Choices and Preferences: Corporate Versus Partnership Vehicles Under the Companies and Allied Matters Act 2020 – What Are the Relevant Business Considerations?

Thought Leadership by Afolabi Elebiju, Deborah Elebiju and Chinazam Ejim[1] April 2022

> *"Our goals can only be reached through a vehicle of a plan, in which we must fervently believe, and upon which we must vigorously act. There is no other route to success."*
>
> - Pablo Picasso

Introduction

Prior to the enactment of the ***Companies and Allied Matters Act 2020***[2] ***(CAMA)*** in August 2020, *the generally available business vehicles under Nigerian regulatory framework*[3] were: limited liability companies (LLCs) and unlimited companies (UCs);[4] sole proprietorships (SPs);[5] and partnerships.[6] Only Lagos State, which hosts Nigeria's premier economic hub,

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[2] ***Act No. 3 of 2020***.

[3] Primarily comprised in the ***Companies and Allied Matters Act, Cap. C20, Laws of the Federation of Nigeria (LFN) 2004 (CAMA 2004)***. ***Section 869 CAMA*** repealed ***CAMA 2004***.

[4] See ***Part II CAMA 2004 (Incorporation of Companies and Incidental Matters***), particularly ***sections 21, 22, 24, 25 and 26***. The LLC or UC may be *private* (with maximum 50 shareholders) or *public* (in excess of 50 shareholders without any cap on the number of shareholders); liability may also be *limited by shares* (the more common vehicle for business) or *by guarantee* (having no share capital, and primarily used to promote charitable causes/not for profit objects). For purposes of this article, we will focus on LLCs by shares *vis a vis* partnership vehicles, since the company limited by guarantee (ltd/gte) is not primarily utilised for doing business, and its real comparator is incorporated trustees in ***Parts F*** and ***C CAMA/CAMA 2004*** respectively. For a historic discussion (under ***CAMA 2004*** and then extant regulatory framework), see Afolabi Elebiju, *et al,* ***' "Charitable Objects": Legal and Regulatory Issues in Nigeria's Not for Profit Sector'***, *LeLaw Thought Leadership Insights, February 2020:* https://lelawlegal.com/add111pdfs/NFP.PDF (accessed 02. 04.2022).

[5] Individuals can undertake businesses in their own personal capacities, impliedly by the provisions of ***sections 16(1),(2)(a) and (c); and 33(1) 1999 Constitution of the Federal Republic of Nigeria (1999 Constitution)***, and expressly under the law of contract. SPs may or may not have been registered as business names (BNs) under ***Part B CAMA 2004***. ***Section 573(1) CAMA 2004*** mandated registration of BNs by *"every individual, firm or corporation having a place of business in Nigeria and carrying on business under a [BN]"* **only if** *"(a) in the case of a firm, the name does not consist of the true surname of all partners without any addition other than the true forenames of the individual partners or the initials of such forenames; (b) in the case of an individual, the name does not consist of his true surname without any addition other than his true forenames or the initials thereof; (c) in the case of a corporation, whether or not registered under this Act, the name does not consist of its corporate name without any addition."* Thus, non-registration does not render the SP less effectual, albeit regulatory requirements, for example on providing registration certificates on the opening of bank accounts, etc effectively discourage sole proprietorships that are not registered as BNs. Also, the ***Personal Income Tax Act, Cap. P.8, LFN 2004 (PITA)*** in ***sections 1(a) and 36*** also recognises for the purposes of PIT liability, individuals doing businesses in their own names.

[6] These were partnerships (oral and written) as recognised under the applicable partnership laws of each State – whether locally enacted ***State Partnership Law*** (as in Lagos) or in the absence of which, the UK ***Partnership Act 1890***, a statute of general application, was applicable. Understandably, being companies' legislation, ***CAMA 2004*** *did not have substantive provisions for partnerships, except that they may also be registered as BNs:* ***section 573(1)(a)***. ***Section 3(1) Partnership Law, Cap. P1, Laws of Lagos State 2003 (LSPL)*** defines partnership as *"the relationship which subsists between persons carrying on business in common with*

offered Limited Partnership (LP) and Limited Liability Partnership (LLP) options, triggering remarks then, on need for *"regulatory competition"* in Nigeria's federal context.[7] ***CAMA's*** provisions on LPs and LLPs have now 'suspended' or displaced (except to the extent of any lacuna in ***CAMA*** provisions), the ***Lagos State Partnership Law (LSPL)***, given the applicability of the former throughout the country.[8] We are not aware if a comparative

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a view to profit." See also ***section 3(2)*** exclusions of business relations that do not constitute partnerships under it – companies/associations formed under ***CAMA*** or other written law. Notably, ***section 19 CAMA 2004*** prohibited partnerships of more than 20 persons, upon the pain of a daily fine on each person involved, during the continuance of any breach. Unless the relevant partnership deeds made specific provisions, the presumptions under the ***Partnership Laws*** will apply – for example that death of a partner constitutes dissolution of the partnership, or that a partner is the agent of all other partners. *Cf.* ***section 762(1) CAMA:*** *"Except as otherwise provided by this Act,* ***the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners****."* Emphasis supplied. Note that ***section 762(4)*** applies the provisions of ***15th Schedule CAMA*** in the absence of any agreement. In Lagos State, there were two additional variants of partnerships – *LP* was the forerunner before *LLP* was introduced in 2009 *vide* the ***Partnership (Amendment) Law No. 6 of 2009***. Pre-***CAMA***, LPs and LLPs in Lagos State also registered as BNs; thereby being subject to regulation by the Corporate Affairs Commission (CAC) and the Lagos State's LP/LLP Registry. Typically, CAC registration preceded Lagos State Partnership Registry's.

[7] *"…In the USA where there is 'regulatory competition', States actively compete to attract investments, especially in being the locus of incorporation of companies. 'Thankfully' for the CAC (courtesy, the Exclusive List of the 1999 Constitution), there is no such competition for companies incorporation. Lagos is to be commended for taking the partnership vehicle to another level through provision for LP and LLP options in its Partnership Law. Other States may emulate Lagos to capture a piece of the business start-up compliance market. Absent specific sectoral requirements, businesses may be organized other than as companies, and partnerships [of natural persons] (and their employees) are taxable under PITA helping to shore up States' IGR."* See Afolabi Elebiju, ***'Musings: Nigerian Business Landscape Improvement Issues'***, *LeLaw Thought Leadership*, *p. 2*: https://lelawlegal.com/add111pdfs/Musings-on-Nigerian-Business-Landscape-Improvement-Issues1.pdf (accessed 01.04.2022). Article originally published as ***'Why Government Must Adopt a Business Mindset…'*** in *'Taxspectives by Afolabi Elebiju', ThisDay Lawyer, 29.05.2012, p.7*

