



Scope of Limited Liability Partnerships within Nigerian Legal System: An Appraisal

Chibuzo Mercy Onwuzuruoha¹ and Omoniyi Bukola Akinola²

¹Lecturer, Faculty of Law, Renaissance University, Ugbawka, Enugu, Nigeria.

²Professor & Dean, School of Law, Kampala International University, Kampala, Uganda.

Email: chibuzomercy14@gmail.com, profbukkyakinola@gmail.com

ABSTRACT: *The Companies and Allied Matters Act 2020 introduced a lot of changes in the Nigerian business sector to achieve its lofty objectives of ease of doing business and attraction of foreign investment in Nigeria, among others. The Limited Liability Partnership (LLP) is a new-age business structure introduced by CAMA 2020 to realize the intentions of the Federal Government. A limited liability Partnership combines the advantages inherent in partnership business and the protection from liability that incorporation affords. This paper appraised the scope of Limited Liability partnership within the Nigerian Legal system and finds that the business vehicle of LLP's has the potential of actualizing the objective of the Federal government, which is to attract foreign investment in Nigeria. Professional bodies can benefit from the limited liability if the business vehicle of LLP is adopted, as partners under LLP's can be protected from the negligence or misconduct of their partners. The paper adopted a doctrinal method of research, which includes desk and library research. The benefit of pass-through tax system of Partnerships, flexible organization, and limited liability status are factors that encourage investment by foreigners. This paper recommends LLP's for professional bodies like lawyers, Doctors, Architects etc., because of the protection from liability that it affords, collectively as partners and individually as a partner, even though its liability is unlimited in cases of fraud.*

KEYWORDS: *CAMA 2020, Limited Liability Partnership (LLP), Business Sector, Nigerian Legal System.*

INTRODUCTION

Limited Liability Partnership is among the new business vehicles introduced by CAMA 2020. Before the enactment of CAMA 2020, there was only one form of Partnership, which was regulated by Partnership Act 1890, a statute of general application. In Limited Liability Partnerships (LLPs), all the Partners have their liability limited. It has both aspects of a Partnership and a company. LLP was introduced to actualize the Federal Government's drive for foreign Investment in Nigeria, among other objectives. This paper appraised the scope of Limited Liability partnership within the Nigerian Legal system because the business vehicle of LLP's has the potential of actualizing the objective of the Federal government, which is to attract foreign investment in Nigeria. The benefit of pass-through tax system of Partnerships, flexible organization and limited liability status are factors that encourage investment by foreigners. The paper is segmented. The first segment clarified concepts; the second segment

provided the theoretical framework for this paper; the third segment gave an overview of Partnership while the fourth segment discussed the various types of Partnership and the fifth segment examined the concept of Limited Liability Partnership. The sixth segment examined Limited Liability Partnership under the Nigerian Legal System and the seventh segment reviewed some literature on Limited liability Partnership; the Eight segment looked at the limitations of Limited Liability Partnership in Nigeria; the ninth segment undertook a comparative analysis of Limited Liability Partnership in selected jurisdictions like India, UK, South Africa, USA and Canada; the tenth segment summarized findings. The final segment concluded this paper and made some Recommendations.

CONCEPTUAL CLARIFICATION

Some concepts used in this paper are explained below:

Limited Liability

Limited liability is a type of legal structure for an organization where a corporate loss will not exceed the amount invested in the partnership or Limited Liability Company. In other words, investors and owner's private assets are not at risk if the company fails.¹ In practical terms, when a company or partnership is a limited liability one, the individual promoter or promoter's assets cannot be resorted to in an effort to repay debt obligations attributed to the company or partnership, especially on failure of the business. This is in direct contrast to what obtains in general partnership business or unincorporated companies. In these cases, their liability is unlimited. The personal assets and belongings of the promoters are resorted to in the settlement of creditors' claims or any other debts or obligations of the company. The legal veil of incorporation is attractive to most investors or shareholders as the company or partnership bears the brunt of any failure of the business.

