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Validity Questions: Nigeria's *Companies and Allied Matters Act 2020 (CAMA)* and Limited Partnerships (LPs)

Introduction

Following the enactment of the ***Companies and Allied Matters Act 2020***[1] (***CAMA***), some commentators recently raised the question, whether ***CAMA***'s limited partnership (LP) provisions establishing LP as a nationally available business vehicle, are constitutional.[2] Given the serious implications of the outcome for business, *vis a vis* regulatory policy objectives, this article seeks to consider the above enquiry in more detail, especially as there does not appear to have been any previous exercise in this regard.

If the dispassionate analysis confirms the constitutionality of ***CAMA's*** LP vehicle, then there is no cause for concern; however, a contrary finding will entail further questions and remedial steps - in order to ensure that the LP regulatory framework does not make businesses (such as funds in the private equity (PE) industry), nervous.[3] Incidentally, ***CAMA's*** limited liability partnership (LLP) provisions do not appear to have any questions of constitutional validity, but may impact the LLP provisions of the ***Partnership Law of Lagos State***[4] ***(PLLS)***, which appears to be the only State Law with LLP provisions.[5]

It is not in contention that matters revolving around LP had always been for the States' Houses of Assembly (SHAs) to legislate on ***pre-CAMA***;[6] hence, the

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

[2] Afolabi Elebiju, *et al*, '***Choices and Preferences: Corporate Versus Partnership Vehicles under the Companies and Allied Matters Act 2020 – What Are the Relevant Business Considerations?'*** *LeLaw Thought Leadership, April 2022, p.1:*https://lelawlegal.com/add111pdfs/AEDebbiePearl_-_Business_Vehicle_Article_reviewed.pdf (accessed 29.09.2022). See excerpts from *footnote 8 (at p.2)*: "One *query though, is whether the [NA] 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'".*

[3] *"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/.

[4] ***Cap.P1, Laws of Lagos State (LLS) 2015.***

[5] The legislative history of the ***PLLS*** is as follows: The Western Region (WR) of which Lagos State was part, enacted its ***Partnership Law Cap.86, WR Laws of Nigeria 1959*** to displace the received ***UK Partnership Act 1890 (PA)*** *vide* being a statute of general application in effect as at 1st January 1900: ***section 32(1) Interpretation Act Cap. I23, LFN 2004***). Lagos State partnership legislation thus took many forms: ***Partnership Law of Lagos State Cap. 88, LLS 1973*** (a codification of its predecessor, domesticated from the WR legislation), which in turn became ***Partnership Law of Lagos State Cap. 139, LLS 1994*** before transmuting into ***Partnership Law of Lagos State Cap. P1, LLS 2003***. Subsequent amendment in 2006, inserted the LP vehicle in ***Part 2***; whilst in 2009, further amendments introduced LLP provisions (as ***Part 3***) into the ***PLLS***.

[6] See footnote 4 above. For example, other States in former Western Nigeria either domesticated or inherited the WR ***Cap.86*** legislation. Some other States either enacted their own partnership laws or continued to use the ***PA***. See Nkem Amadike, ***'The Introduction of Limited Liability Partnership Law in Lagos State of Nigeria as an Alternative to the Existing Forms of Business Organization: Echoes of A New Dawn?'*** *Global Journal of Politics and Law Research, Vol. 8, No.1, January 2020, pp.68-89, at p. 71*: https://www.eajournals.org/wpcontent/uploads/THEINT_11.pdf. See also Professor Joseph E.O Abugu, '***Principles of Corporate Law in Nigeria***', *(MIJ, Lagos, 2014), p. 17.* See also, Afolabi Elebiju *et al*, ***(supra)***. In ***A-G Abia State v. A-G Federation [2022] 16 NWLR (Pt. 1856), 205 at 412-413H-D***, the Supreme Court (SC) relying on other authorities held, *per Muhammad, JSC* held that in construing constitutional or statutory provisions, the historical antecedents of such provisions are important, to bring out the real intendment of the law or of the framers of the ***Constitution***.

