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THE PREFERENCE OF LIMITED LIABILITY COMPANIES OVER PARTNERSHIP AND UNLIMITED COMPANIES IN BUSINESS MANAGEMENT: THE DECIDING CONSIDERATIONS

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ABSTRACT: *A limited liability company acquires a corporate personality status from the date of its incorporation with the power to have a name of its own, to sue and be sued amongst other things. This connotes that the company becomes a distinct person from the owners or members of the company. The liabilities of members are limited only to the amount of unpaid shares taken by them in times of winding-up. The article discusses the preference of incorporated companies over partnership and unlimited companies.*

KEYWORDS: Preference, Limited Liability Company, Partnership, Unlimited Company.

INTRODUCTION

One of the reasons why people may wish to associate in business ventures is to further their economic interests, i.e. to carry on a business for gain.[1] Under English law, there are two main types of organization for such business associations, namely, partnerships and companies.[2] This appears to be the position in Nigeria since, Nigeria is a common law country. The word "company" can, in a colloquial sense apply to both company and partnership. However, companies and company law are distinct from partnership and partnership law. Thus when people want to associate for the purposes of carrying on a business, it is apposite to consider different attributes and distinguishing features of organizations or entities through which they can do so. This paper sets out to examine limited liability companies with a view to ascertaining why a limited liability company may be preferred to partnerships and unlimited companies.

An Overview of Company

The word "company" has no strict legal meaning.[3] However, in legal theory it refers to an association of a number of people for some common object or objects. In normal parlance the term "company" refers to any association formed for economic purposes i.e. to carry on a business for gain.[4] Thus, when one examines the concept of company from this perspective, it is difficult to spot out any distinction between company and partnership since both of them are geared towards profit making. This may be the reason why a learned author contends that "the distinction between partnership and companies is often merely one of machinery and not of

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[1] See P. L. Davies (ed), *Gower's Principles of Modern Company Law* (6th ed, Sweet & Maxwell Ltd; London 1997) 3 (explaining that the purposes for which men and women may wish to associate are multifarious, ranging from those as basic as marriage and mutual protection against elements to those as sophisticated as the objects of the confederation of British industry or a political party).

[2] ibid

[3] Davies *Ibid* (n.1) p. 1; *In Re Stanley* (1906) 1 Ch 131 at 134 per Buckley J.

[4] *Ibid*

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function".[5] Carrying the argument further, the learned author asserts that "if a small number of persons wish to carry on business in common with a view to profit they may either form themselves into a partnership or a company".[6] However, as will be shown in this work, there are indeed distinctions between partnership and company which could make persons form a company rather than a partnership.

A company may be created by registration under the Act of Parliament. The liability of members of a company may be limited or unlimited. Companies may consist of thousands of members (public companies) or of family members of few persons (private companies). An alien may join in the formation of company by complying with the laws relating to alien participation in business in Nigeria. One thing that is worthy of note is that irrespective of the type of company that may be formed, upon incorporation that company acquires legal personality. In other words, the company becomes a legal entity distinct and separate from the persons of which it consists. The company upon incorporation enjoys perpetual succession and a common seal, capable of suing and being sued in its corporate name and of acquiring, holding and disposing of all types of property for the purpose of its objects.

Types of Companies

The Companies and Allied Matters Act 2004 (CAMA) by Section 21(1) provides for three (3) types of companies from which promoters of a company may choose from when considering incorporating a company. These are (i) company limited by shares (ii) company limited by guarantee and (iii) an unlimited company. Furthermore, the Act provided by virtue of section 21(2) of CAMA, that the above mentioned companies can either be a private or public company. Thus, there can be a private or public company limited by share; private or public company limited by guarantee and private or public unlimited company.

(i) Company Limited by Share

Section567 is to the effect that a company limited by share shall have the meaning assigned to it by section 21 of CAMA.[7] It provides that a company limited by share is one in which the liability of its members is limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them. In other words, the liabilities of the members are limited to the nominal value of the shares which they have subscribed to. This account for one of the principal advantages of trading through the medium of a limited liability company on the ground that members are liable to contribute toward: payment of its debts only to a limited extent.[8] Where the company is limited by shares, a member's liability to contribute is measured by the nominal value of the shares he holds and where the nominal shares are fully paid, he owes nothing to contribute to the company.