The Nigerian Legal System

The Nigerian Legal system is a somehow complex system of law governing the Country. It could be approached from different angles. It could be described as the aggregate of legislations and accepted legal principles and the body of authoritative grounds of judicial and administrative actions, e.g. the law of the land. It includes the process of administration of justice and the institutions like the police or courts involved in the administration of justice. Nigerian legal system therefore comprises the law, the institutions, machinery and process of administration of justice (civil and criminal) and the persons in law.² Nigerian law can be sourced from the Constitution of the Federal Republic of Nigeria 1999, statutes, English law which comprises (common law, doctrines of equity and statutes of general application) customary law and judicial precedents or case law.³

Among the functions of law is that it acts an agent for social change. It affects every aspect of human endeavour included economic growth. To promote the ease of doing business in Nigeria, the Companies and Allied Matters Act 2020, enacted by the National Assembly was signed into law by President Buhari on the 7th of August, 2020. It is the principal legislation guiding business operations in Nigeria among others. It made revolutionary changes in business

¹ <https://www.investopedia.com> "Limited Liability Definition: How it Works in Corporations and Businesses" Accessed on 12th July, 2025

² <https://africanbookscollective.com> "The Nigerian Legal System-Law" Accessed on 12th July, 2025

³ <https://www.learnnigerianlaw.com> "The Nigerian Legal System" Accessed on the 12th of July, 2025

landscape and among the innovations made by the Act is the introduction of Limited Liability Partnership. The Partnership Act 1890 was the law guiding partnership business before the coming into force of CAMA 2020.⁴

BRIEF OVERVIEW OF THE EVOLUTION OF LIMITED LIABILITY PARTNERSHIP

CAMA 2020 came into being as part of the Federal Government's drive for ease of doing business in Nigeria. Among the objectives of CAMA 2020 is to improve corporate governance and attract foreign investments into the Country. Before the coming into force of CAMA 2020, partnership in Nigeria was regulated by the Partnership Act of 1890. While the Companies and Allied Matters Act 1990, did not repeal the Partnership Act of 1890, it limited the number of persons allowed in a partnership to twenty (20). This vehicle of business operation seem very restricting as Lagos State endeavored to expand the scope by enacting Partnership Law, 2003. The Partnership Law 2003 of Lagos State introduced general Partnership and the Limited Partnership to further streamline the operations of partnership business.⁵ The Partnership Law of Lagos State was amended in 2009 to include limited liability Partnership. Its application was however limited to Lagos State. The introduction therefore of LLP and LP in the CAMA was therefore a new innovation by the government to meet up with the ease of doing business in Nigeria.⁶

The advantage of the flow- through tax element is attractive to foreign investors. It meets with the foreign investment drive of the Federal government. The Act⁷ requires every foreign company intending to do business in Nigeria except those exempted to first take steps to obtain incorporation as a separate entity before they can do so. The incidents of this incorporation in Nigeria before doing business is the Company tax the foreign investors will have to pay as well as the complexities in forming such a company. These conditions scare away foreign investor from the Country. LLP was designed in such a way as to obviate the necessity of the complex registration involved in incorporation by foreign investors. The relaxed tax element is equally attractive to foreign investors. This ultimately ensures the actualization of the foreign investment drive of the Federal Government.

THE CONCEPT OF PARTNERSHIP

A partnership has been defined as a formal arrangement between two or more individuals who agree to manage and operate a business together while sharing its profits and liabilities.⁸ The Supreme Court in *Alade v Alic (Nig) Ltd.*,⁹ held that "a partnership business is a voluntary association of two or more persons who jointly own or carry the business with the sole aim of making profit." Three significant elements can be gleaned from the above definitions. The first one is that to form a partnership, there must be an agreement of two or more persons. Secondly, there must be commonality of purpose and the end will be profiting maximization. Partnerships are formalized through legal agreements whereby the terms of the partnership are clearly

⁴ <https://ng.adersen.com> "President Buhari Signs the CAMA Bill 2020 into law" Accessed on 12th July 2025

⁵ C. Halliday, "Challenge and Prospects of the Limited Liability Partnership and the Limited Partnership as Vehicle for Business in Nigeria" *Nnamdi Azikiwe University; Journal of Commercial and Property Law*, Vol 9 (2) 2022 ISSN 2736-0342

⁶ *ibid*

⁷ Companies and Allied Matters Act, 2020. S. 78 and 79

⁸ <https://www.investopedia.com> "General Partnerships: Definitions, How it works, Taxation and Types" Accessed on 8th of July 2025

⁹ (2010) 19 NWLR (Pt. 126)111 at pg 143

delineated. Some of the advantages of partnership includes combining of resources, skills, expertise, capital etc. to achieve business goals that may be impossible to achieve through sole proprietorship. Business risks and liabilities are shared as well. The various types of partnership include, general partnership (GP), Limited Partnership (LP) and Limited Liability Partnership. Each type will be considered below for effective understanding of the structure.