absence of Nigerian federal legislation on partnership until ***CAMA***.[7] However, ***CAMA***'s new provisions on LP have arguably further obfuscated the legislative boundary issues between the National Assembly (NA) and SHAs and may thus require judicial interpretation for clarity. The historic trajectory of Nigeria's federalism *cum* constitutional development, shows that there had always been legislative boundaries friction between the NA and SHAs.[8]

Whether Nigeria's federalism started in 1946 (with the ***Richard's Constitution***) or with the ***1953 McPherson Constitution***, federalism as a system of government is now very well understood in Nigeria, even though some posit that we are practising '*unitary-federalism*',[9] which is a hangover from military rule.

Notably, the conflict may even arise from executive action or decisions – where the FG, rather than the NA exercises powers that the States believes is *ultra vires* the FG, and therefore unconstitutional.[10]

CAMA, whilst positioning itself as the federal enactment governing partnership in Nigeria;[11] limits the applicability of the ***Partnership Act 1890*** (*vide* its ***section 808***), without referencing any State Law on LP. *The dual LP and LLP regimes under* ***CAMA*** *and* ***PLLS***[12] *therefore raises the question of whether the NA has the legislative competence to enact*

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[7]The predecessor legislation, namely ***Companies and Allied Matters Act Cap. C20, Laws of the Federation of Nigeria (LFN) 2004 (CAMA 2004)*** had no provision regulating partnerships apart from its ***section 19*** which prohibited partnerships of more than twenty partners, upon pain of financial sanctions except for professional practice by lawyers and accountants. Businesses by more than twenty "*partners*" must therefore be carried out *vide* corporate vehicle or as cooperative societies; they could not be registered under ***CAMA 2004***.

[8]See for example, ***A-G Federation v. A-G Lagos State [2013] 16 NWLR (Pt. 1380), 249*** where the SC variously held that whereas the NA can legislate on the regulation of tourist traffic pursuant to the listing in ***Item 60(d) Part I, Second Schedule 1999 Constitution***, it lacked power to enact regulatory legislation on hotels and tourist related establishments given absence of such in the ***Exclusive*** and ***Concurrent Legislative Lists***. Consequently, the Lagos State ***Laws*** in that regard were validly made. The legislation in issue were the ***Nigerian Tourism Development Corporation Act Cap. N137, LFN 2004 (NTDCA) vs. Hotel Licensing Law, Cap. H6, LLS 2003*** (and its ***2010 Amendment Law***, both now comprised in ***Hotel Licensing Law, Cap. H7, LLS 2015)*** and ***Hotel Occupancy and Restaurant Consumption Law 2009 (now Cap. H8, LLS 2015)***. The SC also held ***(at 359-360E-A)*** that the NA lacked the *vires* to impose a duty State Governments (***section 7 NTDCA*** purported to establish State Tourism Boards, and directed each State to appoint members to such Boards). This inability of either tier to impose burden on the other has been affirmed in ***A-G Abia v. A-G Federation [2022] 16 NWLR (Pt. 1856)205 at 434A-B***. Earlier, in ***A-G Lagos v. A-G Federation [2003] 10 NWLR (Pt. 883), 1*** the SC held that the ***Nigerian Urban and Regional Planning Act Cap. N138, LFN 2004*** (originally enacted as ***Decree No. 88 of 1992***) was invalid as against its Lagos State counterpart (now ***Urban and Regional Planning and Development Law, Cap. U2, LLS 2015***), because urban and regional planning was a residual matter for States to legislate on. In ***Lakanmi v. A-G Western State (1970) SC.58/69*** and ***(1970) LPELR-SC.58/69***, the SC interpreting and relying on the unsuspended provisions of the ***1963 Constitution*** during the military era, held that both the ***Public Officers and Other Persons (Investigation of Assets) Edict No.5 of 1967*** and the ***Forfeiture of Assets, etc. (Validation) Decree No. 45 of 1968*** were *ultra vires*. It was an unusual situation where rather than any conflict, *ad hominem* ***Decrees*** (military legislation equivalent of ***Acts***) were being enacted to give cover to ***Edict No. 5*** (equivalent of State ***Law***) and orders issued by the Asset Recovery Tribunal under the ***Edict***, although the SC decision was subsequently reversed by the ***Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 28 of 1970***. For a related detailed discussion of conflict and interplay between Federal and State legislation, 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 20.01.2022).

