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THE INTRODUCTION OF LIMITED LIABILITY PARTNERSHIP LAW IN LAGOS STATE OF NIGERIA AS AN ALTERNATIVE TO THE EXISTING FORMS OF BUSINESS ORGANIZATION: ECHOES OF A NEW DAWN?

Nkem Amadike
LLM Kingston University, London

ABSTRACT: *Lagos State in 2009 emulated developed countries like the UK and the US and incorporated the limited liability partnership law. Prior to the introduction of this form of business organization, the existing forms of business organization in Nigeria include the sole proprietorship, traditional partnership, limited partnership, private and public companies limited by shares, unlimited company and company limited by guarantee. These forms of business organization in existent before the enactment of limited liability partnership law in Lagos state were considered deficient and efficient in some areas. Of this, the introduction of a new form of organization in Nigeria that will fill in the weaknesses of the prevalent forms of business organization became a necessity. Lagos state hastily followed suit with developed countries and 'injected' the limited liability partnership model into its business law. In this paper, the limited liability partnership law will be critically examined to ascertain whether and to what extent it has fulfilled the hopes of its advent. The paper reached a conclusion that undoubtedly the limited liability partnership model has provided some benefits but nevertheless will encourage malpractice among the partners. By and large, whilst the paper proposes the incorporation of limited liability partnership in other states in Nigeria, it also advocates for a regulatory legal framework on whistle-blowing to control malpractices among the partners in a limited liability partnership.*

KEYWORDS: business organization, sole proprietorship, general partnership, limited partnership, limited liability partnership

INTRODUCTION

The relevance of business activities in the daily lives of the people goes without saying. The benefits of business activities range form profit-making, job creation, development of individual skills, improving the standards of individuals, among others, which make business activity one of the most sought endeavors by individuals in the 21st century.[1]

People seeking to embark on new business ventures usually must opt for a legal form under which to conduct business. The existing forms of business organizations available for start-up business in Nigeria prior to 2009 include the sole proprietorship, general partnership, limited partnership, private company limited by shares, public company limited by shares, unlimited company and company limited by guarantee. In 2009 the limited liability partnership law was incorporated into

[1] M C Okany, *Nigerian Commercial Law* (Africana First Publishers Plc 2009) 585

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the laws of Lagos state as alternative to the weaknesses of the existing forms of business organizations. Lagos state followed suit with developed countries like the US and the UK in incorporating the law of limited liability partnership.

This paper seeks to critically examine the provisions and the promises of the limited liability partnership law to determine the extent they fill the loopholes of the existing forms of business organizations prior to its enactment. The primary questions the paper will seek to answer are to what extent are the provisions of the limited liability partnership law efficient in remedying the shortcomings of the existing forms of business organizations prior to its enactment? Has the limited liability partnership law taken care of the deficiencies of the pre-existing forms of business organization or is it an old wine in a new bottle? Is it necessary for the National Assembly to enact a Limited Liability Partnership Act that will be applicable in all the thirty six states of the Federal Republic of Nigeria? Efforts in providing answers to these questions run through the paper in various forms.

The paper concludes that to some extent the limited liability partnership law has contributed in solving the problems of pre-existing forms of business organization but nevertheless has its shortcomings, in particular, the encouragement of malpractice among partners. The paper suggests that the National Assembly should enact the Limited Liability Partnership Act and the State House of Assembles of various states to incorporate the limited liability partnership law into their respective laws. The study also proposes that in adopting the law on limited liability partnership there is the need incorporate a legal framework that would encourage whistle-blowing in limited liability partnership to prevent malpractice among partners.

The Existing Legal Forms of Business Organizations Prior to the Enactment of the Limited Liability Partnership Law by the Lagos State

The legal forms of business organization prevalent in Nigeria before the State House of Assembly of Lagos State enacted the limited liability partnership law are sole proprietorship, general partnership, limited partnership, private company limited by shares, public company limited by shares, company limited by guarantee and unlimited company. These legal forms of business organizations are subsequently examined below in the light of their strengths and weaknesses.

Sole Proprietorship

The sole proprietorship is a legal form of organization in which a business is owned by one individual and not by a separate legal entity. A sole proprietor conducts a business or carries on a profession personally without partners.[2] A professional who carries on a business personally is usually referred to as a 'sole practitioner' whilst a sole proprietor who conducts a business personally is described as a 'sole trader'.[3] The personal affairs of the sole proprietor are not legally separated from the business under a sole proprietorship and the sole proprietor bears the direct responsibility for all the debts incurred whilst carrying on the business or profession.[4]

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[2]H Y Bhadmus, *Badmus on Corporate Law Practice* (3rdedn, Chenglo Limited 2013) 96
[3] Derek French, Stephen Mayson and Christopher Ryan, *Company Law* (32ndedn, OUP 2015-16)
[4]Orojo J Olakunle, *Company Law and Practice in Nigeria, Vol 1 Commentary* (Butterworths 2006) 4

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The sole proprietor does not necessarily need to register the business if he operates the business under his surname or full name. The substantive law of contracts, torts and agency regulates the sole proprietorship including the personal liability of the sole proprietor for the responsibilities of the business.[5] Taxation of sole proprietorship is subject the Personal Income Tax Act which provides for the direct assessment of the tax liabilities of the business on the sole proprietor. In other words, sole proprietorship as business entities do not pay income tax instead the personal income tax is levied on the share of profit of the owner after the profit or loss made by the business has been distributed; the proprietorship itself is not subject to tax but the profit derived from the proprietorship is chargeable to tax. That is to say, a sole proprietorship avoids double tax effect because only the proprietor, not the proprietorship have tax liabilities.[6] The beneficial effect of the single tax can be illustrated:

> Chike forms a sole proprietorship. The sole proprietorship earns ₦500, 000 of taxable income for the taxable year. Chike files a return of ₦500, 000 incomes from the proprietorship. The ₦500, 000 is subject to individual tax rate applicable and thus creates a tax liability. Assuming Chike and Yemi formed a company, Chike and Yemi Ltd, as equal shareholders. The company earns ₦500, 000 of taxable income for the taxable year. Because the company is a separately taxed legal person, the company will pay tax as a separate person at the applicable tax rate. Then if the company distributes money after tax-earnings to Chike and Yemi as a dividend, Chike and Yemi must pay tax on the dividends. Thus, both the company and the shareholder are chargeable to tax compared to sole proprietorship where the sole proprietor only is chargeable to tax.