TYPES OF PARTNERSHIP

As we have noted above, the most common forms of partnership under Nigeria Law are General Partnership, Limited Partnership and Limited Liability Partnership.

General Partnership

Prior to the advent of CAMA 2020, general Partnership was the only type of partnership that existed. It was regulation by the Partnership Act 1890, which is a Statute of general application. In general partnership, each partner shares equally in the work, liability and profits unless the partnership agreement indicates to the contrary. Formation of general partnership is usually a simplified process which basically rests with the agreement of the partners. Every partner is involved in the day-to-day business operations and can contribute meaningfully to the growth of the business. The partners have unlimited personal liability for all the partnership activities and debts. The implication is that personal assets can be claimed against the partnership.

Limited Partnership

This type of partnership is among the new innovations introduced by the Companies and Allied Matters Act 2020. Its nature is provided for in Part D of the Act.¹⁰ Part D of the Act¹¹ regulates the formation and conditions for its formation. A limited partnership shall not consist more than 20 partners.¹² Limited partnership is composed of one or more persons who are called the general partners and one or more persons called limited partners.¹³ The general partners shall be responsible for the debts and liabilities and obligations of the firm.¹⁴ It is important to note that a partnership not registered as prescribed under part D of this Act shall be deemed to be a general partnership and every limited partner shall be deemed to be a general partner.¹⁵ An individual or body corporate may be a partner in a limited partnership provided that an individual shall not become a partner of a limited partnership, if he is of unsound mind and has been so found by a court in Nigeria or elsewhere or an undischarged bankrupt.¹⁶

At the time of entering into the partnership, limited partners are expected to contribute or agree to contribute a specified sum or property valued at a stated amount as capital. Once this contribution is made, limited partners shall not be liable for the debts or obligations of the firm beyond the amount contributed or agreed to be contributed.¹⁷ Where however, the partners agreed in writing, a limited partner is not under any obligation to contribute any capital or property to the partnership.¹⁸ A limited partner shall not take part in the management of the partnership business and shall not have power to bind the firm but he may inspect the books of

¹⁰ Companies and Allied Matters Act, 2020

¹¹ Ibid. s. 795 (1)

¹² Ibid s. 795 (2)

¹³ Ibid. s. 795 (3)

¹⁴ Ibid

¹⁵ Ibid. s. 797(2)

¹⁶ Ibid. s.796

¹⁷ Ibid. s. 795 (4)

¹⁸ Ibid.

the firm and examine the state and prospects of the partnership business and can offer advice thereon. If a limited partner takes part in the management of the partnership business, he will be liable for all the debts and obligations of the firm incurred while he takes part in the management, as though he were a general partner.¹⁹

Limited Liability Partnership

This is also among the innovations introduced in CAMA 2020. Its nature is provided for in Part C of the Act.²⁰ It is a body corporate formed and incorporated under the Act.²¹ It is also a legal entity separate from its partners with a perpetual succession.²² Any change in the partners of a limited liability partnership does not affect the existence, rights or liabilities of a limited liability partnership.²³ Any individual or body corporate may be a partner in a limited liability partnership provided that an individual shall not be capable of becoming a partner of a limited liability partnership if he is of unsound mind and has been so found by a court in Nigeria or elsewhere or an undischarged bankrupt.²⁴ The minimum number of a limited liability partnership shall be two partners.²⁵

If at any time 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 carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, is liable personally for the obligations of the limited liability partnership incurred during that period.²⁶

Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be resident in Nigeria.²⁷ In cases of limited liability partnership where all the partners are bodies corporate or in which one or more partners are individual and bodies corporate, at least two individuals who are partners of the limited liability partnership or nominees of the body's corporate shall act as designated partners.²⁸

The duties of the designated partner include doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of the Act²⁹ as it relates to filing of any document, return, statement and other report under the Act as may be specified in the limited liability partnership Agreement. They are also liable to all penalties imposed on the limited liability partnership for any contravention of the provisions of the Act.