[8] See ***Attorney General of Ogun State v. Aberuagba [1985] 1 NWLR (Pt.3), 395***. For a robust discussion of the relationship between Federal and State legislation including *the doctrine of covering the field*, see Afolabi Elebiju and Ayo Fadeyi, ***'Tussles: A Review Of Attorney General Of Lagos State v. Eko Hotels & Anor (2018) 36 TLRN 1'***, *LeLaw Thought Leadership Insights, May 2019, pp. 3-5*: https://lelawlegal.com/add111pdfs/AG-vs-Eko-Hotels.pdf (accessed 04.04.2022). ***One query though, is whether the National Assembly is competent to legislate on LPs?*** This is because ***Items 32 and 62(f), Part I (Exclusive Legislative List), 2nd Schedule 1999 Constitution*** covers *"incorporation, regulation and winding up of bodies corporate, other than co-operative societies, local government councils and bodies corporate established directly by any Law enacted by a House of Assembly of a State"* and *"Trade and commerce – in particular registration of business names"*. It is trite that whatever is not listed in the ***Exclusive and Concurrent Legislative Lists*** is a residual matter that only the States can legislate on. *Consequently, since LPs are not "bodies corporate" given absence of legal personality and perpetual succession like LLPs (vide* ***section 746 CAMA****), should they not be subject to only State Law?* One counter-argument would be that the National Assembly has legislative competence over *"trade and commerce"*. However, we believe that the generality of *"trade and commerce"* has been narrowed down by the other provisions of ***Item 62***, especially the *"in particular"* before listing specific topics for federal legislative action. Also ***Item 32*** only mentioned corporate bodies, and the non-corporate body considered for further inclusion in ***62(f)*** was BNs. This is supported by established rules of statutory interpretation: *expressio unius est exclusio alterius* (express mention of a thing is the exclusion of others not mentioned) and the *esjudem generis rule* (general words are qualified by subsequent specific words). There is a possibility that aggrieved States (like Lagos that already had LP provisions in its LSPL) could approach the courts to hold that ***CAMA*** provisions on LPs are *ultra vires* federal legislative powers as was successfully canvassed in the Value Added Tax (VAT) litigation decisions in ***A-G Rivers State v. FIRS & A-G Federation (2021) 61 TLRN 1;*** and ***Ukala v FIRS (2021) 56 TLRN 1***. However, both cases are currently on appeal.

review of the ***LSPL*** relative to ***CAMA***, in order to confirm, whether ***CAMA*** being later in time recorded improvements over the ***LSPL***.[9]

Anecdotally, an oft pertinent question that intending investors or entrepreneurs ask, or indeed need to have their lawyers address, is *the optimal business vehicle for their proposed venture*. This would often entail *a comparative analysis of the available vehicle options, vis a vis the circumstances of the proposed venture, including sectoral requirements*. For example, by statutory prescriptions, only 'commercial' companies (limited by shares or unlimited), can amongst others, undertake banking or insurance business, be a pension industry player, or hold oil and gas assets.[10] For such sectors, intending players do not require any analysis of vehicle options, in considering their entry strategy.[11]

However, such question is relevant for many other sectors, whilst professional services had traditionally been provided, and/or in some cases, mandated to be provided under the partnership model.[12] However, in line with evolving trends, the options have widened, even in some professional services.[13] *Typically, the optimality considerations regarding*

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[9] Incidentally, ***section 808 CAMA*** provides that *"Subject to the provisions of this Act, the provisions of the Partnership Act 1890, except so far as they are inconsistent with the express provisions of this Act, shall apply to [LPs]."*

[10] See: ***section 2(1) Banks and Other Financial Institutions Act No. 5 of 2020*** – *"No person shall carry on any banking business in Nigeria except it is a company duly incorporated in Nigeria and holds a valid banking licence issued under this Act"*; ***section 3 Insurance Act, Cap. I17, LFN 2004*** – *"No person shall commence or carry on any class of insurance business in Nigeria except- (a) a company duly incorporated as a limited liability company under the [CAMA]; (b) a body duly established by or pursuant to any other enactment to transact the business of insurance or reinsurance"*; ***sections 60(1)(a) and 62(a) Pension Reform Act No. 4 of 2014*** require prospective Pension Fund Administrators (PFAs) and Pension Fund Custodians (PFCs) to be companies incorporated under ***CAMA***; ***section 273(1) Petroleum Industry Act No. 6 of 2021***: *"**any person, other than a company, who engages in upstream petroleum operations** either on his own account or jointly with any other person, or in partnership with any other person with a view to sharing the profits arising from the operations **commits an offence**."* *Cf. in pari materia* provisions of ***section 24(1) PPTA***. *Cf.* the Nigerian Communication Commission's ***'Licensing Application Process'*** lists amongst *"Class License Application Requirements"*, *"Certificate of Incorporation or Registered [BN]"*; whereas *"Individual License Application Requirements"* includes only *"Certificate of Incorporation"*, suggestive that only corporate applicants are eligible. See: https://www.ncc.gov.ng/licensing-regulatory/licensing/licensing-procedures#individual-license; and https://www.ncc.gov.ng/licensing-regulatory/licensing/licensing-procedures#class-license. However the NCC's ***'List of Lisensees'*** (sic) website subpage features mostly companies, but also several BNs (with *"Enterprises"* and *"Ventures"* as part of their names): https://www.ncc.gov.ng/licensing-regulation/licensing/licensees-list#list-of-class-category-licensees accessed 04.04.2022).

[11] For a related discussion, see generally Afolabi Elebiju, ***'Synchronisations: Size Categorisations under Nigerian Companies and Tax Legislation'***, *LeLaw Thought Leadership Reflections, August 2021: https://lelawlegal.com/add111pdfs/AE_-_Synchronisations_Companies_Size_3.pdf* (accessed 01.04.2022).

[12] See for example, ***Rule 5(5) Rules of Professional Conduct in the Legal Profession 2007 as amended*** stipulates that *"**It shall be unlawful to carry out legal practice as a corporation.**"* Emphasis supplied. Also, ***Rule 5(1)*** forbids lawyers from forming partnership to practice law with non-lawyers or lawyers not licensed to practice in Nigeria.

