

## Legal Alert ? June 2012 ? **Limited and General Partnerships**

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### Introduction

Partnership is one of the most common forms of establishing a business in Nigeria. The culture of sustaining long-term Partnerships that thrives and outlive their original partners have however remained mostly a mirage in Nigeria.

This educational Alert is our contribution to the enlightenment process on the provisions of the Partnership Law and how they may affect your business, if you elect to go into one (or are already in a Partnership).

### What is a Partnership?

Many States in Nigeria, pre and post independence, adopted the English Partnership Act as a statute of general application. Some States like Lagos State adopted this Law with some modifications.

The Lagos State Partnership Law describes a Partnership to be the relationship which exists between people, carrying on business otherwise than as a limited liability company or incorporated trustees, with the sole objective of making and sharing profits.

The Lagos State Partnership Law preserves the rules of equity and common law already applicable to partnerships provided that these rules are not inconsistent with or in conflict with the express provisions of the Lagos State Partnership Law.

### What is a Limited Partnership?

What is a limited partnership holds the most curiosity to a twenty-first century entrepreneur exploring the best way(s) of structuring his or her business(es).

The Lagos State Partnership Law provides that a Limited Partnership must not consist of more than twenty (20) people, and must have one or more General partners who shall bear the debts, liabilities and other obligations of the Partnership.

Unlike a General Partner, a Limited Partner is not liable for the debts of a Partnership beyond the amount that he or she has contributed to own equity in the Partnership. Where however, a Limited Partner draws out or receives back any portion of his equity contribution to a Partnership, such Limited Partner shall in such circumstance be liable for the debts and other related obligations of the Partnership up to the amount so drawn out or received back.

## Registration of Limited Partnerships?

Every Limited Partnership that carries on business in Lagos State is obligated to register such a Limited Partnership with the Registrar of Limited Partnerships in Lagos State.

The implication of the failure of a Limited Partnership not registering such a partnership while carrying on business in Lagos State is that each and every Limited Partner will be deemed in Law to be a General Partner liable for the debts and other obligations of the Partnership.

Any changes in the registration details of a Limited Partnership must be communicated and registered with the Registrar of limited Partnerships in Lagos State within seven (7) days of the consummation of such change. The penalty for default in communicating and registering the change, to/with the Registrar of Limited Partnerships, is a fine, which on conviction will not exceed N2.00k (Two Naira) for each day during which the default continues.

Also, any change in the status of a General Partner or in the assignment of the equity of the General Partner to a Limited Partner must be immediately advertised in the Lagos State Government Gazette; and until such change is advertised in a Gazette, the change or arrangement or transaction shall have no effect in Law.

## Roles of Limited Partners

A Limited Partner shall not take part in the day-to-day management of a partnership's business or businesses. A Limited Partner shall also not have the power to bind the Partnership and where he breaches any of these provisions, the Limited Partner shall be liable for the debts of the partnership as though he were a General Partner.

A Limited Partner or his appointed agent however has the right to inspect the books of the partnership, with its operational state and prospects, and to advise the Partners managing the partnership business accordingly.

## The Powers of General Partners

Every General Partner is an agent of the Partnership and of his other Partners ("the firm"); and therefore can bind himself and his Partners with regard to the business of the firm unless there is a clear intention or agreement that a General Partner has no authority to act for the Firm in a particular matter or matters.

Where one Partner pledges the credit of the Firm for a purpose which is unconnected with the Firm's ordinary course of business, the Firm shall not be bound by such pledge unless the Firm specially authorised the Partner concerned to pledge the credit of the Firm.

## Liability of Partners

General Partners are jointly liable for all the debts and other obligations of the Firm incurred while they remain Partners of the Firm. On the death of any Partner, he or her estate shall be

severally liable for such debts and obligations so far as they remained Partners when those obligations accrued, and the debt remained unpaid after the demise of such a Partner.

Where a General Partner acting within the scope of his or her authority, or the Firm itself, receives third party income or property, and misappropriates or misapplies such income or property, the Firm itself and each General Partner shall be jointly and severally liable for the injury and loss suffered by the third party.

Also, any person who represents himself or holds himself out to members of the public as a Partner of a Firm shall be liable as a General Partner to any person who relies on such misrepresentation and suffers a loss in consequence thereof.

The liability for "holding out" however does not apply to actions that occur after the demise of the "holding out Partner" or to the deceased person's estate.

New Partners admitted into an existing Partnership are not liable to the creditors of the Firm for anything done before the new Partner joined the Firm. In equal measure, a Partner that retires from a partnership does not by his retirement cease to be liable for the partnership's debts incurred while he or she was still a Partner of the Firm except if there is an express agreement with the remaining Partners and Creditors discharging the retiring partner from these kinds of obligations.

#### Corporate Governance & Partnerships

**DUTY TO ACCOUNT.** Each Partner is bound by Law to render to the other Partners of the Firm a true and honest and full account, with other materials, on all aspects of the Partnership business. Each and every Partner is also required to account to the other Partners of the Firm for any benefit or private profit derived by such Partner from any partnership business or related business, or from the use of the partnership property, name or business connections, without the consent or knowledge of the other Partners of the Firm.

**DUTY NOT TO COMPETE.** Each and every Partner is also obligated not to compete with the Firm by carrying on any business of the same kind or nature as that or those carried on by the Firm. Where a Partner breaches this rule, such a Partner shall be personally liable to account to and pay over to the other Partners all the profits and benefits made by him or her from such similar competing business.

#### Dissolution of Partnerships

Subject to any express agreement, a Partnership can be dissolved in any of the following ways:-

- (a) If it is entered into for a fixed term, by the expiration of that term.
- (b) If it is entered into for a single venture or undertaking, by the completion or termination of that undertaking or venture.
- (c) If it is entered into for an undefined period of time, by any of the Partners giving notice to the

other Partners of his intention to dissolve the partnership or retire from the partnership.

A Partnership could also be dissolved by the death, bankruptcy or charge of the assets of a Partner for such a Partner's private debts.

Other grounds for dissolving a Partnership include where a Partner is adjudged to be a lunatic or to be a person of unsound mind; or where his conduct is prejudged by a Court of Law to be to the prejudice of the entire partnership business.

A Notice of the dissolution of a Partnership published in the Lagos State Government Gazette, and in any newspaper with wide circulation in the area of Lagos State where the Partnership carries on business shall be sufficient notice to the members of the public of such dissolution of the Partnership.

#### Partnership Property on Dissolution

On the dissolution of a Partnership, every Partner is entitled to, as against the other Partners of the Firm, have the Partnership properties applied in the payment of all the partnership debts and liabilities, with the surplus assets or income applied, after deducting each Partner's own debt to the Firm, to the payment of any winding up surplus revenue to the Partners of the Firm.

The death, bankruptcy or lunacy of a Limited Partner shall not be a ground for dissolving a Partnership unless the Limited Partner's equity in the Partnership cannot be ascertained and realised.

A Limited Partner does not have the right to dissolve a Partnership while a General Partner can, subject to the terms and conditions of the Partnership Agreement, serve notice of the dissolution of the Partnership.

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