[9]According to a commentator, "*The choice of federalism as the preferred system of government for Nigeria was not accidental. The eventual transformation of Nigeria into a federal state started in 1954 as a result of the 1953 Lyttleton constitution conference.*" See Aderonke Majekodunmi, '***Federalism in Nigeria: The Past, Current Peril and Future Hopes***', *Journal of Policy and Development Studies Vol. 9, No. 2 (February 2015), pp. 107-120 at 110*: https://www.arabianjbmr.com/pdfs/JPDS_VOL_9_2/10.pdf. *Cf.* with another view that: "*To appraise the development of federalism in Nigeria, one may have to start with Arthur Richard's constitutional arrangement of 1947, which even though did not declare the country a federal state, it nevertheless provided greater interaction between Nigerian peoples.*" See Nwachukwu J. Obiakor, '***The Evolution and Growth of Federalism in Nigeria***', *Pen2Print Services*: https://www.pen2print.org/2017/02/historical-evolution-and-growth-of.html (both accessed 28. 02.2023). In ***A-G Abia State v. A-G Federation [2022] 16 NWLR (Pt. 1856), 205 at 414-415G-A,*** the SC expounded on the meaning and concept of federalism. See also detailed consideration by learned authors: Nwabueze, '***Federalism in Nigeria Under the Presidential Constitution***', *(2003, LASMOJ)*, esp. *Chapters 1, 3 and 4*; and '***Akande: Introduction to the Constitution of the Federal Republic of Nigeria 1999***', *MIJ (Lagos, 2000)*.

[10]According to *Muhammad, JSC* in ***A-G Abia State v. A-G Federation [2022] 16 NWLR (Pt. 1856), 205 at 425F-H***: "*… certainly this country is still a Federation and the 1999 Constitution it operates a Federal one. The Constitution provides a clear division of powers between the Federal Government and the States Governments. The category of powers and roles either of the two enjoys is circumscribed. Neither of the two is at liberty to overstep the limits to overstep the Constitution prescribes for the other. If that occurs this Court would remain in place to declare the act unconstitutional and void same.* ***The plaintiffs, by their second issue for the determination of their claim, urge us to view the Executive Order No. 10 of 2020 issued by President Muhammadu Buhari unconstitutional because in its issuance the President has overstepped the limits the Constitution sets for him. And the country is run on the basis of the rule of law rather than the personal dictates of the President. I entirely agree with them. For all reasons so far adumbrated, I find the Order so, declare it void, and nullify same***." Emphasis supplied.

[11]***CAMA's*** long title states that it is: "*An Act to repeal the Companies and Allied Matters Act, Cap.C20, Laws of the Federation of Nigeria, 2004 and enact the Companies and Allied Matters Act, 2020* ***to provide for the incorporation of companies, limited liability partnerships, limited partnerships,*** *registration of business names together with incorporation of trustees of certain communities, bodies, associations; and for related matters*". Emphasis supplied.

