

Deriving the Best out of the Attributes of Both a Partnership and a Company as a Business Entity -The Limited Liability Partnership (LLP)

A partnership can simply be defined as a relationship that subsists between persons carrying on business in common with a view of profit. In a general partnership governed by the Partnership Act (Cap 29) every partner is liable jointly with the other partners for all debts and obligations of the partnership incurred while he is a partner. Every partner is also an agent of the firm and his other partners for the purpose of the business of the partnership hence the acts of every partner carried out in the usual course of business of the partnership bind the partnership and the partners therein. These aspects of a general partnership can in certain instances make such partnerships less than ideal as an entity for conducting a business. The LLP is a corporate entity that integrates the organizational flexibility of a partnership with the limited liability status similar to that accorded to a limited liability company in order to redress some of the drawbacks of the general partnership.

In Kenya, registration of LLPs only became possible upon the enactment of the Limited Liability Partnership Act, 2011 which commenced operation on the 16th of March 2012. Partners in a LLP may be natural persons or legal persons and may be further classified into 2 classes firstly, general partners who have full management and control of the partnership business and accept full personal responsibility for the partnership liabilities. Secondly LLPs will have limited partners with no personal liability beyond their investment in the partnership. A sample LLP may

therefore have a number of limited partners whose main role is the provision of financing for the venture in addition to the general partners engaged in the running of the business. Such an LLP serves to limit the exposure and liability of the limited partners while providing a vehicle by which operating profits and losses can be paid out to the said partners.

The LLP has the following advantages

- a) A registered LLP is a legal entity distinct from the partners. Hence, it has a right to sue or be sued in its own name.
- b) For limited liability partners it limits the amount that may be recovered from such a partner.
- c) It is easy to establish as an LLP requires less paperwork in comparison to forming a company hence suitable for small enterprises.
- d) It affords the partners flexibility with regard to the internal structure adopted for the running of the partnership. Unlike the case of a company there are no mandatory statutory requirements on the procedure for convening board meetings, general meetings or making resolutions. This allows for informal and flexible decision making in that meetings can be convened at short notice and decisions reached expediently based on informal unanimous assents.
- e) It affords partners perpetual existence irrespective of changes in partners which

means that the existence, rights and liabilities of the partnership are not distressed by a change in the partners.

- f) It is an internationally renowned form of business.
- g) It has no requirement of minimum capital contribution
- h) Personal assets of the partners are not exposed except in case of fraud. Where the LLP and its partners have acted with intent to defraud creditors or have acted in a fraudulent manner then the liability of the LLP and such partners for such debts and other liabilities will be unlimited.
- i) Easy to dissolve or wind-up
- j) No requirement to maintain statutory records except Books of Accounts
- k) Lower cost of formation (Compared to a company)
- l) It affords investors an easier way to benefit from the profits and losses of a business without getting actually involved in the business. This makes it ideal for investment by venture capitalists.
- m) Allows for direct ownership and management unlike companies which by statute are required to have a multi-step corporate ownership process where the shareholders hold stock in the company and elect a Board of Directors to make executive decisions and manage the company.

- n) Affords privacy to partners. In Kenya there is no mandatory requirement for the production of the Partnership Agreement prepared by the partners to the Registrar hence the management and running of their affairs remains private.

The LLP has the following disadvantages

- a) The flexibility LLPs are accorded may be open to abuse when partners make decisions based on personal interests and not the interests of the partnership as a whole.
- b) The LLP cannot raise funds from Public
- c) Under some cases an act of the partner without the other may bind the LLP and liability still extend to personal assets of the general partners.
- d) The non-separation of Management from owners

Registration of an LLP

A minimum of 2 persons are required to form an LLP. An LLP can be created by registering it as a new entity or converting an existing general partnership firm into an LLP (this is provided for at Section 24 and the 2nd Schedule of the LLP Act) or converting a private company into an LLP (this is provided for at Section 25 and the 3rd Schedule of the LLP Act).

In an LLP the relationship between the LLP and its partners and among the partners themselves is

regulated by an LLP Agreement prepared by the partners. An LLP agreement should cover the following aspects of the LLP namely the management of its day to day affairs, the decision making process of the LLP, the capital contribution required of members, the division of the members profits, procedure with regard to the distribution of profits, effecting changes to membership, dispute resolution, termination of the LLP and procedure for the amendment of the LLP.

The following matters should be taken into consideration with regard to the operations of LLP:-

1. The LLP Act at Section 7(2) requires a LLP to acquire and maintain a common seal that bears its name and to use the seal for the execution of all documents that under the law require to be sealed.
2. The right of a partner to share profits or losses of the LLP is transferable and may be transferred in whole or in part by any partner (Section 15 of the LLP Act).
3. Section 27 of the LLP Act requires a LLP to have at least one manager who should be a natural person and over the age of 18 years. The LLP must lodge particulars of its manager with the Registrar of LLPs and such manager is

accorded certain statutory obligations which are

- (i) The obligation to annually lodge with the Registrar of LLPs a Declaration that as at the date when the declaration is lodged the LLP is either solvent or insolvent (Section 29 of the LLP Act)
- (ii) Ensuring that no invoice or other documents relating to the Partnership business is issued unless it bears the name and registration number of the partnership together with a statement that the partnership is registered as a limited liability. (Section 32 of the LLP Act)
- (iii) Whenever a change occurs in the LLP to lodge with the Registrar within 14 days of the change a statement specifying the nature and effective date of the change (Section 33(1) of the LLP Act)

From the foregoing the LLP Act is laudable having created an option of a new corporate entity the LLP that counters the drawbacks of the general partnership which offered only unlimited liability to partners and those of the company which came with rigid statute based governance.