

# Limited Partnerships – A Focus On Registration Under The Lagos State Partnership Law By Offshore Entities

## Nature of a Partnership in Nigeria

In Nigeria, Partnerships are regulated by the United Kingdom Partnership Act of 1890 (“the English Act”)<sup>1</sup>. While the Companies and Allied Matters Act (“CAMA”), which regulates the operations of companies, does not repeal the English Act, it limits the number of people allowed in a Partnership to 20.<sup>2</sup>

Although a partnership can be formed orally, in writing or even by conduct, it is advisable to have a Partnership Deed.

Lagos State and some States in the Western and mid-Western parts of Nigeria have enacted their own Partnership legislation, which are

intrinsically adaptations of the English Act. As such, the English Act remains the prevailing law in States which have yet to enact their respective Partnership Laws.

Although a Partnership can be formed orally, in writing or even by conduct, it is advisable to have a Partnership Deed. The following are typical characteristics of Partnerships (of course these can be varied depending on the agreement between partners):

- A Partnership can be for an indefinite period.
- Each partner is an agent of, and principal to every other partner.
- Partners have unlimited liability and are personally liable for the obligations and debts of the Partnership.
- A deceased partner's rights in specific Partnership property vests with the remaining partners upon his death.
- There is a presumption of equality of shares or interest in a Partnership unless otherwise

specifically agreed.

- Partners can be sued in their individual capacities.
- Ownership interest in a Partnership may not be transferred without the consent of all the owners.
- A Partnership does not pay income tax in its own name, but partners pay tax on their individual share of the profits of the Partnership.

## Definition of Limited Liability Partnerships

A Limited Partnership is a hybrid of 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. 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.

In a limited partnership, there must be at least one general partner who will have unlimited liability with respect to all the debts and obligations of the firm. The limited partners contribute

1. This is a Statute of General Application i.e. laws that were in force in England as at 1st January 1900.  
 2. Partnerships formed by lawyers and accountants are exempt from this limit. See section 19(2) of CAMA and *Akinlose vs. A.I.T. Co. Ltd* (1961) WNLR 213

## Section 54 ... “take all steps necessary to obtain incorporation as a separate entity in Nigeria for that purpose”.

capital or property to the business but have no liability for the debts or obligations of the business beyond their actual contributions thereto. In many countries, this form of partnership is referred to as a Limited Liability Partnership (LLP).



### The Lagos State Partnership Law

The Lagos State Government on its website describes a Limited Liability Partnership (“LLP”) as “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”<sup>3</sup>. In particular, the Lagos State Partnership Law 2003 as amended (“Partnership Law”) defines a Partnership as “the relationship which subsists between persons carrying on a business in common with a view for profit”. Corporate entities are included in the scope of the Partnership Law, as its definition of “persons”, includes “any juristic person or any aggregate of persons possessing legal personality”.

All limited Partnerships have to be registered at the Limited Partnership Registry of Lagos State, which became operational with the appointment of a Registrar of Limited Partnerships by the Lagos State Government in June 2002.

### Foreign Companies Doing Business in Nigeria

The incorporation and operation of companies in Nigeria is regulated by CAMA. CAMA is unequivocal in relation to the capability of foreign companies to carry on business in Nigeria. Section 54 of CAMA mandates foreign companies which intend to carry on business in Nigeria to “take all steps necessary to obtain incorporation as a separate entity in Nigeria for that purpose”<sup>4</sup>. Until it has been incorporated, a foreign company is prohibited from:

a. Carrying on business in Nigeria;

- b. Exercising any of the powers of a registered company; and  
c. Having a place of business or an address for service of documents for any purpose (other than the receipt of documents as matters preliminary to incorporation).

The implications of the wordings employed by CAMA should not be understated; CAMA refers to “incorporation as a separate entity”, not “registration of an entity” which has a wider meaning. Black's Law Dictionary defines incorporation as “the formation of a legal corporation.” Therefore, the implication of the provisions of CAMA is that without any exemption in place, any foreign entity must first become a legal corporation in Nigeria, before it can proceed to validly do business.