The advantages of sole proprietorship are that the sole proprietor has sole authority in conducting the business; in sole proprietorship there is a direct relationship between the sole proprietor and employees, if any; the sole proprietor can contribute cash or property to the business and can withdraw money or property from the property without tax consequences; sole proprietorship creates room for the sole proprietor to have maximum enjoyment of the profits arising from the business; the sole proprietor can make quick decisions in sole proprietorship; and sole proprietorship is not subject to double tax effect.

The disadvantages of sole proprietorship are that in sole proprietorship, the business is liable to collapse easily since there is no limit to the liability of the sole proprietorship; the business ends with the death of the owner in sole proprietorship; the risk is borne alone by the sole proprietor; and the sole proprietorship does not easily attract capital for the growth of the business.

General Partnership

[5] Chris C Nwigwe, *Introduction to Company Law and Practice* (Mountcrest University Press) 15
[6] The Personal Income Tax Act (as amended) 2011 s 1

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General partnership in Nigeria is legally regulated by the British Partnership Act 1890, a statute of general application in Nigeria,[7] the Partnership Law of the Western States[8] and the Partnership of other states.[9] This paper explores the Partnership Act 1890 and under the Act the concept of partnership is defined as 'the relation which subsists between persons carrying on a business in common with a view of profit.'[10] The fundamental characteristics of a partnership include that a business must exist; the business must be with regards to an end which is profit-making; the business must be conducted by two or more persons; and there must be an agreement to form a partnership which could be oral, written, by conduct or by estoppels.[11] In the case of *Henshaw v Roberts and Ors*,[12] a business syndicate was formed by the plaintiff with the three defendants and they all paid amount into a central fund for the expenses of the management. A written agreement was executed by the syndicate with intent to form a partnership within a specified time. The partnership was not formed within that time although the association continued. An action was later brought by the plaintiff seeking for a declaration by the court that no partnership existed between him and the defendants. The court held that in an absence of any partnership agreement, no partnership do exist between the parties.[13]

The existence of a partnership largely depends on the intention of the parties, what they agreed on and the court will usually consider the facts and peculiar circumstances of each case and the conduct of the parties. Under the Partnership Act 1890[14] a partnership is likely to be but not necessarily created by the following facts and relationships: joint tenancy, tenancy in common; joint property, common property; the receipt of a share of the profit; recovery of debts from profits; sharing of gross returns; remuneration of servant or agent from profits; receipt of a portion of the profit in consideration of sale of goodwill; annuity that is given to a child or a widow of a deceased partner; loan used in facilitating a venture following an agreement to reimburse the creditor from profit or a rate of interest in variation with the profit.[15]

[7] Statutes of general application in Nigeria refer to statutes that were in force in England on 1st January, 1900 not after that date. Thus, any statute made after that date is not a statute of general application in Nigeria. These statutes only apply in Nigeria, if and only if the Nigerian legislatures have not enacted any law in that area. Where the National Assembly or State House of Assembly goes ahead to enact a law in that same field, then the Act of the National Assembly or Law of the State House of Assembly applies.

[8] The Western states in Nigeria including Oyo, Ogun and Ondo states are regulated by the Partnership Law 1959. Bendel and Lagos states enacted Partnership Laws in 1976 and 1973 respectively based on the Western Region Law. Recently in 2009 Lagos state had also enacted the Partnership (Amendment) Law which is significant for introducing the Limited Liability Partnership model.

[9] Other states apart from the Western states have also enacted a partnership law. For instance, Imo State has the Partnership Law 1994, though not all the states in Nigeria have legislated on the partnership model.

[10] The Partnership Act 1890 s 1 (1); *Ugorji v Uzoukwu* (1972) 1 All NLR (Pt 1) 289; *Balogun v Adebayo* (1975) NNLR 54, 57; see also the Partnership Law (Amendment) of Lagos State 2009 s 3(1)

[11] Ehi Ohio, *Modern Business Law in Nigeria* (Lulupath International Limited 1994) 196

[12] *Henshaw v Roberts and Ors* (1966) NNLR 158; *Uredi v Dada* (1988) 1 NWLR (Pt 69) 237;*Abbapesiwa&Anor v Margaret Krakue&Ors* (1943) 9 WACA 161

[13] Ibid

[14] The Partnership Act 1890 s 2

[15] Ibid

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How the existence of a partnership can be ascertained has been expressed in some few cases. In *Oginni v Oginni*[16] the appellant and the respondents were among the membership of a musical band. It was agreed that firstly, the properties including the musical instruments and the vehicle used would be jointly owned; secondly, the ownership of the profit and money sharing would be on equal basis among the members; and thirdly, should anyone leave the band, he would receive as a matter of right, one-third of the entire thing they owned as his own share. The appellant was subsequently told by the respondents that the agreement was not operative. The appellant later left the partnership and brought an action seeking for the dissolution of the partnership, an account and distribution of the assets.[17] The court held that no partnership existed between the parties and the agreement merely declares the rights of the parties with regards to the property of the band. Upon an appeal, it was held that a partnership between the parties had not been created by mere agreement on co-ownership of the instruments of the band and the issue of rendering account was untenable. The Court of Appeal clarified that co-ownership of property does not in itself create a partnership among the co-owners. The issue on whether or not co-owners of property are also partners will depend on the evidence and the manner in which the property, the proceeds and income arising have been dealt with.[18]

Elsewhere in *Cox v Hickman*[19] there was an agreement with the debtor and the creditors for the creditor to supervise the trade being carried on by the debtor on the ground that the creditors will be repaid periodically from the profits flowing from the trade which will be returned exclusively to the debtor. The court held that the creditors were not partners to the business in as much as they did not carry on the trade as agents of the debtor. There exists no mutual agreement between the parties to trade as partners.[20] Similarly, in *Cox v Houlson*[21] it was agreed that the defendant will manage and provide a theatre, paying for the lighting and playbills whilst Mr Mills would provide the scenery and a performing company. The defendant was to receive 60% of the gross takings whilst Mills was to receive 40%. Following a suit by an injured plaintiff, the court held that no partnership existed between the defendant and Mr Mills.[22] Also in *Walker v Hirsh*[23] the plaintiff was a clerk in the firm who agreed to provide £180 and one-third of the net profits and losses. The court held that the plaintiff remained a servant and was not a partner, thus, he cannot take a move as regards winding up the firm.[24] In *Ismail v Osman*[25] the court also held that the advance of money to a partnership only makes one a creditor rather than a partner in the firm.[26]