(ii) Company Limited by Guarantee

In company limited by Guarantee, each member of the company makes a promise to contribute a fixed amount of on behalf of the company when the company is wound up. The Act did not provide for share capital as provided in companies limited by

[5] *Ibid* pp. 4-5
[6] *Ibid*
[7] Companies and Allied Matters Act 2004.
[8] Pennington's Company Law, 7ed, London: Butterworths, 1995, p. 71.

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shares. The implication is that company limited by guarantee is registered without shares. A guarantee company is usually not registered with profit motives. This make its incorporation more appropriate for research based initiatives or trade associations for the purpose of providing services to the needs of certain professionals. The basic aims of guarantee companies are not to make profit but to obtain income to meet the expenses of its members by charging fees for its services. To a large extent, the members assume the position of suretee for the furtherance of the company's set objects.

Nature of a Company Limited by Guarantee

(a) A company may be registered as a company limited by guarantee if it is formed for promoting commerce, art, science, religion, sports, culture, education, research, charity and other similar objects. Also such company shall not be formed or incorporated for the purpose of distributing profits as income to the members of the company; rather the income and property of the company are to be applied solely towards the promotion of the company's object.[9]

(b) It shall not be registered with a share capital. But in Britain, the Company Act recognizes two forms of company limited by guarantee, namely; the guarantee company without a share capital and a guarantee company with a share capital.[10] The members are under no liability so long as the company remains a going concern; they are liable to the extent they have agreed to pay to enable the company pay its debts upon winding up.

(c) The memorandum of a company limited by guarantee requires the authority of the Attorney-General of the Federation for it to be registered.[11]

(d) The guarantee shall not be less than N10,000.[12]

(iii) An Unlimited Company

Liability here is unlimited and a member may be liable to the full amount of the company's debt. Also by virtue of section 25, an unlimited company must be registered with a share capital. The implication in respect of an unlimited company is that, even where the members have paid up the value of the amount of shares respectively held by them, should the company be wound up; the members would be asked to pay more until the debt is discharged. It is however instructive for investors who would like to go into profit-making ventures such as trading to bear in mind that the main attraction of incorporation is to be insulated by taking the advantage of limitation of liability to which unlimited company lacks the power to provide to its members.

[9] CAMA ibid section 26 (1) & (4)
[10] See section 1 (4) of the English Company Act
[11] CAMA ibid section 26(5)
[12] *Ibid* Section 27 (4) (b)

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Preference of Limited Liability Companies over Partnership and Unlimited Companies in Business Management

Discerning from the above, therefore, one outstanding attribute which makes the partnership associations and unlimited companies unattractive is the absence of limitation of liability of its members. The members are not clothed with the corporate veil offered by limited liability companies on incorporation. While members of limited liability companies are not personally liable for the debts of the company, the members of the unlimited company are personally liable to the debts of the company and are personally pursued until the debts are satisfied. The point being made is that the liability of members of a limited liability company is limited to the nominal value of the shares for which they have subscribed, and once the shares have been paid up they are under no further liability. This is one of the marked preferences of limited companies to investors. From the inception of the company's formation, the investors already knew the extent of their liability to the company. But in an unlimited company or partnership, the liability of the members will only abate when every single debt of the company or partnership is discharged. Thus, the members may themselves become bankrupt if they do not have the money to discharge the debt of the company or partnership.

Corporate Personality Doctrine

One other notable preference of incorporation as amply provided in section 37 of CAMA is to the effect that as from the date of incorporation mentioned in the certificate of incorporation, the subscriber of the memorandum together with such other persons as may, from time to time, become members of the company, shall be body corporate by the name contained in the memorandum, capable forth with of exercising all the powers and functions of an incorporated company including the power to hold land, and having perpetual succession and a common seal. Members are to contribute only to the assets of the company in the event of its being wound up and only to the amount owed by the members as provided under the Act. Furthermore, apart from the provisions contained in the company memorandum, the company Act or other enactments, every company is conferred with the power of a natural person of full capacity for the furtherance of its authorised business or objects.

