Alsec Nominees Limited

DESIGNATED PARTNERS OF A LIMITED LIABILITY PARTNERSHIP

Introduction

One of the innovations of the Companies and Allied Matters Act 2020 ('CAMA') is the introduction of the Limited Liability Partnership ('LLP') corporate structure. An LLP is a corporate body distinct from its partners and has perpetual succession. LLPs are popular for larger partnerships and professional bodies and differ from traditional business partnerships and limited liability company structures. There is no restriction on the maximum number of partners of an LLP, but there must be at least two partners at incorporation, and the number of partners of an LLP must not fall below two for more than six (6) months.[1]

An LLP structure offers some advantages, including the protection of the personal assets of the partners, corporate memberships, capacity to contract in the name of the LLP, flexibility in the management of the partnership and sharing of profit, and the ability of the partners to determine the level of their involvement in the partnership.

Appointment of Designated Partners

In relation to an LLP, a partner means any person who becomes a partner in the LLP in accordance with the partnership agreement of the LLP[2]. A designated partner is an individual appointed by the LLP to ensure the LLP's compliance with the provisions of the CAMA and the partnership agreement. LLPs must have at least two (2) designated partners who must be individuals, and at least one (1) of the designated partners must be resident in Nigeria. Corporate bodies who are partners of an LLP may appoint nominees of the corporate body to act as designated partners. Designated partners may be appointed at incorporation, or the partnership agreement of the LLP may specify the designated partners of the LLP. An LLP is also required to appoint another designated partner within 30 days of a vacancy arising in the office of a designated partner of the LLP.[3]

Only a person who is a partner in an LLP can become a designated partner in the LLP, and a designated partner ceases to be a designated partner if he ceases to be a partner of the LLP[4]. Any individual may be appointed a designated partner of an LLP except he is of unsound mind and has been so found by a court in Nigeria or elsewhere, or he is an undischarged bankrupt.[5]

A partner must indicate his consent to act as a designated partner of an LLP in writing, and the notice of his/her appointment must be filed with the Corporate

[1] Section 748 of CAMA
[2] Section 868 of CAMA
[3] Section 751 of CAMA
[4] Section 749(5) of CAMA
[5] Section 747 of CAMA

Affairs Commission within thirty (30) days of the appointment as a designated partner.

Responsibilities of Designated Partners

An LLP is owned by its partners, who are required to act in accordance with the provisions of the partnership agreement. The CAMA imposes additional responsibilities on designated partners. The duties of designated partners are as follows:

a. To do all acts, matters, and things that are required to be done by the LLP to ensure its compliance with the provisions of the CAMA.

b. Filing of any document, return, statement, and other reports as may be specified in the partnership agreement of the LLP or the CAMA.

c. A designated partner is liable to pay all penalties imposed on the LLP for non-compliance with the provisions of the CAMA.[6]

Liabilities of LLPs

An LLP is liable for any wrongful act or omission of partners of the LLP incurred while carrying on the business of the LLP or with the authority of the LLP and such liability is required to be met out of the property of the LLP[7]. A partner of an LLP is not directly or indirectly personally liable for any obligation of the LLP. However, partners, including designated partners of an LLP, are personally liable for all fraudulent acts they commit while carrying on the business of the LLP. An LLP is also liable for the fraudulent acts committed by its partners to the same extent as the partner, this is only applicable where the LLP is unable to establish that the fraudulent acts were done without the LLP's knowledge or authority.[8]

Conclusion

The LLP structure allows entrepreneurs to own a business entity that enjoys a corporate personality while managing the business, making profits, and enjoying reduced taxes.

Disclaimer

This update is for general information purposes only, does not constitute legal advice, and does not purport to be fully comprehensive. If you have any questions or require any assistance or clarification on how the subject of this guidance note applies to your business, please contact us at alsec@alsecnominees.com.

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[6] Section 750 of CAMA.
[7] Section 766(2) of CAMA
[8] Section 769 of CAMA.