capital of the business and must contribute equally to the capital of the business. This is the position implied by law in the absence of an express provision to the contrary. Therefore, if the partners intend otherwise, then, instructions should be taken to include a clause in the agreement which will provide the proportions or percentages of partners' share in the capital and their contributions thereto.
* Sharing of profits and losses: the formula for this must be expressly stated or the law will imply equal division. By **Section 23(i) of the Partnership Law Lagos**, all partners are entitled to share equally in the capital and profits of the business and must contribute equally toward the losses sustained. Therefore, if the parties intend to share the profits and losses unequally, a clause should be inserted to reflect the sharing formula according to the intention of the partners.
* Partnership property: when a partner brings in any personal property, it should be expressly specified in the partnership agreement because the law presumes that every property used by the firm is bought with the partnership money and belongs to the partnership unless a contrary intention appears as provided in s**ection 20** of the Partnership Law Lagos State.
* Remuneration of partners: by **Section 23(vi) of the Partnership Law Lagos**, the law presumes that partners are not entitled to any form of remuneration for acting in a partnership business. Therefore, if the partners intend that remuneration should be paid, specific instructions must be taken to include an express clause to that effect.
* Suspension and expulsion of partners: when a partnership agreement does not expressly confer the powers for expulsion and suspension of any partner for gross misconduct, no partner can be expelled or suspended irrespective of his conduct. If any partner is expelled or suspended, it determines the partnership.
* Admission of new parties: if the partners intend to introduce and admit new partners with the consent of all existing partners without dissolving the partnership, a clause to that effect must be expressly provided for.
* Duration: usually the duration of a partnership is temporary, unlike an incorporated company that enjoys perpetual succession. A partnership can only live as long as the partners. Thus, there is a need to specify the duration of the partnership, failure of which it terminates at will.
* Sustenance of duration of partnership through the admission of new members.
* Dispute resolution: there should be a clause that provides for means of resolution of disputes between the partners either by resorting to an alternative dispute resolution (ADR) or litigation.
* Retirement: the retirement of a partner determines the partnership at any time on giving notice of the intention to do so. To avoid this, express provisions to the contrary must be provided for in the partnership agreement.
* The execution clause. All parties must sign the partnership agreement together with their respective witnesses.

The Partnership Law of Lagos State and subsequently, the provisions of CAMA brought a paradigm shift to how partnership business is carried on in Nigeria, particularly regarding the nature of relationship and liabilities of partners. However, it is apposite to briefly highlight the nature of relationship and liability of partners prior to these new legislation. These features are discussed below.

First, partnership does not confer any limited liability on the partners. Thus, it is possible for each partner to be liable without limit for debts incurred by the other partners in the course of the partnership business[[6]](#footnote-6) unless it is expressly stated in the partnership agreement as to the percentage of each partner’s liability to the partnership business.

Secondly, in terms of Partnership Act of 1890, partners are more than contracting parties, they owe fiduciary duties to each other and act as agent of each other as well as for the partnership. In essence, partners are expected to behave towards each other as if they were trustees for each other. Furthermore, bankruptcy or criminal liability of one partner may affect the goodwill of the partnership business. It may even lead to the dissolution of the business. So also, the death or withdrawal of a partner may endanger the business.[[7]](#footnote-7)

A partnership *simpliciter* that is not registered as a company under CAMA is not juristic person. It cannot sue and be sue in its partnership name. In case of court litigation, either all the names of the partners are listed as parties to the suit or one or more of the partners sue or is sued in representative capacity.

Against the backdrop of the limitations inherent under the partnership arrangement as stated above, and particularly 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 Partnership Law of Lagos State and subsequently, CAMA 2020, provided for the establishment of Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs) as vehicles for business in Nigeria.[[8]](#footnote-8) This new approach follows what is obtained in other climes like the United Kingdom, India, USA, among others.

Essentially, a limited partnership (LP) 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.[[9]](#footnote-9) 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. 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 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.[[10]](#footnote-10) It therefore logically follows that a limited partnership occupies a middle-point between a partnership and a limited company.

As a general rule, a limited partnership (LP) 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.[[11]](#footnote-11) 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.

In comparison to LP, a limited liability partnership (LLP) limits liability for all partners. 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.[[12]](#footnote-12) Some of the benefits of LLP include the fact that Limited Liability Partners are not ordinarily liable to be sued for partnership debt.[[13]](#footnote-13) Furthermore, LLP may sue and be sued in its registered name. A significant aspect of the LLP 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.

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 LLP has now changed this. 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.

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. It can sue and be sued in its registered name.[[14]](#footnote-14)

Limited liability partnerships like every company continually exist despite the death of its partners.[[15]](#footnote-15) Thus, the life of the LLP is not affected by the demise, retirement, insolvency, or withdrawal of any of the partners.[[16]](#footnote-16) 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.

**Dissolution of a partnership agreement**

A partnership may be determined via any of the following ways:

1. A partnership agreement can be dissolved either by the effluxion of the fixed term or the conclusion of the specific undertaking or venture.
2. Where there is no express term of the agreement, the partnership agreement can be dissolved by any partner giving appropriate notice to others of his intention to dissolve the partnership.
3. A partnership can be dissolved because of bankruptcy or the death of one of the partners. This, however, is not applicable to LLP.
4. A partnership can be dissolved on an application by a partner to the court by summons. The court may decree a dissolution of the partnership in the following cases:
   1. where a partner becomes permanently incapable of performing his or her part of the partnership agreement;
   2. where a partner is adjudged to be a lunatic;
   3. when the partner wilfully commits a breach of the partnership agreement and
   4. When in the opinion of the court, it is just and equitable to dissolve the partnership as provided under **Section 34** of the Partnership Law of Lagos State.
5. Automation dissolution: A partnership is dissolved by the occurrence of any event that makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.[[17]](#footnote-17)
6. When the business can only be carried on at a loss; and
7. When a partner’s action is calculated to affect prejudicially the carrying on of the business or against the nature of the business.

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2. Geoffrey Morse *Partnership Law* (4th Ed, Blackstone Press Limited, 1998) 1. [↑](#footnote-ref-2)
3. Akintunde Emiola *The Law of Partnership* (Emiola Publishers, 2003) 2. [↑](#footnote-ref-3)
4. (1974) 1 All N.L.R. 62. [↑](#footnote-ref-4)
5. See also, *Ojemen v. Okonofua* (1977) NCLR 192 at 197-8. [↑](#footnote-ref-5)
6. *Atagbua & Company v. Gura Nigeria Limited* (Unreported, Suit No: SC. 295/2000 delivered on 11th day of February, 2005). [↑](#footnote-ref-6)
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16. . CAMA 2020, ss. 746 (2); 763 (2). [↑](#footnote-ref-16)
17. See section 33 of Partnership Law of Lagos State CAP. P1, 2015. [↑](#footnote-ref-17)