The effects of corporate personality could be viewed from the legal consequences of incorporation. On incorporation, certain rights and powers accrue to the company that enable the company to carry out its business activities as a corporate body in the eyes of the law. The concept of corporate personality has been an age long doctrine which has been affirmed by the court in a plethora of cases. The *locus clasicus* with the concept of corporate personality begins with the case of *Salomon v. Salomon*[13] where Mr Aron Salomon had a leather business and sold the business to a company named Salomon Co. Ltd. which he formed. There were seven members of the company who were his wife, daughter and four sons who took £1 share each and Aron Salomon, a member of the company, took £20,000 shares. But instead of the company paying him cash in full for the leather business he sold to the company, he was given £20,000 and £10,000 in secured debentures. The company wound-up and the assets left were to be used to pay Aron Salomon. The unsecured creditors contended that Salomon was really the same person as Salomon Co. Ltd and that he could not owe himself. They contended further that they should be paid the value left on the asset of the company. The House of Lords held that Salomon was entitled to the £7000 left as value on assets of the company. And that Salomon was a different person from the company. The most fundamental attribute of an incorporated

[13] (1897) A.C. 22.

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company from which all the other consequences flow from, is that of corporate personality doctrine. As from the date of incorporation, the company becomes endowed with a unique legal status. It automatically becomes a 'person' in the eyes of the law quite distinct from the individuals who are its members. It operates as though it were a natural person, capable of rights and subject to liabilities which are not the same as those enjoyed or borne by its members. It can sue and be sued. It becomes an independent legal entity.[14]

In the case of *Habib(Nig) Bank v. Ochete*[15] the court held that at the presentation of the cheque, the respondent was a separate and distinct person from Belyn Pharmacy Ltd. Thus, the appellant could not therefore convert the respondent's cheque to the company's account.[16]

Concept of Limited Liability

Another important consequence of incorporation is the principle of limited liability. As a result of separate legal personality, the company's liabilities are not borne by its members and except where there are special or express provisions to the contrary. The implication of this is that the members are not directly liable for the debts of the company and cannot be so held. For instance; in a company limited by shares, members are liable only to the amount unpaid in which they subscribed on their shares.[17] This may be so, irrespective of how much the company is indebted to creditors. In a company limited by guarantee, members are liable to contribute specific amounts to the assets of the company in the event of the company being wound-up[18] while in an unlimited company, the members bear the full risk of the company's obligations without any restrictions on the amount.[19]

In *Union Bank of Nigeria Pic v. F. E. Orharhuge,*[20] it was held that once incorporation takes place, the company becomes a separate legal entity from those who incorporated it (and) there is no personal liability for any debt incurred by a company except if in case of a loan,[21] the director had signed as a surety.

Perpetual Succession

Furthermore, an incorporation being an artificial person is not susceptible to "the thousand natural shocks that flesh is heir to.[22] It cannot become incapacitated by illness, mental or physical, and it has not (or need not have) an allotted span of life.[23] This is not to say that the death or incapacity of its human members may not cause the company considerable embarrassment; obviously it will if all the directors die or are imprisoned or if there are too few-surviving members to hold a valid meeting, or if the bulk of members of directors become

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[14] J. Dada, op.cit at p. 129

[15] (2001) 3NWLR (pt. 699) CA 114

[16] Ogobodu v. Quality Finance Ltd (2003) 6 NWLR (pt. 815) 147 C.A.

[17] Section 27 (1) (a) of CAMA Cap. C. 20 L.F.N. 2004.

[18] Ibid at section 27(1)(b)

[19] Ibid at section 27(1)(c)

[20] (2000) 2 NWLR (pt.645) 495 at 510, 517.

[21] Ogbodu v. Quality Finance Ltd (Supra), see AfriBank (Nig) Ltd v. M. Ent. Ltd (Supra).

[22] Paul, Davis, Gower and Davies Principles of Modern Company Law.7th ed. (Sweet & Maxwell, London 2003) at p. 34.