THE CONCEPT OF LIMITED LIABILITY PARTNERSHIP

A limited liability Partnership is a kind of business vehicle that combines the benefits of Limited Liability Company (LLP) and partnership. It achieves the incorporation benefits while

¹⁹ Ibid. s. 806 (a) (b)

²⁰ Companies and Allied Matters Act, 2020

²¹ Ibid. s. 746 (1)

²² Ibid. s. 746(2)

²³ Ibid. s. 746(3)

²⁴ Ibid. s. 747 (a) (b)

²⁵ Ibid. 248(1)

²⁶ Ibid. s 748(2)

²⁷ Ibid. s. 749

²⁸ ibid

²⁹ CAMA 2020

retaining flexibility the partnership offers. A limited liability partnership is a body corporate with a legal personality separate from its members. It has perpetual existence.³⁰ Limited liability partnership is a hybrid form of business that infuses together two types business models; Limited Liability Company and partnership. Whereas a limited liability partnership must have at least two partners, there is no limit to the number of partners prescribed by the law. The partners can be individuals or corporations and each partner is only liable for the debts and obligations of the partnership to the extent of their capital contribution.

It has been suggested that formation of an LLP is particularly an appropriate vehicle for accountants, lawyers, doctors, architects and other professionals who tend to rely heavily on reputation. LLP is mostly best to a group of professionals who have experience and clients between them. This kind of partnership enables them to pool their resources together, thereby lowering the cost of doing business while increasing the LLP's capacity for growth.³¹ The LLP as a unique business vehicle has some advantages which includes the fact that the liability of each partner is limited to his contribution as written in the LLP agreement. It is easy to form as it takes only two members to become operational. The partners are also not liable for the acts of each partner and can be held liable only for their own acts.

AN EXAMINATION OF LIMITED LIABILITY PARTNERSHIP UNDER THE NIGERIAN LEGAL SYSTEM

As at today in Nigeria, the Companies and Allied Matters Act 2020 is the fundamental legislation that guide the management and operations of companies including partnerships. LLP is a new business structure innovation introduced by the Act.³² LLP is defined as a limited liability partnership as a body corporate with legal personality separate from its members.³³

Components of LLP

- a. They have a separate legal entity from their members
- b. They have perpetual succession
- c. They have the benefit of limited liability for their members
- d. They have the organizational flexibility of a partnership
- e. Any agreement (LLP Agreement) between the members governing the operation of the LLP is a private document, which is confidential to the members.
- f. They must have at least two designated members.
- g. Their 'trading disclosure' requirements are similar to those of a company.
- h. They must be registered at the Corporate Affairs Commission.
- i. Their accounting and filing³⁴ requirements are similar to those of a company.

³⁰ Companies and Allied Matters Act 2020. S.746 (1) (2) (3)

³¹ <https://threshold.attorney.com> "An Exposition of Limited Liability Partnerships (LLPs) And Limited Partnership (LPs) under The Companies and Allied Matters 2020-The New Age Business Structure in Nigeria" Accessed on 9th July, 2025

³² CAMA 2020

³³ Ibid 746(1)

³⁴ <https://threshold.attorney.com> "An Exposition of Limited Liability Partnerships (LLPs) And Limited Partnership (LPs) under The Companies and Allied Matters 2020-The New Age Business Structure in Nigeria" Accessed on 9 July, 2025

- j. Having LLP's means spreading the risk, leveraging individual skills and expertise, and establishing a division of labour.
- k. LLP's are common in professional businesses such as law firms, accounting firms and wealth managers etc.

The Act³⁵ provides that a partner of an LLP is an agent of the LLP, and not of other partners. The implication of this is that a partner cannot be liable for the wrongful act or omission of any other partner of the LLP. The members of an LLP act as its agents and only have liability of to their capital contribution. A partner's contribution may consist of tangible, intangible, movable, immovable or property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for service performed or to be performed. The monetary value of the contribution of each partner shall be accounted for and disclosed as prescribed.³⁶

An LLP is a formal structure that requires a written partnership Agreement and an annual reporting requirement. The relationship between the partners are governed by the partnership Agreement.³⁷ An LLP agreement will typically deal with issues and matters such as profits and losses, drawings, ownership of property, meetings/decision making, admission of new members, retirement/expulsion of members, indemnities and insurance, restrictive covenants, death of a member, issues around governance, promotion of members to partners etc.³⁸