[13] For example, ***Principle 1.1.7, 'Nigerian Institute of Architects Code of Professional Conduct and Ethics***', (undated), provides that: *"**Members are at liberty to engage in any activity, whether as Proprietor, Director, Principal, Partner, Manager, Superintendent, Controller or Salaried Employee of, or consultant** to, anybody, corporate or unincorporated or in any other capacity provided that their conduct complies with the provisions of this Code."* Emphasis supplied. See: http://sdngnet.com/Files/Lectures/FUTA-ARC-807-Professional_Practice_and_Procedure/CD%202013-2014/NIA%20Code%20of%20Professional%20Conduct%20and%20Ethics.pdf (accessed 04.04.2022). *Cf.* Nigerian Institution of Estate Surveyors and Valuers (NIESV), ***'List of Firms'***, at:

business vehicles would be from: start-up and ongoing regulatory compliance requirements, risk management, flexibility vis a vis the investor's circumstances cum desired business objectives, and tax efficiency, etc perspectives.

Experience has shown that in making business decisions, options that *prima facie* appear to be more efficient and therefore potentially preferable, may end up ranking poorly after detailed analysis (including financial modelling as applicable) throw up results. Truly, businesses cannot afford to make decisions that are not 'well informed', because they lack empirical basis; consequently, the imperative of such analysis cannot be overemphasised. Sometimes, transformation of an existing business may even be necessitated after such analysis, or when the owners practically experience substantial con(s) of the business vehicle being utilised.

For example, partners in a retail business that was registered as a business name (BN) may see the need for conversion in consonance with the growth of the business; or for example, in order to enjoy the benefits of legal personality and obviate the business suing or being sued in the name of the partners. This is moreso if one or more of the partners have regular employment (say, as top management staff in an unrelated sector company). Other times, business exigencies or other circumstances may require that a private company be re-registered as public or *vice versa;* LLC to UC or *vice versa*; or even PLC to UC or *vice versa.*[14]

Given the new ***CAMA*** framework,[15] this article discusses the key features and undertakes a comparative analysis of available business vehicles in Nigeria for investors' consideration, generally on a sector agnostic basis.

Start-Up Compliance and Maintenance Requirements:
A key consideration is *how heavy or light is the regulatory burden?* This is exemplified by the respective vehicle's compliance and maintenance requirements (primarily discoverable in the ***CAMA*** and the CAC's ***Companies Regulations 2021***), with attendant cost and administrative time implications. We will consider the requirements[16] under the relative headings:

- *Information and documentation*
  To register a company, the incorporation documents needs to be completed with relevant information and supporting documentation provided.[17] Similar requirements

https://niesv.org.ng/registered_firms.php?currentpage=1 (accessed 04.04.2022), which features mostly regular partnerships and SPs/BNs.

[14] See ***section 55 and other provisions of Chapter 2 CAMA***.

[15] See ***Parts B, C, D*** and ***E*** (together with respective/referenced Schedules for Companies, LLPs, LPs and BNs), respectively.

[16] We omit uniform requirements, such as name availability check and reservation given their universal application.

[17] This is essentially ***Form CAC 1.1. (Application to Register a Company)***, the Memorandum and Articles of Association (Memart), official identification (ID) of directors (and where relevant residence permit for expatriate directors). The ***CAC Form 1.1.***, (excluding 2 pages for companies ltd/gte), is 14 pages.

are prescribed with variations for LLPs, LPs and BNs, with BN requiring the most basic information.[18]

Companies generally appear to require more filings;[19] whilst for year-end reporting, the ***Form CAC 19 (Annual Return of Companies)***, is 11 pages, compared with 8, 4 and 4 pages respectively for the LLP, LP and SP counterparts.[20]

- *Costs*

  There is *ad valorem stamp duties exposure* (at 0.75% of share capital) on the share capital of companies, and graduated CAC filing fees also based on share capital; thus, the higher the capital the greater the statutory fees exposure. Furthermore, PLCs attract higher CAC filing fees at incorporation or increase in share capital than the other LLCs.[21]

  CAC charges: ₦20,000/~~₦~~5,000 for LLP registration and annual returns; ₦15,000/~~₦~~5,000 for LP registration and annual returns; and ₦10,000/~~₦~~3,000 for BN registration and annual returns, respectively. Apart from the absence of share capital (and therefore nil stamp duties),[22] in practice the CAC does not require that registration documents of LLPs, LPs and BNs be stamped.[23] Practical issues would arise if (as we think), nominal stamping should be required.[24]

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[18] ***Form CAC LLP 01*** runs into 10 pages, ***Form CAC LP 01*** is 6 pages, whilst ***CAC BN 01*** is 5 pages. Given that the Forms elicit information, the pagination of the respective forms is indicative of the amount/ comprehensiveness of disclosures required. ***CAC 1.1.*** and ***LLP 01*** has 6 and 4 pages of disclosures on PSCs respectively, whereas ***LP 01*** has none.

[19] See ***pp 23-125, Companies Regulations 2021*** for CAC Forms that are only relevant for companies under the ***CAMA***. *Cf.* with ***pp. 133-162*** for LLPs, ***163- 182*** for LPs and ***183 – 200*** for SPs.

[20] See ***Companies Regulations 2021***.

[21] See CAC, ***'Schedule of Fees'***: https://www.cac.gov.ng/schedule-of-fees/ (accessed 04.04.2022). CAC filing fees is currently set at: ~~₦~~10,000/~~₦~~20,000 for the 1st million share capital (or part thereof) for SCs/OCs and PLCs; and ~~₦~~5,000/~~₦~~10,000 per million share capital (or part thereof) for up to ~~₦~~500 million for SCs/OCs and PLCs; ~~₦~~7,500/~~₦~~15,000 per million share capital (or part thereof) for amounts above ~~₦~~500 million for SCs/OCs and PLCs , respectively. These same rates apply for increase to their share capital. Likewise, CAC fees for annual returns are ~~₦~~5,000/~~₦~~10,000 for SCs/OCs and PLCs respectively.

[22] Cf. the request for information on *"Capital (or Contribution other than cash) committed but yet to be contributed (state as applicable)"* and *"Capital (or Contribution other than cash) contributed (state as applicable)"* in ***Form CAC LLP 01***. Similarly, ***Part 3***, ***Form CAC LP 01*** elicits the same information (actual/proposed contributions) for both general and limited partners respectively. Arguably, *"contributions"* are equivalent to *"share capital"* and therefore ought to attract SD? However, since *"there is no equity about tax"* (see ***Ahmadu v Governor of Kogi State [2002] 3 NWLR (Pt.755) 502 at 519:*** whatever is not expressly charged, cannot be subjected to SD. This thus constitutes a cost advantage to LLPs and LPs – since BNs had never been subjected to SD previously. *Presumably, there are policy grounds for ensuring that non-company vehicles have comparative regulatory cost advantages, otherwise their attraction as alternative vehicles becomes compromised*. Consequently, we do not expect significant advocacy for similar SD treatment for share capital and partner contributions.