[23] Section 84 (1) (a) of the Insolvency Act 1986, replacing S. 572 of the Companies Act, 1985 envisages that the period of the company's duration may be fixed in the articles, but this is never done in practice and even if it were the company would not automatically expire on the expiration of the term.

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enemy aliens.[24] But the vicissitudes of the flesh have no direct effect on the disembodied company.[25] The death of a member leaves the company unmoved; members may come and go but the company can go on forever.[26]

In *C.B.C.L. (Nig). Ltd v. Okoli,*[27] it was held that a juristic person is a creation of law and unlike a natural person whose legal existence terminates at death, a juristic person is immortal as long as the law creating it allows its existence and it is only subject to demise in accordance with the law.[28]

Legal Capacity and Proceeding

(a) Contractual Capacity: An incorporated company has the capacity to enter into a valid contract and execute same just like a natural person. In *Trenco (Nigeria) Ltd v. African Real Estate,*[29] Aniagolu J. S. C. held *inter alia* that the first defendants were a limited liability company. The effect of this is that a company has the capacity to enter contracts. Thus, a shareholder is neither a party to the contract made by his company nor is he entitled to benefit there from. He cannot be sued on contracts made by his company nor be compelled to fulfil its contractual obligations.

(b) Legal Proceedings: A registered company being a legal person can sue in its corporate name for any injury or wrong suffered by it. Its members cannot sue on its behalf, and once a corporate body is before a court, the court accords him the same recognition and privileges it accords natural persons.[30] Moreso, it was established in *Ladejobi v. Odutola*[31] that the proper plaintiff in an action in respect of a wrong alleged to be done to a company is *prima facie*, the company itself.[32] It is apposite to state that an action cannot be maintained in the name of a company (if need be) without the express authority of that company being received from proper quarters.

On the other hand, a corporation can be sued in torts or for crimes committed by it or its agents acting on its behalf as can further be seen hereunder:

(i) Liability in Torts:

A company may be liable in tort. This is based on the principles of vicarious liability of the company for the acts of its servant or on the grounds that the company itself

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24 *Daimler Co. V. Continental Tyre & Rubber Co*. (1916) 2A C. 307 HL.
25 As Greer L. J. said in Stepney Corporation v. Osofsky (1937) 3 All E. R. 289 at 291 C.A. A corporate body has "no soul to be saved or body to be kicked", his epigram is believed to be of considerable antiquity.
26 During the 1939-1945 War all the members of one private company, while in general meeting, were killed by a bomb. But the company survived; not even a nuclear bomb could have destroy it.
27 (2009) 5 N. W. L. R. (pt. 1135) 446 C.A.
28 See: Ibrahim v. N. U. B. Ltd (2004) 11 N.W.L.R (pt. 585) 537.
29 (1978) 3 S.C.
30 *Bank of Baroda v. Iyalabani Co. Ltd*. (2002) FWLR (pt. 124) 494.
31 (2002) 2 N.W.L.R (pt. 753) 121 C. A.
32 *Government of Midstate v. Mid-motor Nigeria Co. Ltd* (1977) 10 S. C.43.
Nkporinwi v. Ejire (2009) All FWLR (pt. 499) 450 C.A.
National Bank of Nigeria Ltd. v. Korban Brothers (Nig) Ltd. (1976) 1 F.N. R. 116.
Vassilev v. Paas Industries Ltd. (2000) 12 NWLR (pt. 681) 357.
C. B. Ltd v. Intercity Bank Plc (Supra).
Umar v. W.G.C. (Nig) Ltd. (2007) 7 N. W. L. R. (pt. 1032) 117 C.A.