[16]*Oginni v Oginni* (1975)(2) ALR Comm 93
[17] Ibid
[18] Ibid
[19]*Cox v Hickman* (1860) 8 HL Cas 268
[20] Ibid
[21]*Cox v Coulson* (1916) 2 KB 177; *Lyon v Knowles* (1863) 3 B & S 556
[22] Ibid
[23]*Walker v Hirsh* (1884) 27 Ch D 460
[24] Ibid
[25]*Ismail v Osman* (1966) (1) ALR Comm 471
[26] Ibid

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The creation of partnership in Nigeria can be done orally, in writing or by deed or through the conduct of the parties or by estoppels. In *S Thomopulous and A Thomopulous v John Mandillas*[27] a partnership that existed based on the conduct of the parties was upheld by the court. In *Ojemen v Okoafuda*[28] there was an oral agreement by the plaintiff and the defendant to set up a cinema that was to be run for their mutual benefit. They both contributed financially in purchasing the relevant equipment. No formal agreement was made neither was the total amount of capital required from a partner agreed on. A document was only signed by the parties in which they set out the amount they already contributed.[29] The court held that in the light of the facts there was a partnership existing between the parties and the defendant has a duty to account as a partner. By and large, where no formal document is made, the mode of dealing by the partners will serve as evidence in establishing a partnership.[30]

In forming a partnership, the partners are not required to be more than 20 (twenty), except a co-operative society, firm of legal practitioners or accountants. An association consisting more than 100 persons claiming to be a partnership was considered illegal in the case of *Akinlose v AIT Co Ltd*.[31] A partnership must be registered with the Registrar of Business Names where the name of the partnership does not reflect the true surnames of all partners without any addition other than their true forenames or initials of the forenames.[32]

The partnership property must be used exclusively in achieving the aims of the partnership and in line with the partnership agreement. Partnership property consists of property originally brought into the partnership stock; property acquired through purchase or otherwise, on behalf of the partnership or for the purposes and in the ordinary course of the business of the partnership; and property bought with the money of the partnership.[33] In *Wray v Wray*[34] the deceased was in a partnership with his two sons in which they carried on business under the partnership name of William Wray. Upon his death, his widow was joined as a partner whilst the old name of the partnership was retained. A house was later purchased and paid for from the 'purse' of the firm and was transferred to William Wray. The court held that the house was partnership property and owned by the four partners as joint tenants.[35] In another case, *Aina & Ors v Clay Industry (Nig) Ltd*[36] it was held that where goods bought for a joint adventure by two people and were entirely paid for by one of them whilst skill and labor were contributed by the rest in return for a share of profits, a partnership must exist to such a nature that the gross are property of the partnership.[37]

[27]*Thomopulos& A Thomopulous v John Mandilas* (1944) 10
[28]*Ojemen v Okoafuda* (1977) NCLR 192
[29] Ibid
[30] Ibid
[31]*Akinlose v A I T Co Ltd* (1961) WNLR 503
[32]Ibid (n1)
[33] Ibid (n14) ss 20-21
[34]*Wray v Wray*(1905) 2 Ch 349
[35] Ibid
[36]*Aina & Ors v Clay Industry (Nig) Ltd*(1977) 10 CCHCJ 2305
[37] Ibid

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The rights and duties of partners and the respective interests they have in the partnership property would depend primarily on agreement whether express or implied. However subject to any agreement or a change by consent[38] there are some rules that are applicable.[39] Each of the partners is entitled to equal share of the capital and must make equal contribution towards losses whether of capital or otherwise.[40] The partners are not entitled to interest on capital prior to ascertaining the profits. The partners are not automatically entitled to remuneration for acting in the business of the partnership even where the partners have not worked equally.[41] Every partner can engage in managing the business of the partnership.[42] Prior to introducing anybody as a partner, the consent of all existing partners must be sought.[43] Issues regarding the ordinary matters of the partnership business may be resolved by a decision of the majority of the partners in so far as they acted in good faith, but the nature of the partnership business cannot be changed without the consent of all the partners.[44] A partner cannot be expelled by a majority of partners except such a power is provided in the articles.[45] Each of the partners has an entitlement to be indemnified by the firm as regards the payments he made and liabilities he incurred whilst engaging in the ordinary business of the firm; or any act or omission necessary for preserving the business or property of the partnership. Any partner who in relation to the purpose of the partnership made advance beyond the amount of capital agreed by him to subscribe has an entitlement to an interest on the amount at five percent per annual from the date the advance was made. The books of the partnership are kept at the place of the business of the partnership accessible to all the partners and the partners are under a duty in rendering accurate account and full information of all things concerning the partnership to the partners or their legal representatives. A partner is under a duty[46] to account to the firm any benefit derived from any transaction relating to the partnership without the consent of other partners[47] and to avoid any form of competition with the firm.[48]

For the purpose of the partnership business, each partner is an agent of the firm and his other partners. Any act or omission by a partner in the ordinary course of business of the partnership binds the firm except the person does not have the authority to act for the firm; and the third party either knows the person does not have the authority or does not know or believe him to be a

[38] Ibid (n14) s 19
[39] Ibid s 24
[40] *Halaby v Halaby & Anor* (1950-51) 13 WACA 180
[41] *Thadani v Hotchand* (1966) NCLR 274
[42] *Ozodo v Okwuniazor & Ors* (1961) 3 ENLR 29
[43] *Byrne v Reid* ((1902) 2 Ch 735
[44] *Bello v Dairo v Alowonle* (1968) (2) ALR Comm 118; *Law v Law* (1905) 1 Ch 140; *Floydd v Cheney* (1970) 1 All ER 446
[45] *Ozodo v Okwuniazor & Ors* (1961) 3 ENLR 29
[46] *Bentworth Finance (Nig) Ltd v Adesina&Ors* (1968) (1) ALR Comm 175; *Balogun v Adebayo* (1975) NNLR 54, 57; *Adeleye v Akin-Olugbade* (1986) 6 SC 268; *Adesina v Federal Public Trustee &Ors*(1972) 1 All NLR 269
[47] Ibid (n14) s 29
[48] Ibid s 30