[12]For purposes of this article, ***PLLS'*** LP provisions also includes LP provisions - to the extent they are still applicable - in States in the former Western and mid-Western Regions (Lagos, Ogun, Ondo, Oyo, Ekiti, Osun Edo and Delta States) *vide* the ***Partnership Law 1959***. According to a commentator: "*The English Limited Partnership Act 1907 does not apply in Nigeria since it was enacted after 1st January, 1900. The Western and Mid-Western (now Bendel) States in 1959 however did enact a Limited Partnership Law. Thus limited partnership can only be applicable in Bendel State, Lagos State and the Western States for there exists no similar laws in other States of Nigeria.*" See Nkem Amadike, '***The Introduction of Limited Liability Partnership Law in Lagos State of Nigeria as an Alternative to the Existing Forms of Business Organization: Echoes of A New Dawn?***' *Global Journal of Politics and Law Research, Vol. 8, No.1, January 2020, pp.68-89, at p. 77*: https://www.eajournals.org/wpcontent/uploads/THEINT_11.pdf. According to another corroborative commentary, "*In 1959, the Governor of the Western Region enacted a law which limited the reception of the common law. The statutes of general application were re-enacted as local legislation, and so some unfavourable statutes were left out and some statutes after 1900 were re-enacted. The Western Region enacted a partnership law which allowed partners to limit liabilities.* ***As the law was enacted in England in 1907, other Regions for a long time had laws which prevented partners from limiting their liabilities since it is so in the Partnership Act of 1890.***" Emphasis supplied. https://www.learnnigerianlaw.com/learn/legal-system/englishlaw (both accessed 22.01.2023).

CAMA's *LP provisions?*[13] We discuss the related issues under the respective subheadings below.

Does the NA Have Legislative Competence to Enact CAMA's LP Provisions?

Undisputedly, ***The Constitution of the Federal Republic of Nigeria 1999 as amended*** (***1999 Constitution***) is the *grundnorm* against which the validity of all other laws are measured.[14] ***Section 4 1999 Constitution*** delineates legislative powers between the three tiers of government – Federal, State and Local Governments, and further prescribes specific items in terms of subject matter legislative competence in ***Parts I (Exclusive Legislative List, (ELL)) and II (Concurrent Legislative List (CLL))***, ***2nd Schedule 1999 Constitution.*** The ***ELL*** contains subject matter over which only the NA can legislate; whereas both the National and State Assemblies can legislate on subject matters comprised in the ***CLL***.

Answering the above question, and the concomitant one of the applicability of ***PLLS*** or other equivalent State legislation, calls for a detailed analysis of the ***1999 Constitution, CAMA*** and the ***PLLS/State equivalents***.[15] *The relevant considerations are whether*:

(a) *the NA has legislative competence over the subject matter of partnerships (wholly or in part)*, pursuant to either the ***ELL*** or the ***CLL***;

(b) if the answer to *(a)* is in the positive under the ***ELL***, then ***PLLS*** is not applicable at all;

© if the answer is positive under the ***CLL***, then has ***CAMA*** sufficiently *"covered the field"* to displace, or make ***PLLS'*** provisions otiose, such that ***PLLS*** would only be relevant where ***CAMA*** has gaps?; and

(d) if the answer to *(a)* is in the negative, then ***CAMA's*** partnership provisions are unconstitutional; and thus, the ***PLLS*** provisions prevails in case of any conflict with ***CAMA***.[16]

Subject matter items in the ***ELL*** includes the following:

> ***Item 32***: *"**Incorporation, regulation and winding up of bodies corporate, other than** co-operative societies, local government councils and **bodies corporate established***

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[13] *I. T. Muhammad, JSC* in his concurring judgment in ***A-G Federation v. A-G Lagos State [2013] 16 NWLR (Pt. 1380) 249 at 329E-F*** held: *" 'Inconsistency', in law, to me can be taken to be a situation where two or more laws, enactments and or rules, are mutually repugnant or contradictory, contrary, the one to the other so that both cannot stand and the acceptance or establishment of the one implies the abrogation or abandonment of the other. It is thus, a situation where the two or more enactments cannot function together simultaneously. The Constitution does not tolerate that. In Ishola v. Ajiboye (1994)7-8 SCNJ (Pt.1)1, (1994) 6 NWLR (Pt. 352) 506 this Court held that the Constitution is not only supreme when another law is inconsistent with it, but also when another law seeks to compete with it in an area already covered by the Constitution."*

[14] See ***section 1(1)*** and ***(3)***: *"This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria"*; ***"If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void."*** Emphasis supplied. See also ***A-G Abia State v. A-G Federation [2006]16 NWLR (Pt.1005) 265 at 381D-F.*** In the words of a learned author, *"According to the [SC] in Adegbenro v. Attorney-General of the Federation (1962) 1 ANLR 431, FSC, the phrase 'shall to the extent of the inconsistency be void' in the subsection implies that a law may be valid in part and void in part vis-à-vis the Constitution. Once found inconsistent, there is no need for another law to invalidate it."* See Prof. Kehinde Mowoe, ***'Constitutional Law in Nigeria'***, *(Malthouse, 2008), p.119.*

