Understanding Limited Liability Partnerships (LLPs)

John Willis. Javan Silas

Limited Liability Partnerships (LLPs) represent a hybrid legal structure that combines the operational flexibility and tax benefits of a partnership with the limited liability features of a company. In jurisdictions such as Kenya, LLPs are governed by Limited Liability Partnerships Act that regulate formation, management, partner relations, and dissolution. This write-up provides a detailed exploration of the key legal principles underpinning LLPs, particularly those derived from the LLPs Act.

- **Legal Personality and Agency**

An LLP is a body corporate with a separate legal personality from its partners. This means the LLP can own property, sue, and be sued in its own name.

Each partner acts as an agent of the LLP when conducting business in the ordinary course. However, the LLP is not bound by a partner's actions if:

- The partner lacks authority to act in that manner; and
- The third party knows the partner lacks authority or does not believe them to be a partner.

This structure ensures that liability is generally limited to the LLP as an entity, rather than to individual partners, unless there is fraud or wrongful conduct.

- **Relationship Among Partners**

The mutual rights and duties of partners (and between the partners and the LLP) are primarily governed by the LLP Agreement.

In the absence of such an agreement—or where the agreement is silent on a matter—the First Schedule of the LLP Act provides default rules.

This allows for great contractual flexibility, but also imposes statutory norms in cases of omission. Resolutions among partners are presumed to require unanimous consent, unless the LLP agreement specifies otherwise.

- **Cessation of Partnership**

A person ceases to be a partner:

- In accordance with the LLP agreement; or
- By giving 90 days' notice (if no agreement exists);
- Automatically upon death or dissolution of the LLP.

Upon cessation, unless otherwise agreed, the former partner or their estate is entitled to:

- Their capital contribution, and
- Their share of accumulated profits, minus losses,
- As calculated on the date of cessation.

However, a former partner has no right to interfere in the management of the LLP after ceasing to be a partner.

- **Effect of Bankruptcy on Partnership**

If a partner is adjudicated bankrupt, they do not automatically cease to be a partner. However, they are barred from participating in management under bankruptcy laws.

The Official Receiver or trustee in bankruptcy:

- Cannot interfere in LLP management;
- Is only entitled to receive the distributions due to the bankrupt partner.

This balances the protection of the LLP's operational integrity with the rights of creditors.

- **Assignment of Partnership Interest**

A partner can assign (transfer) their interest in the LLP, either wholly or partly. However, this assignment:

- Initially entitles the assignee only to distributions;
- Terminates the assignor's partnership in the LLP;
- Grants the assignee management rights, thereby effectively admitting them as a partner.

This is a significant legal feature because in many jurisdictions, such as under UK law, assignees usually acquire financial rights only unless all partners consent to full admission. The Kenyan model, unless modified by the LLP agreement, grants both financial and management rights to assignees.

- **Role of the LLP Agreement**

Throughout the LLP framework, the LLP agreement plays a central role. It can:

- Define exit and entry of partners,
- Restrict or broaden authority,
- Alter default management rules,
- Limit the rights of assignees to financial benefits only,
- Prescribe voting and resolution thresholds.

Therefore, careful drafting of the LLP agreement is essential for managing risk, control, and continuity in the business.

- **Conclusion**

LLPs offer a powerful structure for professionals and businesses seeking limited liability without sacrificing flexibility. However, because statutory provisions often act as fallbacks, the importance of a comprehensive LLP agreement cannot be overstated. Understanding provisions around agency, cessation, bankruptcy, and assignment is key to maintaining a stable and legally sound partnership. Stakeholders must tailor their LLP agreement to ensure that management control, partner rights, and transfer rules reflect their specific intentions and protect the LLP's ongoing viability.