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partner.[49] The members of the partnership are jointly and severally liable for the torts or wrongs of each of the partners committed in the ordinary course of business of the partnership.[50]

Where a general partner makes an application for the dissolution of the partnership the court may make an order for its dissolution if a partner is not mentally fit; permanently incapacitated; conducts himself in a way prejudicial to the conduct of a partnership business; consistently breaches the partnership agreement; the business can only be conducted at a loss; dissolving the partnership is just and equitable.[51]

Subject to any contrary agreement by the partners, a partnership is dissolved where it is created for a fixed term, at the expiration of that term; created for a single adventure or undertaking, at the termination of that adventure or undertaking; entered into for an unspecified period by any partner giving notice to the other of his intention to have the partnership dissolved. In the latter case, dissolution takes place from the date mentioned in the notice and in the absence of any specified date, from the time the notice was communicated.[52]

The death or bankruptcy of a partner can lead to the dissolution of the partnership or at the option of other partners where a partner charges his shares in the partnership property with the payment of his separate debt.[53] A partnership is also dissolved if the objective for conducting the business of the partnership is illegal.[54]

Following dissolution, the authority of each partnership to bind the firm subsists so far as it is relevant for the winding up of the business but not otherwise. The partnership property must be applied in payment of the debts and liabilities of the partnership and the surplus assets applied in paying what is due to the partners and any partner can apply to court with regards to this.[55] In distributing the assets following a dissolution, losses and deficiencies of capital are paid, first from the profits of the partnership, next from the capital and lastly, where necessary from the individual contribution by partners in the proportion of their entitlement to share profits. To distribute the surplus assets, these are applied firstly, in satisfying the debts and liabilities owed to third parties; secondly in repaying all advances made by the partners to the partnership; thirdly in refunding the cash partner his share of the capital; and lastly dividing the ultimate residue, if any, among the partners in the proportion by which the profits were shared.[56]

Taxation of partnerships is subject to the Personal Income Tax Act which requires the direct assessment of the tax liabilities of the business on the partners. Partnership as a business entity do not pay income tax rather the Personal Income Tax are charged on the share of profits of the

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[49] Ibid ss 5-8
[50] Ibid ss 10, 12
[51] *Awolaja v Shenu* (1972) 1 NMLR 113
[52] *Emiansegen v Stephen &Ors* (1985) 3 NWLR (Pt 11) 54
[53] *Ikuemesi v Cole* (1962) LLR 87
[54] Ibid (n14) s 34
[55] Ibid ss 33-44
[56] *Chidiak v Laguda* (1964) 1 All NLR 160

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partners after the distribution of profit or loss made by the business. Differently put, partnership as a business entity is not chargeable to tax what is liable to taxation is the profit from the partnership; a double tax effect is not applicable to partnership in that only the partners not the partnership are liable to pay tax.[57] The advantage of single tax effect under partnership can be illustrated as follows:

> Chike and Yemi form a partnership as equal partners. The partnership yields ₦500, 000 of taxable income for the taxable year. Chike and Yemi file a return of ₦500, 000 incomes from the partnership. The ₦500, 000 is subject to individual tax rate applicable and thus creates a tax liability. Assuming Chike and Yemi formed a company, Chike and Yemi Ltd, as equal shareholders. The company earns ₦500, 000 of taxable income for the taxable year. Because the company is a separately taxed legal person, the company will pay tax as a separate person at the applicable tax rate. Then if the company distributes money after tax-earnings to Chike and Yemi as a dividend, Chike and Yemi must pay tax on the dividends. Thus, both the company and the shareholder are chargeable to tax compared to partnership where partners only are chargeable to tax.

The advantages of general partnership are that a partnership is not subject to double tax-effect; in a partnership, there is a combination of skills and abilities making the management more efficient; the business of a partnership does not necessarily ends with the death of a partner; the risks and liabilities are shared among the partners reducing individual burden; in a partnership the source of fund is magnified.

The disadvantages of general partnership include firstly, the adverse consequence of easy termination. In the winding up process, the capital accounts of the parties are reconciliated. During reconciliation, the profits and losses of the partnership are influenced by the changes in the value of the property used in the partnership business. As a requirement, the property will be liquidated and the proceeds from liquidation will determine whether there is a profit or loss arising from the sale. Following a termination the real value of the property is likely to fall below its real value during the formation of the partnership, thereby occasioning loss among the partnership.

The problem of easy termination can be illustrated for better understanding. Assuming A and B agree to form a partnership. A contributes equipment, lets say a vehicle for the partnership business valued by the partnership agreement at ₦500, 000. 00 and B made no contribution but agreed to provide the skill and work full time for the partnership business. Three months later, A notified B that it was a bad idea going into business and they both agreed to dissolve the partnership.

In the above scenario by default- that is, in the absence of any agreement or prior specific speculation contained in the partnership agreement- what will the parties own? From the understanding of a layman, it is likely to expect that A will receive the vehicle back and both parties will walk away. However, this is not obtainable in practice. Following the termination of

[57] Ibid (n6) s 1

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the partnership comes the winding up process. The winding up process involves the reconciliation of the capital accounts of the partners. During reconciliation, changes in the value of the property since formation will affect the profits and losses of the partnership. The vehicle owned by A will be liquidated and the proceeds from liquidation will determine whether the sale comes with a profit or loss. Assuming the partnership realized ₦300, 000.00 from the sale (owing to the depreciation in value), it has suffered ₦200, 000.00 loss which the partners are to share equally.