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committed the tort through its servants, even though a specific intent is required. When the facts show that the act was done in the course of the company's business, a defence of *ultravires* may not be allowed. In *Z.P. Ind. Ltd v. Samotech Ltd,*[33] it was held that a corporate body can sue and be sued for libel if the defamatory matter is published against its business.[34]

(ii) Liability for Crimes:

Under the common law a corporation could not be liable for its acts and omissions because the corporation was considered a legal fiction devoid of independent will.[35] Then it was reasoned that since the company lacked the mind with which to form the necessary intent, it could not be criminally liable. However, the development of company law has heralded a new principle of corporate liability known as the "Alter Ego Doctrine". This allows the law to attribute the mental state of those who in fact control and determine the management of the company 'itself as its directing mind and will.[36] On this basis, companies have been convicted of crimes involving dishonesty whether created by statutes or common law.[37]

In *Federal Republic of Nigeria v. Thompson & Ors.*[38] The principle of corporate criminal liability was reiterated. The Guardian press, a limited liability company, publishers of the Guardian Newspaper was convicted under *section 1(1) of the Public Officers (Protection against False Accusation*) Decree[39] together with two staff of the company.[40]

Company Property Ownership

The concept of corporate personality enables the property of the association to be more clearly distinguished from that of its members. Hence, the corporate property belongs to the company and members have no direct proprietary rights but merely to their 'shares' in the undertaking.[41] It was firmly established in a celebrated case[42] that the company has no interest in the property of its members and members on the other hand do not have proprietary or insurable interest[43] in the company's property. In *Onagoruwa v. The State*[44] the Court of Appeal made the point when it stated that "although a company cannot talk and functions physically like a natural person, it has the legal capacity to own property and its own property separate and distinct from those of its members".

33 (2007) 16 N.W.L.R. (pt. 1060) 315 C. A.
34 *Ifeanyi Chukwuwu (Osondu) Co. Ltd. v. Soleh Boneh Nigeria Limited* (2000) F.W.L.R. (pt. 27) at 2046.
35 Dictum of Edward Coke in Sutton's Hospital Case (Supra).
36 Section 65 of CAMA provides that any act of the members in general meeting or the board of directors while carrying on in the usual way the business of the company shall be treated as the act of the company itself and the company shall be criminally and civilly liable therefore.
37 Ani Chinyere, "Corporate Liability for Crimes" (2009) 1 (2) J. B. P. C. L. at p. 45.
38 (Unreported) 1984.
39 No 4 of 1984
40 *AG (Eastern Region) v. Amalgamated Press of Nigeria Ltd* (1956-57) E.R.N.R. 12
41 Shareholders are not in the eye of the law part owners of the undertaking. The undertaking is something different from the totality of the shareholdings. Per Evershed L. J. In *Short v. Treasury Commissioners* (1948) 1 KB 116, 122 C. A.
42 *Aso Motel Kaduna Ltd v. Goni* (2006) 10 N.W.L.R. (pt. 987) 88 C. A.
43 *Macaura v. Northern Assurance Co*. Ltd (1925) A. C. 615.
44 Supra

In the case of *Bank Voor Handel v. Statford,*[45] Delvin J. described the proposition that property owned by a company belongs to its shareholders, or alternatively is held or managed by the company on behalf of the shareholders' "as being…beyond the reach of sustained argument. It seems to me to be contrary to all authority and principle".[46]

Other consequences of incorporation include: easy transfer of shares,[47] borrowing powers,[48] nationality and residence,[49] and formalities, publicity and expense[50] and restriction to business stated in the memorandum.[51]

The Concept of Partnership: An Overview

Partnership is the relationship which subsists between persons carrying on business in common with a view of profit.[52] Partnership law, which is largely codified in the Partnership Act 1890,[53] is based on the law of agency, each partner becoming an agent of the others, and it therefore affords a suitable framework for an association of a small body of persons having trust and confidence in each other. The Companies and Allied Matters Act[54] limits the maximum number of persons who can form a partnership from minimum of two (2) to twenty (20). Thus, S. 19(1)[55] thereof provides:

> No company, association, or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business for profit or gain by the company, association or partnership, or by the individual thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other enactment in force in Nigeria.

The purport of the above provision is that any association of people consisting of more than twenty members must be incorporated into a company in so far as they want to carry on business for profit or gain. Thus, if such association of persons does not exceed twenty (20) persons, the association can remain as a partnership. Therefore in partnership there is minimum number of two persons and maximum number of twenty (20) persons. However, the provision of section 19(1) of CAMA does not apply to co-operative societies or firm of Lawyers and Accountants;[56] they can be more than twenty (20) even though they carry on as partners.