[15] The question in issue has also attracted some prior attention. For example, some commentators have opined that: *"**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."* See Afolabi Elebiju, *et al* ***(supra)*** *at p. 1.* The accompanying footnote 8 stated: *"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…' …**. 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 [NA] 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."*

[16] See ***A-G Lagos State v. Eko Hotels & Anor (2018) 36 TLRN 1 at 58,*** where *Ejembi-Eko, JSC* held that: *"an Act of the [NA], for purposes of covering the field can only be said to be a 'predominant paramount' legislation if it was validly enacted, or could be deemed to have been validly enacted, with respect to any matter the [NA] is empowered by the Constitution to make laws."* See also further detailed exposition of the concept by *Ogunwumiju, JSC* in ***New Nig. Dev. Co. v. Ugbabe [2022] NWLR (Pt. 1855) 35, at 130-131C-B,*** leveraging the definition in ***A-G Abia v. A-G Federation [2002] 6 NWLR (Pt. 763), 264*** and citing with approval, ***Lakanmi v. A-G Western State (supra).*** Further, see also discussions in ***'Peter Oluyede's Constitutional Law in Nigeria'***, *(Evans, 2001), pp.189-196* together with the 1st Republic cases cited therein.

directly by any Law enacted by a House of Assembly of a State";[17]

The ***CLL*** also on its part, does not have relevant LP (or partnership generally), express provisions.[18] It is also noteworthy that the *"trade and commerce"* phraseology of ***Item 62*** has been circumscribed by the latter part of the provision, an interpretation that found judicial favour of the Supreme Court (SC) in ***A-G Ogun State v. Aberuagba***.[19] Thus, *whatever is not captured in the* ***ELL*** *and* ***CLL*** *is outside the NA's legislative competence, leaving room for only the States to legislate thereon;* as such items comprise the ***Residual List***.[20]

Item 62(f): *"Trade and commerce, and in particular ... registration of business names"; and*

Item 68: *"Any matter incidental or supplementary to any matter mentioned elsewhere in this List."*

Our conclusion on this point is that by the combined operation of ***Items 32 and 62*** (particularly ***62(f)) Part I, 2nd Schedule 1999 Constitution (ELL)***, *the NA can only legislate on LLPs and business names, but not on LPs*. This means that only States can legislate on LPs, being (as shown from our foregoing analysis), a matter on the ***Residual List***. Incidentally, Lagos State (Nigeria's premier economic hub and the only State that appeared to have had an LP regime in place, pre-***CAMA***), has not shown any intention to challenge ***CAMA's*** regulation of LPs; neither has the Lagos State Partnerships Registry (LSPR) issued any advisory on its post ***CAMA*** enactment strategy.[21]

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[17]Emphasis supplied. Since the LP is not a body corporate and the above provisions excludes bodies corporate established by State Assemblies, it is arguable that only States can legislate on LPs. The authority of States to legislate on LPs would in that instance be derived from such matter being on the ***Residual List***. See discussions in Afolabi Elebiju, *et al* ***(supra)***, suggesting that whilst the ability of the NA to legislate on LLPs is not in doubt; the same conclusion is not applicable to LPs. For example, at *footnote 55 (p.7), inter alia*: "See ***section 746 [CAMA]***: *'(1) A[n] [LLP] is a body corporate formed and incorporated under this Act and is a legal entity separate from the partners. (2) A[n] [LLP] 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 [LLP]... See also* ***section 756*** *and related discussion in footnote 29 above that* ***CAMA*** *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."* Footnote 29 (at *p.4* states): *"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.'"*