[23] Apparently, partnership agreements (especially those purporting to be by deed) should be stamped, given the provisions of the ***Stamp Duties Act, Cap. S8, LFN 2004 (SDA)***. However, the ***SDA's Schedule*** did not specifically list partnership agreements as subject to *ad valorem* SD; hence, they should be stampable nominally under omnibus category of contract or agreement. For related detailed discussion, see generally, Afolabi Elebiju (ed.), ***'Questions and Pathways: Recent Issues in Nigerian Stamp Duties' Regulatory Framework ("LeLaw on Stamp Duties")'***, *December 2020.*

[24] These will include the fact that partnership agreements involving individuals (where there are no corporate partners), SD would be payable to the State IRS, rather than the FIRS which is empowered to collect SD on

Some fees are flat for LLPs, LPs and BNs: for example it is ₦10,000 for change of name, whereas companies' change of name attracts ₦10,000, ₦20,000 and ₦50,000 respectively for SCs, OCs and PLCs. Some transactions like registration of charges attract the same CAC fees irrespective of the business vehicle.[25]

- *Investor Numbers: 'the Fewer the Better or the More the Merrier'?*
  Section 18(2) CAMA 'emulates' SP by permitting single shareholder private companies (SSHCs). Compares to an SP however, the single shareholder (SSH) has better risk exposure due to the separate legal personality of the company, his liability is limited to the number of issued shares, whereas an SP is fully liable for the losses of the business. Thus, compared to an SP, an SSH can be seen as *"eating his cake and having it"*.

  Sole ownership either through SSHCs or SPs can be apposite for businesses that are based on the ideas/solutions/intellectual property of the shareholder or SP, which constitute business asset that can be monetised at greater valuation in the future through sale or assignment. That way the visionary can really enjoy the upside, whilst a single shareholder company helps him with downside protection more than an SP.

  While a private LLC may also have more than one shareholder/subscriber, all other vehicles must have at least two shareholders/partners: ***section 18(1) and 753(1)(a)***.[26] Pooling of resources (financial, skills and experience) that this affords may be the critical element for the prospective success of the business, and thus sufficient grounds not to utilise SP or SSHC. Clearly, the scale of investment required to prosecute ventures by PLCs informs their large number of shareholders, more particularly, of listed PLCs.

  Ultimately, the particular circumstances and allied matters of the proposed or ongoing venture cum promoters/partners/investors could determine optimal number limits or sizes. ***Section 19(1) CAMA*** already stipulates that generally partnership sizes shall be limited to 20 partners, whilst ***section 19(2)(b)*** exempts law and accounting firms from such restriction.[27] The restriction on number of partners can be an impediment to merger of two or more firms to create an otherwise desire bigger firm; whereas such impediment does not apply to corporate vehicles.

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transactions and instruments involving companies: ***section 4 SDA (as amended by section 52 FA 1 2020)***. There would be challenges with CAC integrating its systems with 36 State IRS, compared to its present interface with only the FIRS for corporate stamp duties.

[25] For example, on registration of charges, all company types and LLPs pay CAC fees at the higher of ₦25,000 or 0.35% of the amount secured by the charge; and also ₦25,000 for Memorandum of Satisfaction/Deed of Release. Registration of Deed of Hypothecation attracts ₦25,000 on all companies, etc.

[26] By its essence a partnership must comprise more than one person as it takes two to tango; an individual cannot be a partner with himself. Pre-***CAMA***, all statutory definitions have followed this logical position (also exemplified by ***sections 748(1), 753(1)(a)*** and ***798(1)(b)***. For example, ***section 1(1) Partnership Law, Cap. P1, Laws of Lagos State of Nigeria, 2015*** defined partnership as "a business relationship existing between two or more persons having the mutual intention of profit making Partnership Law.

[27] See also ***section 795(2)***: *"a limited partnership shall not consist of more than 20 persons." Quaere*: is this not an instance of regulatory discrimination in favour of lawyers and accountants, *vis a vis* other professionals like architects that are not exempted from the 20 partner cap restriction? What considerations could possibly apply to only lawyers and accountants to the exclusion of their other professional colleagues?

- *Timeframe*
  Timeframe for registering business vehicles is no longer a huge differentiator given the CAC's online presence and operations. The most critical issue is to ensure accurate completion of forms before uploading them with other requisite documents to obviate any queries which could delay completion of the process, irrespective of vehicle. Although the CAC advertises timelines for concluding registration of businesses, this does not always turn out to be the case in practice.

- *Risk Management*
  - *Legal Personality*
    Historically, the separate legal personality conferred by statute on companies[28] was a major attraction for investors and the evolution of partnership models via the LP and LLP variants was to 'combine' this feature with the flexibility of partnership.[29]

    If an SP dies (whether intestate or not), the devolution of his business will attract estate taxes at 10% of the value of the assets, upon the grant of probate or letters of administration.[30] However, since the assets of a SSH belongs to the company and not to him,[31] this issue may not have as much stark impact as in an SP scenario;

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[28] See ***sections 42 and 43(1) CAMA***: *"As from the date of incorporation mentioned in the certificate of incorporation,* ***the subscriber of the memorandum together with such other persons as may become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the powers and performing all functions of an incorporated company including the power to hold land, and having perpetual succession, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act"*** and *"Except to the extent that the company's memorandum or any enactment otherwise provides, every company shall, for the furtherance of its business or objects, have all the powers of a natural person of full capacity."* Emphasis supplied. *In pari materia* provisions in ***CAMA 2004*** were ***sections 37*** and ***38(1)***.

[29] See ***section 756 (Effect of registration [of an LLP])***; it can: *sue and be sued in its own name; acquire, own, hold, develop or dispose of any type of property; have a common seal if it decides to have one; and do all such other acts that bodies corporate may lawfully do*. For emphasis (so 'the message is not lost'), ***section 757(1)*** goes on to provide that LLPs shall have the acronym or the words *"limited liability partnership"* as the last words of their names. Notably, there is no equivalent of ***section 756*** for LPs; thus can ***section 807 (Application of Part C)*** be called in aid to achieve similar effect for LPs? The answer is in the negative, because ***section 807*** applies ***Part C*** provisions (on LLPs) to LPs *"except so far as they are inconsistent with the express provisions of this Part [on LPs]";* and ***section 795(3***) already provided that an LP: *"shall consist* ***of one or more persons called general partners, who shall be liable for all debts and obligations of the firm****, and one or more persons called limited partners."* Furthermore, by ***section 795(4)***: *"****Each limited partner shall at the time of entering into the partnership contribute, or agree to contribute, thereto a sum or sums as capital or property valued at a stated amount and shall not be liable for the debts of obligations of the firm, beyond the amount so contributed or agreed to be contributed."*** Emphases supplied.