[45] (1953) 1 QB 248.
[46] Ibid at p. 269.
[47] Gower op. cit at p. 169.
[48] Ekpo, M. op. cit at p. 43
[49] Section 27 for e.g provides that the registration office of the company shall be situated in Nigeria. See: *George v. S. B. N. Plc* (2009) 5 N.W.L.R. (pt. 1134) 302 C. A..
[50] Davies, P. op. cit at p. 42.
[51] Section 27 (1) © of CAMA Cap. C. 20 L.F.N. 2004.
[52] H. Y. Bhadmus, *Bhadmus on Corporate Law Practice* (2nd edition, Chenglo Ltd; Enugu 2013) 109 see also S. 3(1) Partnership Law of Lagos State Cap P.1 2009; S. 1(1) Partnership Act of 1890.
[53] The Partnership Act 1890 is a statute of general application in Nigeria being a pre-1900 Act in enforce in England on the 1st of January 1900. However it will apply to states that have not enacted their Partnership Laws. Thus, since Lagos State has enacted its Partnership Law, the 1890 Act does not apply to Lagos State anymore. (See Lagos Partnership Law *ibid*).
[54] Cap C20 Laws of the Federation of Nigeria (LFN) 2004 (hereinafter referred to as "CAMA").
[55] *Ibid*
[56] *Ibid* S. 19(2)(a) & (b) (i) & (ii).

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Any association in existence must therefore have the following attributes stated hereunder for it to qualify as a partnership. The attributes are:

(i) There must be a business,[57]

(ii) The business must be carried on in common by two or more persons not exceeding twenty (20); and

(iii) The intention must be to make profit.[58]

The question whether a partnership does or does not subsist between any particular persons is a mixed question of law and fact, and not a mere question of fact.[59] The fact that an author receives a percentage or royalty from a publisher on copies of a book sold does not indicate a partnership between the author and publisher. Thus in *Cox v. Coulson*,[60] M and B agreed to go into business together and to form a limited liability company which would carry on IM's Restaurant. B ordered certain goods from the plaintiff. These goods were intended to be used by the company when incorporated. B was adjudged bankrupt and the plaintiff sued M contending that he was a partner of B. It was held that M and B were never partners because they never intended to carry on business in partnership. All they did was work preparatory to the business to be carried on by the company when formed.

Partnership Agreement

A partnership agreement may be oral, written or by deed. It is however advisable for partners to draw up a written agreement because of the following:

(i) It minimizes the incidence of bad faith, cheating and oppression.

(ii) The written terms form the bench-mark of reference in time of crisis.

(iii) Writing makes it possible to ascertain easily the terms and stipulations of the agreement and therefore its enforceability by the court will pose little or no problem.

(iv) Most importantly, it prevents the presumptions of law which may be at variance with the intention and desire of the partners.

Contents of Partnership Agreement

Partnership agreement must among other things contain the following items:

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57 *Henshaw v. Roberts* (1966) NNLR 158, *Uredi v. Dada* (1988) 1 NWLR (pt. 69) 237.

58 *Ugorji v. Uzoukwu* (1972) 1 All NLR (pt.1) 289.

59 Bhadmus *ibid* (n. 3) p. 110 (explaining that in determining the existence of a partnership the following must be noted: (i) Joint tenancy, tenancy in common, joint property, common property or part ownership does not itself create a partnership (ii) The sharing of gross returns does not of itself create a partnership (iii) The receipt by a person of a share of the profit of a business in prima facie evidence that he is a partner in the business (iv) Receipt of such share of profit or payments contingent or varying with profits does not of itself make a person a partner especially if: (a) debt or other liquidated amount is being paid by instalments out of profit (b) a contract of employment allows an employee or agent to share out profit (c) a widow or child of a deceased partner is being paid annuity from profit (d) a loan is given on the understanding that the rate of interest shall vary with profit (e) receiving annuity from profits of a business in consideration of the sale of goodwill of the business. (See S. 2 Partnership Act 1890; S. 4 Partnership Law of Lagos State).

60 (1916) 2 K.B. 177.