The last and major problem of general partnership is that the issue of vicarious liability. In general partnership, the general partner is liable for the malpractice of another partner and for contract signed by a partner on behalf of the partnership.[58] The problem of vicarious liability in general partnership was aptly described by Chris Cook in the following manner:

> The traditional partnerships are very pretty useless vehicle for delivering modern general practice. Who in their right minds should volunteer to accept unlimited 'joint and several liability' for any part of modern wealth care? And how many practices have not found, at one time or another, that sharing of risk and reward that constitutes their partnership is causing is causing them financial or emotional problems with all the stress that goes with it?[59]

Limited Partnership

The English Limited Partnership Act 1907 does not apply in Nigeria since it was enacted after 1st January, 1900. The Western and Mid-Western (now Bendel) States in 1959 however did enact a Limited Partnership Law. Thus limited partnership can only be applicable in Bendel state, Lagos state[60] and the Western states for there exists no similar laws in other states of Nigeria. This study examines the Partnership Law 1959.

A limited partnership comprises 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 makes a contribution 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.[61]

From the above definition, it can be discerned that a limited partnership occupies a middle-point between a partnership and a limited company in that it is a farrago or an amalgam of limited and unlimited partnership.[62] Under the Limited Partnership Law 1959, a limited partner is not allowed

[58]Shawn Bayern, 'Three Problems (Two Solutions) in the Law of Partnership Formation' (2016) 49(3) *U MICH J L Reform* 605, 621-623
[59]Chris Cook, 'The Partnership is dead! Long Live the Limited Liability Partnership!' (2004) *British Journal of General Practice* 9622
[60] It should noted that the Partnership (Amendment) Law of Lagos enacted in 2009 which introduced the limited liability partnership also provided for the limited partnership model
[61] The Partnership Law 1959 s 46 (2)
[62] Ibid (n1) 630

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to withdraw any part of his contribution whilst the partnership subsists, or else he will be liable for the debts and obligations of the partnership up to the amount withdrawn.[63] A registered company may also be a limited partner in a limited liability partnership.[64] Like in a general partnership and unlike a company, a limited partnership is not a legal person.[65]

Unlike in a general partnership, a limited partnership 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.[66] The rules of law that applies to general partnership are also applicable to limited partnership however, some modifications also apply. 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 were a general partner.[67]

A limited partner cannot be dissolved by the death or bankruptcy of a limited partner nor can the lunacy of a limited partner lead to the dissolution, except in a case where the share of the lunatic cannot be ascertained and realized.[68] If a limited partnership is dissolved, the general partners are to wind up the affairs, except the court orders otherwise.[69]

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; where a limited partner suffers his share to be charged for his separate debt, the other partners does not have the right to dissolve the partnership; the introduction of a new person into the partnership can be done without the consent of the existing partners; and the limited partnership cannot be dissolved by the limited partner giving a notice.[70] Taxation under this form of organization is subject to the Personal Income Tax Act.[71]

The advantages of limited partnership are that the limited partner enjoys limited liability; interests in a limited partnership are easily transferable; and there is no double taxation effect.
The disadvantages of limited partnership are that the general partners in a limited partnership are jointly and severally liable for the debts of the partnership; and the limited partners cannot involve

[63] Ibid (n 61)s 46 (3)
[64] Ibid s 46 (4)
[65] M O Adesanya and E O Oloyede, *Business Law in Nigeria* (Evan Brothers Limited 1893) 255
[66] Ibid (n61) s 55
[67] Ibid s 54 (1)
[68] Ibid s 54 (2)
[69] Ibid s 54 (3)
[70] Clive M Schmitthoff and Sarre David A Godwin, *Charlesworth's Mercantile Law* (14[th]edn 1984) 280; Ejiofor, Okonkwo and Iloegbune, *Nigerian Business Law* (Sweet & Maxwell 1982) 256- 257
[71] Ibid (n6)

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in the management of the limited partnership without jeopardizing the status as limited liability partners.

Private Company Limited by Shares

A private company limited by shares is a type of company in which the liability of its members is limited by the memorandum to the amount, if any, unpaid on the shares held by them respectively. A private company limited by shares is stated to be one in its memorandum of association.[72] In the Articles of Association, a private company limited by shares must restrict the transfer of shares.[73] The total number of members of a private company limited by shares must be a minimum of two but not exceeding fifty persons, excluding persons who are 'bona fide' in the employment of the company, or were during the employment and have continued after the employment was determined.[74]If two or more persons jointly hold one or more shares in a company, they would be considered as a single member.[75] Except where the law authorizes, a private company limited by shares is not allowed to invite the public for subscription of any shares or debentures of the company; or invite the public to make periodic fixed deposits whether bearing interests or not.[76] The authorized minimum share capital required in a private company limited by shares is ₦10, 000[77] and above and the secretary of a private company limited by shares need not be a professional.[78]

Since a private company limited by shares is a company with separate personality from the members[79], its taxation is subject to the Companies Income Tax Act. The income of a private company limited by shares on which tax is levied is the profits derived by the company from whatever source.[80] It suffices to say that the shareholders are also taxed on the dividends paid to them by the company.[81]

The advantages of a private company limited by shares are that starting a private company limited by shares does not require huge amount of capital; it enjoys the benefits of separate personality that follows incorporation; the liability of the members are limited to the amount, if any, unpaid on the shares respectively held by them; private company limited by shares is a preferable option for family or friends seeking to incorporate a business; it does require the filing of Annual Financial Statement and Audit.

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[72] The Companies and Allied Matters Act 2004 s 22 (1)
[73]*Okoya v Santili* (1994) 4 NWLR (Pt 338) 256; *Berry and Stewart v Tottenham Hotspur FC Ltd* (1935) Ch. 718
[74]Ibid(n72) s 22 (3)
[75] Ibid s 22 (4)
[76] Ibid s 22 (5)
[77] Ibid s 27 (2) (a)
[78] The statute does not place any restriction or criteria as regards the qualification required for a secretary in a private company limited by shares
[79]*Union Bank of Nigeria Plc v Orharhuge* (2002) 2 NWLR (Pt 645) 498
[80] The Companies Income Tax Act 2007 s 40
[81] Ibid s 43

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The disadvantages of a private company limited by shares are that as a company, the private company limited by shares is subject to double taxation effect; a private company limited by shares cannot invite the public to subscribe for any shares or debentures of the company or make fixed periodic deposits except in circumstances authorized by the law; membership in a private company limited by shares is restricted in terms of members; the secretary in a private company limited by shares need not be qualified and this could lead to inefficiency due to an incapable capable.