[30] Although this is charged and paid in practice, for a view that there is no legal basis for such (given absence of specific legislation, see Temiloluwa Oladele, ***'Death And Taxes: An Overview Of The Tax Considerations Of A Natural Person In Death'***, *Mondaq, 07.06.2018*: https://www.mondaq.com/nigeria/capital-gains-tax/708580/death-and-taxes-an-overview-of-the-tax-considerations-of-a-natural-person-in-death (accessed 11.04.2022).

[31] As an incidence of the legal personality of the company as laid down in the *locus classicus* of ***Salomon v. Salomon*** ***[1897] AC 22***. Salomon has been severally followed in Nigerian cases such as: ***Dawan v. EFCC [2020] 5 NWLR (Pt.1717] 226 at 420D-F***. *Per Ugo, JCA: "I think this issue can be decided on the short point that appellant being not Taen Nigeria Ltd. whose account was frozen cannot competently ask for the unfreezing of the said account.* ***Yes, he may be its directing mind but that does not make him the company or owner of its account.***

for example, he could have transferred shares for nil consideration to intended beneficiaries, prior to his passing.[32] Transfer of a partner's interest unfortunately does not, *ipso facto,* generally lead to disassociation with the partnership.[33] There could more wiggle room for tax planning in the corporate context, albeit this may be moderated by other points made elsewhere in this article. Suffice to say that detailed analysis of tax impact - which this article is constrained from undertaking for reasons of space - is also important, as part of the business vehicle option considerations.

- *Agency and Liability*
  Unless involved in management, shareholders are not generally not agents of the company.[34] In the same way, ***section 806*** precludes limited partners from partaking in management of partnership business, whilst stating their incapacity to bind the firm; *with the caveat that participation in management exposes them to liability for firm debts and obligations as if they were general partners*. In an LLP context, designated partners are responsible for ensuring the LLP's compliance with ***CAMA*** provisions and liable to fines for any contravention by the LLP.[35]

- *Contract Execution/Litigation*
  For some it is an irritant that they (individuals) would be the parties suing and being sued on behalf of the business, or that their business contracts have to be signed

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The company is a distinct person in law: *see Olalekan v. Wema Bank Plc (2006) LPELR – 2562 (SC); (2006) 13 NWLR (Pt. 998) 617 and Ebhota & Ors v. Plateau Investment & Property Development Co. Ltd. (2005) LPELR – 988 (SC); (2005) 15 NWLR (Pt. 948) 266."* Emphasis supplied. See also ***Williams v. Adold/Stamm Intl. (Nig.) Ltd [2022] 5 NWLR (Pt. 1822) 23, at 97F-G:*** the mere fact of majority shareholding without more, does not translate into the shareholder being the *alter ego* of the company. In ***Ostankino Shipping Co. Ltd v. The Owners, MT 'Bata 1' [2022] 3 NWLR (Pt. 1817) 367 at 393D-H****, per Nweze, JSC: "our law attributes juristic personality, that is the capacity to maintain and defend actions in court to natural persons and artificial persons and institutions…* ***The consequences of the above is that only natural persons or a body of persons whom statutes have, either expressly or by implication, clothed with the garment of legal personality can prosecute or defend lawsuits by that name****…"* Emphasis supplied.

[32] Since there is no mark to market rules in Nigeria, the shares will not be *"income"* for PIT reporting purposes; however there may be capital gains tax (CGT) exposure upon disposal if the triggers in ***section 30(2) CGT Act Cap. C1, LFN 2004*** (amended *vide* ***section 2 Finance Act No. 3 of 2021***) are implicated. However, income from profits of the business will be liable to tax in the hands of the trustee or executor. This is not worse off situation because the founder too would have been subject to tax on his income from the business. The tax planning possibilities will also have to take account of the ***Income Tax (Transfer Pricing) Regulations 2018.*** There may also be other Parties may also be able to exploit the gaps between the fact that the FIRS may be more focused on the company's continual payment of CIT than on change of ownership from founder to children (or other beneficiaries). The State IRS that is entitled to estate taxes may not even be aware about the change of ownership in order to enforce payment of such estate taxes.

[33] See *774(1) and (2): "(1) Unless otherwise provided in the [LLP] agreement, the rights of a partner to a share of the profits and losses of a[n] [LLP] and to receive distributions in accordance with the [LLP] agreement are transferable either wholly or in part. (2) The transfer of any right by any partner under subsection (1)* ***does not by itself cause the disassociation of the partner*** *or a dissolution and windingup of the limited liability partnership."* Emphasis supplied.

[34] *Cf.* with ***section 309(2) CAMA***: *"A director may, when acting within his authority and the powers of the company, be regarded as agents of the company under Part III of this Act."*

[35] See ***sections 749, 750 and 752 CAMA***.

as *"ABC [name], trading as (t/a) ABC Ventures"*. These drawbacks are not applicable to corporate vehicles and the LLP.[36]

- *Corporate Governance*
  In its ***Introduction***,[37] the ***Nigerian Code of Corporate Governance 2018 (NCCG)*** stated that it *"seeks to institutionalise corporate governance best practices in Nigerian companies."* Whilst this excludes partnerships (and the ***NCCG*** is actually not mandatory for all companies),[38] nothing stops partnerships from being guided by its provisions, with necessary modifications, for 'internal democracy' that would enhance sustainable operations. In our view, *partnerships may have greater flexibility to set their own bespoke corporate governance rules, especially as the CAC does not in practice regulate provisions of partnership agreements (PAs)*.[39]

  Management of partnerships may be more nimble because designated partners for LLPs and general partners for LPs may be able to take prompt action, unburdened by formalities and strictures of board of directors' statutory requirements in the ***CAMA*** and by sectoral regulators. From relationship management perspectives, individuals who want to loom large over the business are better off being SSHs of SSHCs or being SPs, as overbearing attitudes may create friction between partners (especially simple partnership that is neither LLP nor LP). In any event, a robust PA/ shareholders' agreement (SHA) as the case will not only provide clarity on rights, obligations and relationship *inter partes*, but may be could be helpful in averting or managing internal stakeholders' relationship crisis in the business.

  However, shareholders may also seek to achieve bespoke outcomes through their SHA; whilst they are also at liberty to prescribe regulations for the company through the Articles of Association.[40] It is probably accurate to state that *the CAC*

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[36] Note observation at footnote 29 above that unlike LLPs, LPs unlike are not expressly conferred with separate legal personality and perpetual succession.

[37] At *p. iv*.