(i) Parties: This will make provision for those who are partners in the business. The essence is to ensure that the number of partners complies with the provision of section 19 of CAMA as regards the maximum number of persons that can form partnership. The full names and addresses must be clearly stated. A schedule may be created to list out the partners if they are many.[61]

(ii) Commencement: The date of commencement of partnership must be clearly stated. This is because it determines the date of registration of the partnership. If a partnership is contemplated, the date of commencement will help in ascertaining when the partnership actually commences.[62]

(iii) Name and Style of the Partnership: This is necessary so as to give due regard to prohibited names, restricted names, names that need not be registered and names that must be registered.[63]

(iv) Capital of the Business: The amount of money to be contributed by each partner must be expressly stated. This is because at common law, there is a presumption of equality of shares if proportion of contribution is not stated.[64] It may be observed that there is a difference between "capital" and "advance". Capital is an amount which partners in a business will have to contribute to start up the business while advance means an amount a partner gives to the partnership in form of a loan and so attracts interests at the rate of 5%. Capital contributed does not attract interest.[65]

(v) Profit and Loss: The ratio of sharing profits and losses must be expressly stated. If there is no express provision, profit and loss will be shared in equal shares by the partners.[66] Also, it is important to state when profit will be shared i.e. monthly, quarterly or yearly.

(vi) Payment of Salaries: Whether partners are entitled to partnership salaries or commission should also be stated. This is because unless this is done partners are not entitled to salary or remuneration for participating in the management of the business.[67]

(vii) Duration: If the partners wish the partnership to last for a particular number of years it should be expressly stated. Partnership is presumed to be at will. If duration is stated, it determines the life span of the partnership and mode of dissolution.[68]

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[61] Bhadmus *ibid* (n. 3) p. 115.
[62] See Section 574(1) of CAMA which provides that any such partnership should be registered within 28 days of commencement of business.
[63] See Section 579(1)(a)-(e) for restricted names and section 579(2)(a) & (b) for prohibited names. The difference between restricted names and prohibited names is that, restricted names may be used if the consent of the Corporate Affairs Commission (CAC) is obtained, but prohibited names must not be used in any circumstance.
[64] See *Halaby v. Halaby* 13 WACA 180; Section 25(a) Partnership Law of Lagos
[65] See Section 25© & (d) of Partnership Law of Lagos.
[66] *Ibid* s. 25(a)
[67] *Ibid* s. 25(f)
[68] *Ibid* ss. 27(1) and 33(a)(b) and (c)

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(viii) Powers, Rights and Duties of Partners: If there is no provision for these, every partner is entitled to take part in the management of the company and equality of powers and rights are presumed.[69]

(ix) Retirement: If the partnership is to be continued after the retirement of a partner it must be provided for, if not, the partnership may have to be dissolved. But if a partnership is for a fixed term, retirement of a member before the expiration of the term will not dissolve the partnership. The kind of notice of retirement to be given should also be provided for. Other items that may also be included are issues bordering on accounts of the partnership, expulsion and suspension and arbitration.

CONCLUSION

A company limited by shares has more advantages over an unlimited company and partnership associations as has shown in this work. It is, the highlighted advantages that make incorporated companies most preferred over the two other types of business associations. A company upon incorporation acquires a corporate legal personality which separates it from the members as was held in *Salomon v. Salomon Co. Ltd.*[70] It may on its own name and by its own account engage in all ordinary transactions permitted by its article and the law. Thus, it may own property; enter into contracts; appoint and be represented by agents; sue and be sued in its own name. Its liabilities are distinct from those of its members who cannot be sued with respect to the corporate debts.[71] These attributes are not available to a partnership. An unlimited company is less attractive and less preferred to a company limited by shares. This is because the liabilities of members are limited to the value of shares respectively held by them. This means that upon winding up, the members of a company limited by shares will only be liable to the extent of the unpaid shares held by them. But the members of an unlimited company as well as partnership bear unlimited liability vis-à-vis the debt of the company to a hilt.

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[69] *Ibid* ss. 25 and 39
[70] Ibid
[71] D. Lloyd, *The Idea of Law* (Penguin Books, London 1991) 305.

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