[18]For example, ***Item 17(b) CLL*** provides that *"The [NA] may make laws for the Federation or any part thereof* ***with respect to the regulation of ownership and control of business enterprises throughout the Federation for the purpose of promoting, encouraging or facilitating such ownership and control by citizens of Nigeria***". On its own part, ***Item 18*** prescribes that: *"Subject to the provisions of this Constitution, a House of Assembly may make Laws for that State with respect to industrial, commercial or agricultural development of the State."* The first provision relates to promotion of local ownership of businesses (indigenisation relative to foreign ownership), whilst the latter can provide a general basis for States to legislate on the forms of partnerships in furtherance of industrial, economic or agricultural development of the State. Any reference to ***Item 17(b) CLL*** too to suggest that the [NA] can legislate on LPs would be misplaced, because the provision relates to: *"****the health, safety and welfare of persons employed*** *to work in factories, offices or other premises or in inter-State transportation and commerce* ***including the training, supervision and qualification of such persons.****"* *Cf.* the view of a commentator that: *"the fact remains that partnership is a matter on the [CLL]"*: Professor Joseph E.O Abugu, '***Principles of Corporate Law in Nigeria***', *(MIJ, Lagos, 2014), p. 17*. However, based on our detailed review of the ***CLL***, we respectfully disagree with Professor Abugu.

[19]***Supra***, at ***415H***, *per Bello JSC: "....For the above reasons, having regard to all the relevant provisions of the [1999] Constitution,* ***I am of the firm view, that the Constitution does not confer on the Federation exclusive power over trade and commerce in Item 61****. I hold that all the Governments (Federal, State and Local) have been accorded their respective shares to control trade and commerce.* ***Accordingly, I would construe the words 'in particular' in Item 61 to be words of limitation and that the trade and commerce power of the Federation is limited to the sub-items (a) to (f) therein****. For the avoidance of any doubt, I may emphasize that the Federal Government had power to make law on the items specified in sub-items (a) to (f). In this respect international trade and commerce and inter-State trade and commerce are specifically reserved for the Federation. While trade and commerce within a State is left as a residuary matter to the States."* Emphasis supplied.

[20]See comparative discussion in ***Akande (supra)***, *p. 486: "In the Australian case of* ***Australian Boot Trade Employer's Federation v. Whybrow [1914 10 CLR 266]****, the view was expressed that a Commonwealth Law and a State Law are not inconsistent if it was possible to obey the State Law without disobeying Commonwealth Law. It must be mentioned that there is no Concurrent List in the Australian Constitution, just as there is none in the United States and Canada; the Constitution enumerates only the Exclusive powers of the Federal legislature. In spite of that, it is provided that where a State Law is inconsistent with a Commonwealth Law, the latter prevails. As more clearly enunciated by* ***Dixon J. in Victoria v. Commonwealth [(1937) 58 CLR 618, p.680]*** *when a State Law is inconsistent with a Commonwealth Law, if valid, would alter, impair or detract from the operation of a law of the Commonwealth Parliament, then to that extent it is invalid. Moreover, if it appears from the terms, the nature or the subject matter of a Federal enactment that it was intended as a complete enactment of the law governing a particular matter or set of rights and duties, then for a State Law to regulate or apply to the same matter or relation is regarded as a detraction from the full operation of the Commonwealth law and so is inconsistent."* Suffice also to state that Nigeria has developed a sizeable body of Caselaw jurisprudence on this issue, from the 1st Republic up till the current democratic dispensation; and such can only be further developed as Nigeria's democratic journey continues.