[38] Presumably as a result of policy underpinning that partnerships do not have the same clout, leverage etc to potentially impact the wider public like "public interest entities" regulated by the ***NCCG's*** enabling legislation, the ***Financial Reporting Council of Nigeria Act No. 6 of 2011***. For some discussion, see Afolabi Elebiju, *et al*, ***'Definitions And Developments: Corporate Governance Implications Of Judicial Interpretation Of "Public Interest Entities" In Eko Hotels Limited v. FRCN FHC/L/CS/1430/2012'***, *LeLaw Thought Leadership Insights, July 2019*: https://lelawlegal.com/add111pdfs/PIE-ARTICLE.pdf (accessed 04.04.2022).

[39] See ***section 753(2)*** for LLPs: *"The incorporation documents shall be in the form as prescribed by the Commission and shall - (a) state the name of the [LLP]; (b) state the proposed business of the [LLP]; (c) state the address of the registered office of the [LLP]; (d) state the name and address of each of the persons who are partners of the [LLP] on incorporation; (e) state the name and address of the persons who are to be designated partners of the [LLP] on incorporation; (f)* ***contain other information concerning the proposed [LLP] as the Commission may prescribe.****" Cf.* ***section 798(2)*** for LPs, that: *"The application for registration of a[n] LP shall include a statement signed by the partners which shall contain - (a) the name of the [LP]; (b) the general nature of the business; (c) the principal place of business; (d) the full name and address of each general partner; (e) the full name and address of each [LP]; (f) the term if any, for which the partnership is entered into and the date of its commencement; (g) a statement that the partnership is limited and the description of every [LP] as such; and (h) the sum contributed, or agreed to be contributed by each [LP] and whether paid, or to be paid in cash or in another specified form."*

[40] See ***section 32(1) and (2) CAMA***: *"(1) A company shall have articles of association prescribing regulations for the company. (2) Unless it is a company to which model articles apply by virtue of section 34 it shall register*

regulates companies more rigorously than partnerships because those are closer to the informal sector than not, and therefore presumptively deserving of lighter regulation, otherwise businesses will not have any incentive to emerge from the shadows of the informal sector.[41]

Compensation/Profit Sharing
Shareholders with equity interest can only expect returns *via* dividends (interim or final, declaration of which is subject to ***CAMA*** rules),[42] and unless they are also executive management, or vendors to the company, cannot expect any other compensation from the company, except directors' fees and/or sitting allowances. ***CAMA*** contains stringent provisions on related party loans, especially to directors and officers, including strict disclosure requirements. Also, property transactions with directors absent disclosure to and shareholders' ratification resolution is forbidden, and is voidable at the company's instance.[43]

Many of these restrictions do not apply to the partnership model, where the general partners' management fees for example in PE context are a key part of the LP Agreement (LPA).[44] In professional firms, partners can take drawings against their share of anticipated profits, but such is not allowed in corporates. The typical PE compensation structure can only be feasible in LP (and more rarely LLP) settings.

- *Tax Efficiency/Compliance*
  Tax efficiency is always a critical consideration in transaction structuring, as much as in entry/country/operating strategy for businesses. In Nigeria's tax regulatory context, the key factors that tend to weigh in favour partnerships are the tax transparency that taxes partnership profits in the hands of the partners, not at the

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articles of association." The issue of conflict, and which one prevails between provisions of the SHA and the Articles, will not arise in a partnership scenario. *Cf.* also that by ***sections 762 and 807 CAMA*** LPs may adopt ***15th Schedule CAMA*** provisions regarding matters relating to mutual rights and duties of the partners. Whereas in ***UOO (Nig) Plc v. Okafor [2020] 11 NWLR (Pt. 1736) 409 at 452E-G,*** the SC held that inconsistent provisions of the Articles of Association with ***CAMA 2004*** are void. For a discussion on conflict between SHA and the Memorandum and Articles of Association (MeMart), see K Recce Thomas and CL Ryan, ***'The Law and Practice of Shareholder Agreements'***, *(3rd ed. (2009), LexisNexis), pp. 7-12.*

[41] For a related discussion, see Afolabi Elebiju and Ayooluwatunwase Ewebiyi, ***'Value Added Tax and the Informal Sector'*** in Samagbeyi and Otusanya (eds.), ***'Value Added Tax in Nigeria: Policy, Legal Administrative Issues and Options for Reform'*** *(CITN, 2021), pp. 170-179.*

[42] They may be declared by shareholders only out of *"distributable profits"*, and only on the recommendation of directors (shareholders can reduce but not increase the recommended dividend), and must not be declared *"if there are reasonable grounds for believing that the company is or would be, after the payment, unable to pay its liabilities as they become due."* There are reserve and capitalisation provisions/rules, and directors have joint and several personal liability for paying dividend out of capital. See generally, ***sections 426 - 433 CAMA***. Some companies also have dividend distribution policy in their SHAs, and any changes is often subject to veto or super majority decision of shareholders.

[43] For a discussion, see Afolabi Elebiju, ***'Relationships and Scrutinisations: The Companies and Allied Matters Act 2020 and Transfer Pricing in Nigeria'***, *LeLaw Thought Leadership, April 2021, pp. 3-6:* https://lelawlegal.com/add111pdfs/Relationships_and_Scrutinisations_Afolabi_corrected.pdf (accessed 06.04. 2022).

[44] Note that by a collegial reading of ***sections 762 and 807 CAMA,*** provisions of ***15th Schedule CAMA*** could apply if there is no ***LPA or LLPA***.

partnership level. This is unlike corporate tax where taxation happens at two levels: the company and the shareholder *via* 10% witholding tax (WHT) on dividends.[45]

Even though dividends represents franked investment income on which there is no further tax apart from the WHT already suffered,[46] avoidance of the double layer of taxation can sometimes spell the difference between 'reasonable' and '*under par*' returns. *This appears to be one of the reasons why the partnership model is very popular in the private equity (PE) fund structuring landscape.*

A second reason that partnerships are more tax efficient is their more optimal/ generally lower WHT exposure on their invoices at 5%, instead of the 10% generally applicable to companies.[47] This confers *cash flow advantage* on partnerships as the 5% differential would be part of cash available for the purposes of their business which is lost to a corporate competitor that has suffered WHT deduction at 10%. This advantage can get more magnified if both parties are involved in low margin business – because "*cash is king*", the deferred tax obligation by way of lower WHT is a strategic business advantage.

On the other hand, a corporate vehicle may be attractive compared to SP or partnerships because the ***CITA*** grants small and medium sized companies (companies with less than and above ₦25 million turnover respectively) tax exemptions – nil (0%) tax and lower (20%) tax rate instead of the generally applicable 30% CIT rate.[48] These preferential tax treatment could mitigate the

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[45] See ***sections 9, 40; and 80 Companies Income Tax Act, Cap. C21, LFN 2004 (CITA)***.

[46] ***Section 80(4) CITA***.