Public Company Limited by Shares

A public company limited by shares is a type of company that have the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them and which states in its memorandum that it is a public company.[82] The membership of a public company limited by shares is not restricted both in terms of the maximum number and share acquisition and disposal. The minimum share capital required in a public company limited by shares is ₦500, 000 with at least 25% of the share capital allotted to the members upon incorporation.[83] A public company limited by shares must hold statutory meeting within 6 months that follows incorporation.[84] There is a restriction in appointing directors above 70 years in a public company limited by shares and the members must be given special notice prior to making such an appointment. The secretary in a public company limited by shares must be a professional and duly qualified.[85]

In as much as public company limited by shares is type of company with separate personhood from the members,[86] the taxation of this type of company is subject to the Companies Income Tax Act. The income of a public company limited by shares which is chargeable is the profits derived by the company from whatever source.[87]The dividends paid to the shareholders by the company are also subject to taxation.[88]

The advantages of a public company limited by shares are that a public company limited by shares can invite the public for subscription to its shares or debentures; the maximum number of membership in a public company limited by shares is not restricted; and the shares of a public company limited by shares can be transferred; the appointment of qualified secretary in a public company limited by shares will enable efficiency; the separate personality principle applies as the creditors cannot go after the personal assets of the corporate members.

The disadvantages of a public company limited by shares are that a the start-up of a public company limited by shares requires huge capital; a public company limited by shares is not ideal for family members or friends seeking to incorporate a business; being a company, the double taxation effect applies.

[82] Ibid (n72) s 24
[83] Ibid s 27 (2) (a)
[84] Ibid s 211 (1)
[85] Nelson C S Ogbuanya, *Essentials of Corporate Law Practice in Nigeria* (2ndedn Novena Publishers Limited 2014) 54-55
[86]*Salomon v Salomon* (1897) AC 22
[87] Ibid (n80) s 40
[88] Ibid s 43

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Unlimited Company

An unlimited company is a form of company whose memorandum of association explicitly provides for the unlimited liability of the members. By implication, the members are liable to all the claims against the company and all the debts of the company without limit.[89]

The principle of separate personality operational from incorporation[90] implies that an unlimited company is subject to taxation in line with the provisions of the Companies Income Tax Act. The income of an unlimited company on which tax is levied is the profits made by the company.[91]There is a double taxation effect as the shareholders are also taxed on the dividends paid to them by the company.[92]

The advantages of an unlimited company are that it is a legal entity separate from its members; the corporate responsibilities as regards the claims and debts of the company are collectively rather than individually borne. The disadvantages of unlimited company are that the limited liability of the shareholders does not apply; and it is subject to a double taxation effect.

Company Limited by Guarantee

A company limited by guarantee is a form company formed for the purpose of promoting commerce, art, science, religion, sports, culture, education, research, charity or other similar objects.[93]This type of company does not require a share capital for its registration and the liability of the shareholders in a company limited by guarantee are limited to the amount that they have subscribed to pay in the event that the company becomes wound up or dissolved.[94]A company limited by guarantee cannot be incorporated with the object of operating a business so as to make and distribute profits to members except as permitted under the law.[95] This type of company is not allowed to register with a share capital and its memorandum cannot be registered without the authorization of the Attorney-General.[96]

Where a company limited by guarantee operates a business with an aim to distribute profits, all offices and members aware of it shall be jointly and severally liable in paying and discharging the debts and liabilities incurred by the company whilst doing the business. The company and every such officer and member shall be liable to a fine that does not exceed N100 for each day it conducts the business.[97] The article of association of a company limited by guarantee may require that the

[89] Ibid (n72) s 25
[90]*Macaura v Northern Assurance Co Ltd* [1925] AC 619; *CBDI v COBEC (Nigeria) Ltd* (2004) 13 NWLR (Pt 948) 376; *Union Bank (Nigeria) v Penny-Mart* (1992) 5 NWLR (Pt 240) 228, 237
[91] Ibid (n80) s 40
[92] Ibid s 43
[93] Ibid (n72) s 26 (1)
[94] Ibid s 26 (2)
[95] Ibid s 26 (4)
[96] Ibid s 26 (5)
[97] Ibid s 26(6)

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defaulting members can retire or be excluded from its membership.[98] The total liability of the members in this form of company as regards contributing to the assets of the company upon winding up must be ₦10, 000 and above.[99] Where a company limited by guarantee winds up and there remains any property after its debts and liabilities have been discharged, such a property or properties cannot be distributed among the members but transferred to another company with similar objects or used for some charitable object. These will be determined by the members before its dissolution.[100]

Profits flowing from any statutory, charitable, ecclesiastical, educational or other similar associations are not taxable in as much as the profits are derived from any trade or business operated by such organization or association and not distributed among the members, trustees or shareholders of such a company.[101]

The advantages of a company limited by guarantee is that its formation does not require a share capital; in the event of winding up, the assets and liabilities of a company limited by guarantee is adequately managed; the separate personality principle of the company from its members applies; and the company is not subject to taxation.

The disadvantages of a company limited by guarantee are that the company limited by guarantee does not seek to make profit for distribution to members and this makes it not the best choice for an organization intending to operate a business for profit-making; and a company limited by guarantee cannot be registered except the consent of the Attorney- General of the Federation is sought.