### “Doing Business” Defined

The issue of doing business was considered in the case of Ritz Pumpenfabrik GmbH & Co Kg vs. Techno Continental Engineers Nig. Ltd.<sup>5</sup> where the Court of Appeal adopted the definition in Black's Law Dictionary (5th edition) of doing business i.e. to conduct, prosecute

Definition of doing business ... doing a single act with the intention of starting a series of such acts...

or continue a particular vocation or business as a continuous or permanent occupation. Acts of repetition or holding oneself out to be engaged in the selling of goods and services could also amount to doing business.

Black's Law Dictionary in its 9th edition subsequently expanded the definition of doing business to include a single action i.e. “doing a single act with the intention of starting a series of such acts, especially a non-resident's participation in sufficient business activities in a foreign state to allow the state's courts to exercise personal jurisdiction over the non-resident”.

Therefore, in order to avoid breaking Nigerian law, any foreign entity without the applicable exemptions must first become a legal corporation in Nigeria, before it can proceed to enter into and register a Partnership and indeed validly do any other business.

### Status of Limited Liability Partnerships Outside Lagos State

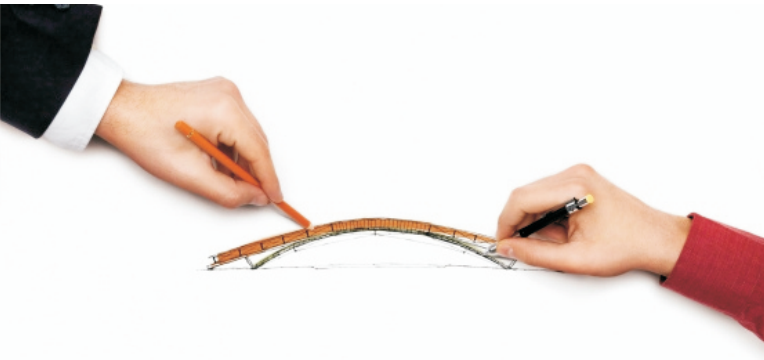
The English Act makes no mention of limitation of liability. Indeed, one distinct difference from the Partnership Law is that under the English Act, every partner in a firm is liable jointly with the other partners, for all debts and obligations of the firm incurred while he is a partner. After his death his estate is also severally liable in due course of administration for such debts and obligations, so far as they remain unsatisfied.

3. See <<http://www.lagosstate.gov.ng>>

4. In certain situations, CAMA allows foreign companies to obtain exemption from incorporation.

5. (1994) 4 NWLR 598





Taking cognizance of the locality of the Partnership Law, one must be mindful of the fact that Federal law supersedes State law. Therefore any part of the Partnership Law which conflicts with CAMA is automatically void. Regarding the English Act, as a Statute of General Application it is arguably a Federal law. However, within Lagos State the Partnership Law would prevail as such Statutes are in force so far only as local laws shall permit. Outside Lagos State however, while States are not obliged to enforce the local laws of other States, the principle of comity will be applied if necessary.

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In light of this, there is the strong likelihood (though as yet unproven in the Court of law) that contracts between a Limited Liability Partnership (LLP) and an entity outside Lagos State will be held valid and enforceable as the LLP will be treated as a juristic person and will therefore have legal capacity to contract.

*6. Although the principle is typically used in relation to sovereign nations, it is opined that it should be applicable, as a local state has its individual laws and requirements, much like a sovereign nation.*

## Conclusion

Conclusively, foreigners are not at liberty to use a Partnership as a vehicle for running a business in Nigeria. Until an offshore entity or a foreign individual incorporates a company in Nigeria, such entity/individual would be prohibited from registration under the Partnership Law. Such registration would constitute doing business in Nigeria and would leave both the entity or individual (and its officers/agents) open to sanctions under CAMA. Therefore, it can be concluded that compliance with CAMA is the only doorway through which offshore entities and foreigners can legally do business in Nigeria.

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