[47] According to a commentator: "*Nigerian tax legislation provides for the WHT system to function as an advance payment of tax upon pain of criminal sanctions for breach. There are essentially in pari materia provision in the …(PITA, sections 69-75), …(CITA, sections 78-84), … (PPTA, sections 56 & 54); and the … (FIRS[E]A, sections 30 & 40), together with the WHT Regulations made pursuant to CITA and PITA respectively.* ***Parties (e.g. recipients of service) making payments on listed transactions are required to deduct tax on such payments at either 5% or 10% depending on the transaction or status of the payee****. …"* Emphasis supplied. See Afolabi Elebiju, ***'Withholding Tax: The A-Z of Grossing Up'***, *LeLaw Thought Leadership, p.1:* https://lelawlegal.com/add111pdfs/Witholding-Tax-A-to-Z-of-Grossing-Up1.pdf *(originally published in 'Taxspectives by Afolabi Elebiju', THISDAY Lawyer, 16.02.2010, p. 14)*. Note that ***sections 78-80 CITA*** and ***70-72 PITA*** specified 10% WHT rates for loans/royalty, rent and dividends (irrespective of beneficiary). See also subsidiary legislation, such as the ***WHT Regulations*** made pursuant to ***CITA*** and ***PITA*** respectively; and ***FIRS Information Circulars No. 2006/02 of February 20116,*** and ***No. 9902 of 1st January 1999***.

[48] For a fuller discussion, see Afolabi Elebiju, ***'Synchronisations…' (supra)*** at *pp. 6 – 7: '* ***(D. FA1 and FA2 2020: Size Matters)***' including other tax incentives for small companies. See also *footnote 6 at p. 1*: "*Section 22 FA1 2020 introduces definitions of "small company" (SC), "medium-sized company" (MSC) and "large company" (LC) into section 105(1) CITA. By the combined effect of sections 9 and 16 FA1 2020 (amending sections 23(1) and 40 CITA), profits of SCs are tax exempt, MSCs pay at concessionary 20%, whilst taxable profits of LCs remain subject to the erstwhile (general) 30% rate. On its own part, section 38 FA1 2020's amended section 15 VATA relieves businesses (including companies) that have less than ₦25 million taxable supplies in any calendar year, from VAT registration and reporting requirements (in sections 8(2), 13, 29, 34 and 35 VATA). In determining whether a person meets the ₦25 million threshold, taxable supply of a capital asset or made as a consequence of sale of whole or part of the business or of permanently ceasing to carry on business, are excluded (section 15(2) VATA). This in effect approximates to CITA's SC turnover threshold. Whereas MSCs enjoyed 20% CIT rate; under VATA, MSCs and LCs' VAT obligations are unaffected.*"

double layer of taxation described above, and also make a huge difference during the start-up phase of businesses.[49]

- *Confidentiality*
  Confidentiality is also a big concern for many investors, given that filings to the CAC constitute public record. Consequently companies shield details of their internal workings through SHAs (which is not required to be filed), unlike the Memorandum and Articles of Association (MeMart). Previously, partnership agreements did not need to be submitted alongside the application for registration of BNs under ***CAMA 2004***. Presently, although ***CAMA*** does not expressly provide for it, it may be argued that the CAC's ***Draft Operations Checklist 2021*** requires that the exact PA proposed to be used by the partners be filed.[50]

  This will not bode well for confidentiality and could present business risk through exposure of commercially sensitive information.[51] Hence, the reasonable view we would expect the CAC to take is a basic PA consistent with the details in the LLP 01 and LP 01 will suffice.[52] Such approach worked previously, and we do not think there is any compelling need to disturb that now.

- *Brand Perception*
  Some investors want to start out with SP and then change to LLC after gaining some scale based on the perception that the compliance requirements of SP is lighter. Some other people rightly or wrongly believe that using BN/SP vehicle will handicap their brand, as "small timers" and therefore would only consider the corporate vehicle options. This is pursuant to the perception that BN/SP is closer to

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[49] See excerpts from ***'Synchronisations' (supra)***, at *p. 6*, (citing Afolabi Elebiju and Chuks Okoriekwe, ***'Counting the Cost': An Impact Analysis of Nigeria's Tax Incentive Regime'***, *LeLaw Tax Monograph Series No. 1 (March 2021), at p. 10*: *"Also, 'by the new section 23(1)(o)(ii) CITA (vide section 9 FA1 2020), dividends received from small manufacturing companies in the first five years of their operations are also tax exempt.' " "Further, 'Small companies are also exempt from the 2% of assessable profit as Tertiary Education Trust Tax: section 34 FA2 2020 (amending section 1(2) TETFund Act).' "* Subsequently, ***section 7 Finance Act No. 3 of 2021 (FA 2021)*** has also been codified two relevant tax exemptions as new ***section 23(1)(n) and (o) CITA***.

[50] See ***Items 15 and 16 of 'Incorporation of Limited Liability Partnerships: General Requirements'*** *(p. 39* ***Checklist***): *"15. The Registration Application Form should be accompanied by a [PA] stating the term(s), if any, for which the partnership is entered into. (16) Name of a Limited Liability Partnership must appear on the Registration Application Form and Partnership Agreement exactly as approved by the Commission." Cf. with, in pari materia* ***Items 12 and 14 LP's General Requirements****. Cf.* ***Item 24 and 22****: "Documents must comply strictly with the provisions of the Act and the Commission's requirements for registration of [[LLP] [or LP]]." "****Post Incorporation Services"*** include. *"4. Registration of Change in LLP Partnership Agreement – Section 762 (2), CAMA"*, and *in pari materia* ***Item 6*** *for LPs.*

[51] The question then arises, what options are open to prospective applicants for registration as LLP/LP with the CAC? One is to seek declaratory reliefs that the request is *ultra vires* the CAC, because the info requests in ***Forms CAC LLP 01*** and ***LP 01***. Furthermore, although the CAC has incidental powers to give effect to ***CAMA's*** provisions (***section 8(d)-(f) CAMA***), that does not authorise CAC regulations that substantively extend ***CAMA*** requirements, as such would be *ultra vires*.

[52] Such will be consistent with the language of ***Item 15*** and ***12*** (for LLPs and LPs respectively) that a PA (not the PA) stating the terms if any for which the partnership is entered into. Emphasis supplied. In order words, the partners can state some, but not all of the terms. Can it then be argued that the detailed PA is inconsistent or conflicts with the registered PA? We think any partner seeking to avoid obligations under such guise would fail, to the extent that the detailed terms (which such partner had signed up to), do not include any unlawful provisions.

the informal sector than the formal sector where particular investors/business founders want to play because of their long term future plans; for example, to do an initial public offer (IPO). It is thus not unusual for choice of business vehicle to be more largely informed by sentimental reasons than other considerations.