The Introduction of Limited Liability Partnership as an Alternative to the Existing Forms of Business Organizations

The limited liability partnership is the newest type of business organization introduced in Lagos State in 2009. Lagos state followed suit with developed countries like the US and UK in incorporating the limited liability partnership model. The Partnership (Amendment) Law 2009 of Lagos State provides that a limited liability partnership can be formed.[102] As the name implies, limited liability partnership involves the limited liability of the partners. It is a form of partnership in which the liability of the partners for the malpractice of other partners is limited. The partners of a limited liability partnership shall be liable to make contribution in event of it being wound up or dissolved. A limited liability partnership can sue and be sued in its registered name nonetheless a limited liability partner can be sued in his personal capacity for acts of the partnership in some restricted circumstances. These include in cases of fraud, misrepresentation and other alleged improper conduct by the limited partner; where the written consent of the Commission is obtained

[98] Ibid s 26 (8)
[99] Ibid s 26 (9)
[100] Ibid s 26 (10)
[101] The Statutes do not contain any provision that directs the taxation of the companies limited by guarantee and they are in fact not taxable entity because in a way they are considered as non-profit organizations.
[102] The Limited Partnership (Amendment) Law 2009 s 59 (1)

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having established that it is in the reasonable interest of the public to take action against an individual or a limited liability partner. A judgment made against the limited liability partnership cannot be executed on the asset of a partner except a judgment is also made against the partner. An execution may not be levied on the assets of a limited liability partnership by a judgment creditor if the claim is against a partner except a judgment relating to the same claim has been obtained against the partnership.[103]

To register a limited liability partnership, it must be ensured that there are a minimum number of two members.[104] Upon registering a limited liability partnership, the limited liability partners constitute those whose names were subscribed to the registration document. Persons may subsequently become members of the limited liability partnership according to an agreement with the existing partners and an existing partner can cease to be a member subject to the agreement with other parties.[105] Each of the partners of a limited liability partnership is the agent of the limited liability partnership in the conduct of the partnership business.[106] Subject to the agreement between the partners, a partner in a limited liability partnership can partake in the management of the partnership business and will be liable for negligent or incorrect statement made during the usual course of business on behalf of the partnership.[107] Annual return of the limited liability partnership must be filed once in a year.[108] The income of partners in a limited liability partnership is liable to tax under the Personal Income Tax Act.[109]

There is no gain saying that the introduction of limited liability partnership carries with it some 'goodies' for the firm. Unlike general partnership, the limited liability partnership is like a company, a body corporate, in that it has continuing legal existence independent of the partnership members. By implication, a limited liability partnership unlike the general partnership can own property and enter into contracts on its own and in its own name rather than having the individual members doing these on behalf of the partnership. Like a limited company, limited liability partnership also enjoys the benefits of limited liability: partners in a limited liability partnership are liable only to the extent of their contribution to the partnership unlike in traditional partnership where partners are liable not only for claims concerning their own misconduct but also for the debts and liabilities of other partners whilst conducting the partnership business. Unlike in a company, a limited liability partnership is not required to go through the formal prerequisites of having the memorandum of articles of association. The limited liability partnership agreement also must not necessarily be in writing among the members, although it is advisable for it to be in writing. Lastly, unlike a company, a limited liability partnership is not subject to double taxation, it is taxed based on the Personal Income Tax Act which entails direct assessment of the tax liabilities of the business on the partners.

[103] Ibid s 59 (2) (4) (5) (6)
[104] Ibid s 60 (2)
[105] Ibid s 66 (1) (2)
[106] Ibid s 68 (1)
[107] Ibid s 75
[108] Ibid s 78 (1)
[109] Ibid (n6)

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Although the limited liability partnership has its advantages, this form of business organization also has its shortcomings. It has been rightly argued that limited liability partnership will assist in malpractice by the partners.[110] In traditional partnership, a partner is liable for any acts of misconduct by the partnership including acts of misconduct of other partners, whether or not the partner was involved in that particular act or misconduct.[111] This will acts as a catalyst for every partners to steps in reducing the possibility of mistakes by partners. However in a limited liability partnership, a partner is not liable for the acts of other partners except that partner also engaged in or supervised the misconduct.[112] Arguably, the exoneration of a partner from being liable for the acts of other partners will contribute in reducing the zeal of a partner in checkmating other partners for malpractice.[113] Thus the decrease in monitoring by partners seen in limited liability partnership will culminate to an increase in malpractice.[114]Of this it is suggested that the practice of whistle-blowing be incorporated into the laws regulating limited liability partnership.

A Regulatory Framework for Whistle-Blowing in Limited Liability Partnership: A Matter of Exigency

Whistle-blowing is a practice whereby an activity considered unethical, illegal and incorrect within a private or public organization is exposed.[115] Instances of acts deemed as a wrongdoing worth exposing include contravening company rules and regulations or acts that pose a threat to public or national interest.[116] Whistle-blowing can be done internally or externally. Internal whistle-blowing involves exposing the illegal or unethical misconduct by bringing it to the knowledge of other people in the same organization with the culprit, particularly to an immediate supervisor. In an external whistle-blowing, the whistle-blower exposes an unethical behavior by bringing it to the attention of a third party outside the organization such as the government, media or the law enforcement agencies.[117]

Those who are exposed by an act of whistle-blowing usually take it on the whistle-blowers. Of this, laws have been made to shield whistle-blowers. In the UK, there is the Public Interest Disclosure Act 1998 which seeks to protect individuals who discloses information in the interest of the public. In making a disclosure under the Act, the whistle-blower must 'reasonably believe' it to be a criminal offence, non compliance with legal obligations, a danger to the safety and health

[110]Scott N Murphy, 'Its Nothing Personal: The Public Costs of Limited Liability Law Partnerships' (1995) 71(1) *Indiana Law Journal* 201, 215
[111]Steven A Water and Matthew D Goetz, 'Partnerships' (1991) *Sw LJ* 2011
[112]Ibid (n101)s 59 (2) (4) (5) (6)
[113]Dennis E Curtis, 'Old Knights and New Champions: Kaye, Scholer, the Office of the Thrift Supervision, and the Pursuit of the Dollar' (1993) 66 *CAL L REV* 986, 1016
[114]Ibid (n110)
[115]WimVandekerckhove, *Whistleblowing and Organizational Social Responsibility: A Global Assessment* (Routledge 2006) 21
[116]Janet P Near and Marcia P Miceli, 'Organizational dissidence: The case of whistle-blowing' (1985) 4 (1) *Journal of Business Ethics* 1-16
[117] T M Dworkin, 'Internal vs. External Whistleblowers: A Comparison of Whistleblowering Processes'(1998) 17 (12)*Journal of Business Ethics*1281

of employees, a miscarriage of justice or concealing of information which shows such actions.[118] South Africa has followed suit with the UK and enacted the Protected Disclosures Act 2000. The Act provides for procedures to shield employees from occupational detriment should they disclose information regarding unlawful or corrupt conduct by their employers of fellow employees. The Act seeks to encourage honest employees to raise alarm and disclose wrongdoings in the workplace without fear.[119]