[21]Presumably, the LSPR (or Lagos State Government) has been silent on ***CAMA*** *vs.* ***PLLS*** conflict issues because the same party (APC) controls both the Federal and Lagos State Governments. Previously when Lagos was controlled by opposition party to the then ruling PDP, its constitutional advocacy was very vibrant, resulting in a plethora of successful litigation at the SC, many of which have been cited heretofore. Without litigation, constitutional infractions will not be pronounced upon by the Courts. In ***Nwokedi v. Anambra State Government [2022] 7 NWLR (Pt. 1828), 29 at 64D-G***, the SC held *per Aboki, JSC* that: *"Where a statute is enacted in breach of the Constitution, the Courts must come in to stop the breach.* ***This the Court can do only by one or more parties seeking the Court's jurisdiction to declare the statute void.***" Emphasis supplied. As an aside, it noteworthy that even online information about the LSPR is dated. *Per* extracts, *"There are two Registries under the Commercial Law Directorate [of the Ministry of Justice] which are: Registry of Limited Partnerships (LP): The Registry is set up to register Limited Partnership businesses within Lagos State in accordance with the provisions of Part 3, Cap 139, Vol. 6 Partnership Law, Laws of Lagos State 1994. Limited Partnerships must be registered at the Limited Partnership Registry before they commence business. ..."* See ***'Directorate of Commercial Law',*** *Lagos State Ministry of Justice:* http://lagosministryofjustice.org/directorate-of-commercial-law/ (accessed 28.02.2023).

This could raise potential concerns from LPs and LLPs already registered under the ***PLLS***.[22]

Consequently, in our considered view, the ***PLLS'*** LP provisions are still effectual, whilst those relating to LLPs are either void or suspended. This is because pursuant to ***Item 32 ELL***, SHAs can only establish named body corporates directly by ***Law***; for example, Lagos State Water Corporation (LSWC), rather than establish generic body corporates, such as LLPs.

LP Business Vehicle Choice, Compliance and Other Considerations

The discussion of the validity of the Nigerian LP regime (Federal *vs.* State) is not an academic discussion because LP as a business vehicle is quite popular in some sectors, for example in the PE industry because of its tax transparent treatment, liability allocation and governance structure. Also, *recent increases in tax rates for companies, or introduction of new taxes*[23] *applicable to only companies, or the prospect of additional future corporate taxes, could increasingly make LP vehicle more attractive.*[24] The issues of which is the valid LP option would therefore agitate the business community, given the potentially significant repercussions for the underlying LP businesses. We now turn to discuss some of them.

The Property Owning/Holding Capacity Question

For example, can a ***CAMA*** LP validly hold real property, since its very existence may be unconstitutional? This is because one cannot put something on nothing and expect it to stand: ***Mcfoy v. UAC***.[25] However, this may not be as drastic as it looks *prima facie,* because if there is no valid LP to hold the asset, presumably the general partner (GP) will by operation of law hold the property on behalf of the general partners?[26] Furthermore, such a view is consistent with not punishing innocent transactors for legislative failures; it would preposterous otherwise.

Thus, *assuming* ***CAMA*** *applied to LPs*, ***sections 756 and 807 CAMA***[27] would still have not represented major inhibitions thereby; especially as ***section 808 CAMA*** applies provisions of the ***Partnership Act 1890***, where

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[22]Extant LPs under ***PLLS*** can bring an action to challenge the ***CAMA*** provisions on LPs, but it is doubtful whether they would. In the event that they choose to do so, Lagos State will be joined as co-Respondent. It has been argued that: *"Taking cognizance of the locality of the Partnership Law, one must be mindful of the fact that Federal law supersedes State law. Therefore any part of the Partnership Law which conflicts with* ***CAMA*** *is automatically void. Regarding the English Act, as a Statute of General Application it is arguably a Federal law. However, within Lagos State the Partnership Law would prevail as such Statutes are in force so far only as local laws shall permit."* See '***Limited Partnerships - A Focus on Registration Under the Lagos Partnership Law by Offshore Entities***', *DCSL Newsletter Issue 002/2012, p. 3:* https://www.dcsl.com.ng/data/content/_1357638361_TN84X70FE7.pdf (accessed 21.01.2023). However, such position must be viewed with caution because it assumes that the Federal legislation is valid in all cases - an ***Act*** can be held to be unconstitutional *vis a vis* a conflicting ***State Law*** as has often been so declared by the Courts. See for example, ***A-G Federation v. A-G Lagos State [2003] 2 NWLR (Pt.833) 1, at 241-242H-A.***