It is important to note that being a designated partner or cessation to be so designated is subject to the provisions of the limited liability Partnership Agreement.³⁹ The flexibility in management structure of LLP's makes it more attractive than other forms of partnership business. Partners are involved in the management of the business while yet retaining their professional autonomy. Business decisions are made in a collaborative manner with every partner involved. There is a clear delineation of roles in the partnership Agreement.⁴⁰

LLP is a flow-through entity for tax purposes. This means that the partners receive untaxed profits and must pay the taxes themselves. The LLP as a corporate body is not taxed as a separate entity. Profits and losses, "pass-through" to the individual partners. The partners will only have to report their share of the LLP's income or losses on their tax returns. This will ultimately prevent or avoid double taxation as witnessed in corporation.⁴¹ The formation process of Limited Liability Partnership is simplified. Two or more people associated and carrying on a lawful business with a view to profit can form an LLP.⁴² The only exceptions are those provided under the Act.⁴³

⁴⁴An application for registration or change of name of an LLP could be rejected if the Commission finds it undesirable or if it is identical or nearly resembles that of any other partnership, business name, limited liability partnership, body corporate, or a registered

³⁵ The Companies and Allied Matters Act 2020. S. 765

³⁶ Ibid. s. 770 (1) (2)

³⁷ Ibid. s. 762

³⁸ <https://threshold.attorney.com> "An Exposition of Limited Liability Partnerships (LLPs) and Limited Partnership (LPs) under The Companies and Allied Matters 2020-The New Age Business Structure in Nigeria" Accessed on 9 July, 2025

³⁹ Companies and Allied Matters Act, 2020. S. 749(2) (b)

⁴⁰ <https://splashdict.com> "Features of Limited Liability Partnership (LLP) Business" Accessed on 10 July, 2025

⁴¹ ibid

⁴² CAMA 2020. s. 753(1) (a)

⁴³ Ibid. s.747

trademark.⁴⁵ All LLP's must end with the words, "limited Liability Partnership" or their abbreviation "LLP".⁴⁶

Every limited partnership shall ensure that its invoices, official correspondence and publications bear the name, address of its registered office and registration number of the limited liability partnership; and a statement that it is registered with limited liability. Failure to comply with any of these statutory requirements may result in a fine for the LLP and/or for all members in default.⁴⁷

LLP's are required to provide financial information and must file at Corporate Affairs Commission the following:

- a. An annual return
- b. Annual accounts
- c. Notification of changes to the LLP's membership, including changes to a member's status (from member to designated member or vice versa)
- d. Notification of changes to the registered office address
- e. Details of any mortgage or charge created by the LLP

Failure to file annual accounts or annual return on or before the due date will result in a fine being imposed by the Commission.⁴⁸

On registration, a limited liability partnership may:

- a. Sue and be sued in its name
- b. acquire, own, hold and develop or dispose of property, whether movable or immovable, tangible or intangible
- c. If it decides to have one, have a common seal; and
- d. Do and suffer such other acts and things as bodies corporate may lawfully do and suffer.⁴⁹

These are some incidents of incorporation enjoyed by a limited liability company. Limited liability partnership as a corporate body is so entitled by the provisions of the Act. It is important to note that the liability of a limited liability partnership is unlimited in cases of fraud. The Act⁵⁰ provides that in the 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 shall be unlimited for all or any of the debts or other liabilities of the limited liability partnership. Where any act is carried out by a partner the limited liability partnership is liable to the same extent as the partner unless it is established by the limited partnership that the act was carried out without the knowledge or the authority of the limited liability partnership.

⁴⁵ Ibid. s. 752 (2)

⁴⁶ Ibid. 757(1)

⁴⁷ Ibid. s. 760 (1) (2)

⁴⁸ Ibid. s. 772 and 773

⁴⁹ Companies and Allied Matters Act 2020. s. 756

⁵⁰ Ibid. s. 769 (1) (2)

The winding up of a limited liability partnership may be voluntary or by the court. The winding up could be made by the court where the partners decide that the limited partnership be so wound up by the court; or where for a period of more than six months, the number of partners falls below two; it is unable to pay its debts; it has acted against the interests of the sovereignty and integrity of Nigeria or against her security or public order; it has made a default in filing with the commission, the statement of Account and solvency or annual return for any 10 (Ten) consecutive financial years; or where the court is of the opinion that it is just and equitable that the limited liability partnership be wound up.⁵¹

LITERATURE REVIEW

Scholars have not done much work in this aspect of legal discourse. Subai questioned the justification for limited liability partner liability in limited liability Partnerships with reference to Nigeria, in the light of the fact that partnerships operate under different situations from companies.⁵² It was noted that while the traditional justifications for conferring limited liability do not exist in the limited liability partnership, some justifications may still exist for granting the protection on partners who trade under it. A significant reason is the need to shield professional partners from misjudgment of their colleagues.