Some vehicles have gained international recognition for particular businesses. For example, even if some corporate vehicles are involved in a PE fund, the underlying architecture of the fund itself is an LP with an LPA.[53] Utilisation of recognised vehicle makes it easier for the promoters/founders to attract investment and other relationships necessary for their success.

- *Real Estate Asset Holding Purposes*
  One popular reason for using the corporate vehicles is as a platform for real estate transactions, especially to sidestep the requirement for governor's consent to such transactions under ***section 22 Land Use Act***[54] (***LUA***). Given the legal personality and perpetual succession of companies - changes in company ownership does not affect the company's title to real estate; the ***LUA*** provisions therefore does not catch the indirect transfers through acquisition of property holding companies. That way, transactions costs and time that would have been otherwise expended on governor's consent application process would be saved, leading to efficiency. In this wise, only LLPs with the beneficial provisions on separate legal personality and perpetual succession is in a similar standing with corporate vehicles – SPs, BNs and LPs are disadvantaged.[55]

  However, one would have to consider the start-up compliance and ongoing maintenance costs of the companies over time, especially annual professional fees (such as audit and legal fees) for preparation of audited financial statements, tax and CAC filings, etc to be sure that having a company hold the real property is more cost effective.[56] This may not be an issue where the property value is substantial,

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[53] *"Most PE firms are structured as limited partnerships, where the fund manager is the general partner (GP) and the fund's investors are limited partners (LP). The GP has management control over the fund and is jointly liable for all debts. The LPs have limited liability; they do not risk more than the amount of their investment in the fund. Two core functions of the GP are: To raise funds. To manage investments."* See IFT, ***'Essential Concept 86: Private Equity Fund Structures, Valuation and Due Diligence'***: https://ift.world/concept1/level-ii-concept-86-private-equity-fund-structures-terms-valuation-and-due-diligence/ (accessed 07.04.2022).

[54] ***Cap. L5, LFN 2004.***

[55] See ***section 746***: *"(1) A limited liability partnership is a* ***body corporate*** *formed and incorporated under this Act* ***and is a legal entity separate from the partners****. (2) A limited liability partnership shall have perpetual succession. (3) Any change in the partners of a limited liability partnership does not affect the existence, rights or liabilities of the limited liability partnership."* Emphasis supplied. See also ***section 756*** and related discussion in footnote 29 above that ***CAMA*** that did not intend to confer legal personality and perpetual succession on LPs vide ***section 807***. ***Section 807*** was to avoid duplication of some LLP provisions that are not inconsistent with express LP provisions, to be applied to LPs. It was a legislative efficiency provision. In our view, given its criticality to the attribute of LPs, if ***CAMA*** intended that LPs will have legal personality and perpetual succession, it would have made express provision accordingly.

[56] By the way, BNs and LPs will suffer a double whammy if they were to acquire properties in their names – they would still be subject to maintenance costs because of compliance obligations, whilst still being subjected to transaction costs of governor's consent.

and such property could potentially be subject to several transactions – repeatedly avoiding governor's consent transaction costs could be the clincher. For example, the developer of an apartment block comprising several units could achieve competitive pricing by transferring shares – equivalent to the size of each unit – to prospective purchasers of such units.

Sometimes even for non-real assets, it may be convenient to hold them in a corporate vehicle for orderly management, ease of transmission and other reasons.

- *Termination Considerations*
  Given ***CAMA*** provisions, it is more tasking and quite technical to wind up or dissolve companies than partnerships.[57] As between LLPs and LPs, the former is easier, whilst the SP is the one more easily unravelled, given the absence of any other party directly having a stake in the business.[58] From a cost perspective, all things being equal the process is more expensive for companies.

Conclusion

The choice and use of vehicle for business should not be a knee jerk reaction. Sustainable long term future, profitability, market competitiveness and other critical desired objectives may depend on it. Therefore time and resources invested in a comparative analysis of the options given the investor(s) objectives and circumstances to arrive at the most business and regulatory efficient option would be more than worthwhile. Such exercise is akin to due diligence without which a prudent prospective investor will not acquire a major asset or business.

In this regard, it is a happy development that the LP and LLP option are now available as alternative business platforms across Nigeria, not just in Lagos State as in the pre-***CAMA*** days. The CAC also needs to ensure robustness of its service delivery in tandem with the intendment and provisions of ***CAMA***; for example system glitches of its online platform should be minimised.[59] We expect that Nigeria will continue to make the necessary

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[57] Whilst companies have copious provisions including procedural and documentation requirements for voluntary winding up, creditors' winding up and winding up by the Court in respect of companies, there are only 3 sections on winding up of LLPs and LPs. This is further borne out by CAC Forms and references in ***Companies Regulations 2021*** and CAC's ***Draft Operations Checklist 2021***. The latter is available at: https://www.cac.gov.ng/wp-content/uploads/2021/10/Draft-CAC-Operations-Checklists-2021.pdf (accessed 07.04.2022).

[58] Pursuant to ***section 819(1) and (2)***, the CAC may remove a BN from the Register upon receiving notice by or on behalf of the proprietor of the BN (within 3 months of cessation), that he/it had ceased to carry on business under the BN.

[59] The CAC issued a 31st August 2021 notice, ***'Commencement of Registration of Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs) and Deployment of the Registration Solutions on Company Registration Portal (CRP)***: https://www.cac.gov.ng/public-notice-on-the-commencement-of-registration-of-lp-and-llp/ (accessed 07.04.2022). It stated that *"The Commission wishes to inform its esteemed customers and the General Public* ***that it has commenced the registration of Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs). To this end, it has deployed the registration interfaces for LLPs and LPs on the Company Registration Portal (CRP). Customers and members of the General Public wishing to register LLPs and LPs may now do so on the CRP.***" Emphasis supplied. Apparently, the CAC has commenced LLP and LP registration, despite anecdotal evidence that the take-off of the LLP/LP registration platform had not commenced as at January 2022. The authors are aware of a pending application at the CAC to register an LLP, suggestive that the CAC's LLP/LP registration is live. Given their novelty under ***CAMA***, we expect the CAC to be providing

legislative amendments to consolidate its reform efforts towards improving her ease of doing business and truly becoming an enabling environment for businesses, both local and foreign to thrive to the symbiotic benefit all parties and stakeholders through the resulting national economic development and boom.

regular updates on its registration and regulation of the LLP and LP vehicles. *Cf.* CAC's 20th January 2022 ***'Public Notice on Confirmation of Current Information on Registered Entities'*** which provided update advisory "*Following the deployment of a new Registration application*": https://www.cac.gov.ng/ public-notice-on-comfirmation-of-current-information-on-registered-entities/ (accessed 11.04.2022).