The culture or practice of whistle-blowing in Nigerian is more or less non-existent. No doubt there has been an attempt to encourage whistle-blowing in Nigeria in past. It was reported that in 2017, a whistler-blower assisted the Nigeria government in recovering $43.5million, £27,800 and ₦23.2million at No. 16 Osborne Road, Ikoyi, Lagos, Nigeria and the whistle-blower was paid the sum of ₦421million by the Federal Ministry of Finance.[120] Be that as it may, the culture of whistle-blowing has not been given the necessary attention as it has been given in countries like the UK and South Africa. These countries had encouraged whistle-blowing making specific legislations on whistle-blowing. The absence of a similar legislation in Nigeria to encourage whistle-bowing is conspicuous. Although most legislation on whistle-blowing had sought to encourage whistle-blowing within the activities of the company for effective corporate governance, this paper proposes the extension of whistle-blowing to limited liability partnership. Where this feat had been undertaken and a culture of whistle-blowing established in a limited liability partnership, it will assist in reducing malpractice by partners in a limited liability partnership.

CONCLUSION

This paper has sought to critically analyze the various forms of business organizations prior to the advent of limited liability partnership in the Lagos State of Nigeria and determine whether the introduction of limited liability partnership law takes care of the problems of the preceding forms of business organization. The paper identifies sole proprietorship, general partnership, limited partnership, private and public companies limited by shares, unlimited company and company limited by guarantee as the forms of business organizations in existence before the coming of limited liability partnership.

In sole proprietorship, the business is owned by one individual rather than a separate entity. The sole proprietorship can enjoy the profits arising from the business solely and make quick decisions. This form of organization is easy and cheap to set up and there exist a direct relationship among

[118]The Public Interest Disclosure Act 1998 s 1
[119]The Protected Disclosures Act 2000
[120]Kumolu Charles, 'IKOYI CASH: Whistleblower gets N421m, jets out of Nigeria' *Vanguard* (Vanguard 14 December 2017) <https://www.vanguardngr.com/2017/12/ikoyi-cash-whistleblower-gets-n421m-jets-nigeria/> accessed 10 November 2019

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the sole proprietor and the employees. Disadvantageously, the business in sole proprietorship ends with the owner and the risk is borne alone by the sole proprietor. Sole proprietorship also does not easily attract capital for the progress of the business.

General partnership is a legal form consisting of an association of two or more persons operating a business to make profits. The double tax effect is not applicable to general partnership and there is a combination of skills and abilities for efficient management as well as shared risks and liabilities reducing individual burden. Resources can be pooled together in a general partnership and the death of a partner does not necessarily leads to the end of the partnership. The problems of general partnership are that the partners are jointly and personally liable for the obligations arising under the partnership and misunderstanding between the partners may result to the end of the partnership. More so the partnership does not have independent legal existence making the personal assets of the partners remain unprotected and liable to attachment by creditors.

In a limited partnership, the limited partner enjoys limited liability, interests in this form of organization are easily transferable and the double taxation effect does not exist. The unfavorable characteristics of limited partnership are that the general partners are jointly and severally liable for the debts of the partnership and the limited partners cannot engage in the management of the organization without making their limited liability status precarious.

A private company limited by shares is a form of company where the liability of the members is limited by the memorandum to the amount, of unpaid shares, if any, respectively subscribed to by them. This type of company is the best choice for family and friends interest in incorporating a business. The capital required in starting a private company limited by shares is not much and the separate personality principle applies. The filing of Annual Financial Statement and Audit is not also a requirement in this type of company. However the issues with private company limited by shares are that it is subject to double taxation effect and cannot invite the public to subscribe for any of its shares or debentures or make fixed periodic deposits except in circumstances allowed by the law. Membership in this type of company is as well restricted and its secretary does not necessarily needs to be qualified which can lead to inefficiency.

In a public company limited by shares the liability of the members is limited to the amount, if any, unpaid on the shares respectively held by them and which set forth in its memorandum that it is a public company. The public can be invited by a public company limited by shares for subscription to its shares or debentures. The maximum number of membership in a public company limited by shares is not restricted and the shares of a public company limited by shares are transferrable. Only a qualified secretary can be appointed in a public company limited by shares and this assists efficiency. The separate personality principle thrives in this type of business organization.

An unlimited company is a form of company in which the members are unlimitedly liable to all the claims against the company and all the debts of the company and whose memorandum of association made unlimited liability of the member explicit. The Unlimited liability company has a separate personhood from its members and the corporate responsibilities with respect to the claims and debts of the company are collectively rather than individually borne. The limitations of

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the unlimited liability company are that the shareholders are not subject to limited liability and the double tax effect is operational.

A company limited by guarantee is a form company set up in promoting a particular course including commerce, art, science, religion, sports, culture, education, research, charity or other similar objects. It does not require a share capital to be formed and upon winding up, the assets and liabilities of a company limited by guarantee is managed properly. The separate personality principle holds sway in this form of organization and it is not subject to taxation. The weak points of a company limited by guarantee are that it does not make profits for distribution to members and it cannot be registered except with the consent of the Attorney-General of the Federation.

The limited liability partnership model was introduced in Lagos state in 2009 and this requires that the liability of the partners for the acts or omissions of other partners are limited. To some the limited of liability partnership fulfilled the hopes of an expected new form business organization. Unlike general partnership, the limited liability partnership is structured like a company having continual legal existence independent of the partnership members. Unlike in traditional partnership the partners are not vicariously liable for the misconduct of other partners and the partners are only liable for claims concerning their own misconduct. Unlike in a company, the formation of a limited liability partnership does not as a matter of necessity require the prerequisites of memorandum and articles of association and must not necessarily be written. Unlike a company, a limited liability partnership is also not subject to double taxation. The pleasing characteristics of limited liability partnership notwithstanding, this form of business organization is flawed, particularly, its nature allows the committal of misconduct by the partners composing it. To this end this paper had argued the incorporation of the practice of whistle-blowing into the regulatory legal framework of limited liability partnership.

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