According to the writer, in conferring the protection of limited liability to LLPs, it is necessary to subject the form to regulatory requirements aimed at protecting the interests of creditors and ensuring that partners do not abuse the extensive protections conferred to LLPs by the Act. Similarly, Ajibade⁵³ in justifying the introduction of LLP in Lagos State stated as follows:

“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 LLP’s in growing economies around the globe encouraged the government of Lagos State to push for the creation of Limited Liability Partnership.”

The writer articulated the purpose of Introducing LLP’s in Lagos which is a precursor to the Federal enactment. Also, Uzoka,⁵⁴ recommended LLP’s for legal practitioners and disagreed with the Rules of Professional conduct for Legal Practitioners which made it unlawful for to carry out legal practice as corporation. According to the writer:

“The introduction of limited liability Partnership is aimed at improving the ease of doing business in Nigeria by ensuring that entrepreneurs and professionals form partnerships and also enjoy reduced personal liability in Nigeria. Legal practitioners in Nigeria can now set up their law firms to be incorporated as limited liability partnership as is obtainable in other jurisdictions. However, suffice it to hold that the provision of Rule 5(5) of the Rules of Professional conduct 2007 which makes it unlawful to carry out legal practice as a corporation is laughable and outdated in the light of global realities of the introduction of limited liability partnership. A body corporate can be a partner in a limited liability partnership by section 747 of CAMA 2020. This provision of the rules of professional conduct has been overtaken by events and needs to be expunged to reflect present day global realities.”

⁵¹ Ibid. s. 789 and 790

⁵² <https://gravitasreview.com.ng> “Is there Sufficient Justification for Limited Partner Liability in Limited Liability Partnerships? Lessons from Nigeria” Accessed on 13 July, 2025

⁵³ <https://spajibade.com> “A Review of Limited Liability Partnerships Under the Partnership Law of Lagos State 2009”

⁵⁴ <https://www.nigerianjournalsonline.com> “Adopting a LLP for Legal Profession” Accessed on 14th of July, 2025

LIMITATIONS OF LIMITED LIABILITY PARTNERSHIP IN NIGERIA

Human Element

Where every partner is involved in the management of a certain business is an invitation to chaos. Differences in ideas and personality issues must necessarily kick and if caution is not adhered to, the death of the business may happen. The limited liability Agreement should specify the controlling partner/s and the criteria for the designation. The controlling partner/s will be trusted with the responsibility of synthesizing of various ideas and implementing of same. This will save the partners from dead-lock.

Wrongful act of a Partner harms the partnership

A limited liability partnership is liable if a partner 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.⁵⁵ The business could suffer terminally in the long run if this position is left unchecked⁵⁶.

COMPARATIVE ANALYSIS OF LIMITED LIABILITY PARTNERSHIP IN SELECTED JURISDICTIONS

India

In India, the law guiding Limited Liability Partnership is Limited Liability Partnership Act 2008. This law along with Limited Liability Partnership Rules 2009, form the legal framework for forming, operating and regulating LLP's in India.⁵⁷ A Limited Liability Partnership shall be a body corporate and a legal entity separate from its partners with will have perpetual succession. Limited liability Partnership in India is protected from personal liability except to the extent of their capital contribution. Liability is limited to each partner's agreed upon contribution to the Limited liability partnership.⁵⁸ Indian Partnership Act 1932 does not be apply to LLP's and there is no upper limit on number of partners in an LLP unlike an ordinary partnership form where the maximum number of partners cannot exceed 20.⁵⁹ Any individual or body corporate can be a partner, once the individual is of sound mind, an undischarged insolvent or has applied to be adjudicated as an insolvent and his application is pending.⁶⁰ The minimum number of Partners shall be two, there is penalty for violation.⁶¹

The limited liability partnership Act has a mandatory requirement that it shall at least two designated Partners and at least one of the Partners in the LLP must be an Indian⁶². In terms of taxation, an LLP is treated like any other partnership firm. This entails that the business profits and losses are not taxed at the partnership level but instead pass through directly to the individual partners.⁶³

No partner is liable on account of the independent or unauthorized actions of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's

⁵⁵ Ibid. s. 766(2)

⁵⁶ Ibid

⁵⁷ <https://www.indiacode.nic.in> "The Limited Liability Partnership Act, 2008- India Code" Accessed on 12 July, 2025

⁵⁸ Limited Liability Partnership Act 2008. S 3

⁵⁹ Ibid. s. 4

⁶⁰ Ibid s. 5

⁶¹ Ibid. s 6

⁶² Ibid. s. 7

⁶³ <https://cleartax.in> "Limited Liability Partnership (LLP) Registration in India" Accessed on 13 July, 2025

wrongful business decisions or misconduct.⁶⁴ There are provisions in the Rules for corporate actions like mergers and acquisition. Also, provisions in respect of winding up and dissolution of are spelt out in the rules. The Registrar of Companies registers and control LLP's.⁶⁵

South Africa

South African law does not provide for limited liability partnerships (LLP) formed under any statute. Such as in other countries. Partnerships in South Africa are merely contracts under common law and are not regulated by specific pieces of legislation in the same way that close corporations, companies and trusts are.⁶⁶ Partnerships are also not regarded as legal or juristic persons in South Africa.⁶⁷

Any Foreign LLP that wishes to engage in a business in South Africa may register as an external Company in compliance with the Act.⁶⁸ An external company is a foreign company that is carrying on business or non –profit activities within South Africa.⁶⁹ A foreign company is an entity incorporated outside South Africa irrespective of whether it is a profit or non-profit entity carrying on business or non-profit activities within South Africa.⁷⁰

If one considers the definition of “foreign company” as an “entity” that is “incorporated” in a foreign country. Therefore, a foreign company for purposes of Act would have to be a juristic person or body corporate (i.e. an entity that is recognized as a person in the jurisdiction in which it is registered. It follows then that if an LLP is like a common law partnership in South Africa, with no separate legal identity from its partners, then the LLP will not fall within the definition of “foreign company” in terms of the companies Act,⁷¹ South African Law does not recognize or accord it to foreign entities operating in their space.⁷²

In any case, where the LLP registered as an external company is sued in South Africa, the LLP in its place of incorporation itself will be sued. Similarly, where the LLP be deregistered in its place of incorporation, the branch in South Africa would be deregistered too.⁷³

United Kingdom

The limited liability Partnership Act 2000 came into force on 6th of April, 2001. Its main purpose and effect were to introduce a new form of legal entity known as a limited liability partnership (LLP). The pressure for the change was largely to resolve problems arising out of the nature of traditional partnerships for larger professional practices, but the use of LLPs is not restricted to them.⁷⁴

The features of LLP in UK is similar to what is obtainable in Nigeria. The key features are that it offers limited liability for members; it's a separate legal entity; it's taxed as a partnership and it has organizational flexibility of a partnership. It is similar to a company in its accounting and

⁶⁴ <https://globallawexperts.com> “LLP's in India-All You Want To Know” Accessed on 12 July, 2025

⁶⁵ *ibid*

⁶⁶ <https://www.cliffedekkerhofmeyr.com> “Registering an LLP in South Africa as an External Company” Accessed on 11 July, 2025

⁶⁷ *ibid*

⁶⁸ Companies Act, 71 of 2008. S. 23

⁶⁹ *Ibid.* s 1

⁷⁰ *ibid*

⁷¹ <https://www.cliffedekkerhofmeyr.com> “Registering an LLP in South Africa as an External Company” Accessed on 11 July, 2025

⁷² *Ibid*

⁷³ *Ibid*

⁷⁴ <https://www.gov.uk> “IHTM25094-What is a partnership: Limited Liability Partnerships” Accessed on 11 of July, 2025

filing requirements.⁷⁵ A limited liability partnership must have at least two members, where membership falls below two and the LLP continues to trade for more than 6 months, it will lose the benefits of LLP.⁷⁶ LLP must be set up as a profit-making business. It cannot be used by non-profit enterprises or charities.⁷⁷

USA

The law guiding LLP in the USA is primarily based on State statutes. There is no federal enactment providing for the formation or registration of LLP in the USA. Each state has its own specific LLP law, which can vary in terms of the partnership, liability and other features. It is now in the interest of the partners who intend to adopt LLP as their business vehicle to approach the State where the LLP is to be registered to know more about it.⁷⁸ Generally, in USA, a limited liability partnership is a business form that combines the benefits of a partnership with those of a company. It offers the partners limited liability similar to that of a company, but is more akin to a partnership in terms of taxation and management.⁷⁹ The LLP is taxed differently from other business forms, such as sole proprietorships or corporations. It is usually treated as a pass-through entity, meaning that the profits and losses of the LLP are passed directly to the partners and reported on their personal income tax returns.⁸⁰ Among the benefits it offers to the partners is the limited liability status. This means that the personal assets of the partners are protected from the debts or liability of the LLP provided the partners are not personally liable due to negligence or unlawful conduct.⁸¹

Canada

In Canada, LLP is governed by provincial and territorial legislation. Just like in the USA, there is no single Federal enactment on it. Every province or territory has its partnership Act that outlines the criteria for registration.⁸² LLP's are commonly used by professional service firms such as law firms and accounting firms to protect partners from the negligence or misconduct of their partners.⁸³ A limited liability partnership (LLP) is a partnership where all partners have limited liability and can participate in the management of the partnership. In Canada, LLP is limited to certain businesses and state laws vary on it. It can only be used by certain types of business such as Accountants, Attorneys, Architects, Dentists, Doctors and other fields treated as professionals under each state law.⁸⁴ LLP in Canada has similar features to other countries reviewed, except as noted above.

SUMMARY OF FINDINGS

This paper finds that countries like the USA and Canada do not have any Federal enactment on LLP. There is therefore no uniform procedure in the countries on the formation, liability, or even registration of LLP's. Each state therefore, is left to articulate what is best for it in terms of liability of partners or even taxation. This paper finds also that in Canada and some other

⁷⁵ *ibid*

⁷⁶ *ibid*

⁷⁷ *ibid*

⁷⁸ <https://study.com> "Limited Liability Partnership: Overview. Examples –Lesson" Accessed on 14 July, 2025

⁷⁹ <https://www.clevver.io> "How to establish a Limited Liability Partnership in USA" accessed 14 July, 2025

⁸⁰ *ibid*

⁸¹ *ibid*

⁸² <https://www.canada.ca> "GP VS LP VS LLP: Comparing 3 types of Partnership in Business" Accessed on 14 July, 2025

⁸³ *ibid*

⁸⁴ *IBID*

places, LLP's are often used by professional bodies to shield the partners from the misconduct of other partners. It also found that the LLP IN Nigeria is patterned after that of India, except that Nigeria has a single enactment covering the field, while India has the LLP rule guiding registration and incidental matters and also the law providing for its features. It finds that the business vehicle of LLP's has the potential to actualize the objective of the Federal government, which is to attract foreign investment in Nigeria. Professional bodies can also take advantage of the limited liability status to adopt LLP's as a viable business option as partners under LLP's can be protected from the negligence or misconduct of their partners. The benefit of the pass-through tax system of Partnerships, flexible organization and limited liability status are factors that encourage investment by foreigners.

CONCLUSION

This paper considers the business vehicle of LLP as a veritable tool for the attraction of foreign investment in Nigeria. The registration is flexible, and the tax system is attractive. The needed limitation from liability is equally a needed advantage for a foreign company, which ordinarily would have gone through the whole process of incorporating a company in Nigeria and also registering with the relevant sectors before it can do business in Nigeria. These hurdles have been removed by the introduction of LLP. This paper recommends LLPs for professional bodies like lawyers, Doctors, Architects, etc., because of the protection from liability that it affords, collectively as partners and individually as partners, even though its liability is unlimited in cases of fraud.



This is an open access article distributed under the terms of the Creative Commons NC-SA 4.0 License Attribution—unrestricted use, sharing, adaptation, distribution and reproduction in any medium or format, for any purpose non-commercially. This allows others to remix, tweak, and build upon the work non-commercially, as long as the author is credited and the new creations are licensed under the identical terms. For any query contact: research@ciir.in