[23]***Section 28 Finance Act No.3 of 2021 (FA 2021)*** amended ***section 1(2) Tertiary Education Trust Fund Act No.16 of 2011 (TETFA),*** increased the TET rate payable by medium and large companies, from 2% to 2.5% of their assessable profit. The ***Finance Bill 2022*** (already passed by the National Assembly in December 2022, but yet to receive presidential assent), also contemplates an increase of the TET rate to 3%. See '***Additional Burden of Finance Act 2022***', *Punch Editorial, 23.01.2023:* https://punchng.com/additional-burden-of-finance-act-2022/. *Per* excerpts: *"Economists argue that government should not increase tax during economic downturn but the Bill, which Buhari set aside on the day he assented to the ₦21.83 trillion 2023 Appropriation Act, has jerked up the [TET] from 2.5 per cent to 3.0 per cent. This tax must be a honeypot for the government: the TET was raised from 2.0 per cent to 2.5 per cent in the Finance Act 2021. Another increment 12 months later has huge impact on the profit retained by companies. Businesses are struggling with a 21.34 per cent inflation rate, insecurity, energy and forex crises and shabby infrastructure. At 30 per cent, Nigeria's Companies Income Tax is one of the highest in the world. By increasing TET to 3.0 per cent, the rate rises geometrically, and profit dwindles."* Incidentally, the ***TETFA*** was not listed amongst tax legislation to be amended in the House of Representatives advertorial for public hearing on the ***Finance Bill 2022***: https://pwcnigeria.typepad.com/files/2022-finance-bill_hor.pdf. Meanwhile, ***section 4 Nigerian Police Trust Fund (Establishment) Act No.6 of 2019*** imposed 0.005% levy on *"the net profit of companies operating business in Nigeria"*. The ***National Youth Service Corp (Establishment) Bill 2022,*** which did not receive presidential assent, sought to impose a levy of *"1% of the net profit of companies and organised private sector operating business in Nigeria"*. See Desmond Okon, '***1% From Companies' Profit … Highlights of NYSC Trust Fund Bill'***, *The Cable, 15.04.2022:* https://www.thecable.ng/1-from-companies-profit-0-2-from-federation-revenue-highlights-of-nysc-trust-fund-bill (all online sources in this footnote accessed 28.02.2023).

[24]For some discussion on the seemingly advantageous tax treatment for partnerships, see Afolabi Elebiju, *et al* ***(supra)****, at p. 6:* ('***Tax Efficiency/Compliance'*** subheading under '***Risk Management'***).

[25]***(1961) 3 All ER 1169.***

[26]LPs can hold property, despite its absence of corporate personality. Such property will be held on behalf of the partnership by the GP. In the alternative, the GP will hold stocks and shares (on behalf of the LP), of special purpose vehicles (SPVs) that will hold the respective real estate asset(s) directly. There is also the issue of whether LPs can actually hold real estate/properties in their own names directly, since in ***Nkwocha v. Governor of Anambra State & Ors (1984) 15 [NSCC] 484 at 499*** the SC held *per Obaseki JSC,* that: *"land is specie of property…"*? Whilst the ***Lagos State Land Registration Law Cap. L41, LLS 2015 (LASLRL)*** is silent on the subject of LP (or LLP) property; its ***section 52*** states: *"Where a mortgage relating to land is created by a company or* ***registered partnership*** *which has its registered office or an established place of business, the Registrar shall, if satisfied that such mortgage is registrable accept it for registration."* Emphasis supplied. This presupposes that a registered partnership (including LPs) can mortgage its real property. It also raises the question whether a regular (unregistered) partnership that normally contracts in the names of all the partners *"trading under the name and style of ABC & Co"*.

[27]***Section 756 CAMA*** provides for the effects or incidences of registration of LLPs essentially as a result of its legal personality, whilst ***section 807*** applies ***Part C CAMA*** provisions on LLPs to LPs subject to inconsistency with the express provisions on LPs in ***Part D***.

there are no express ***CAMA*** provisions, to partnerships.[28] Assuming only the ***PLLS*** applies to LPs, ***section 82 PLLS*** which defines "*partnership property*" will not come to play.[29]

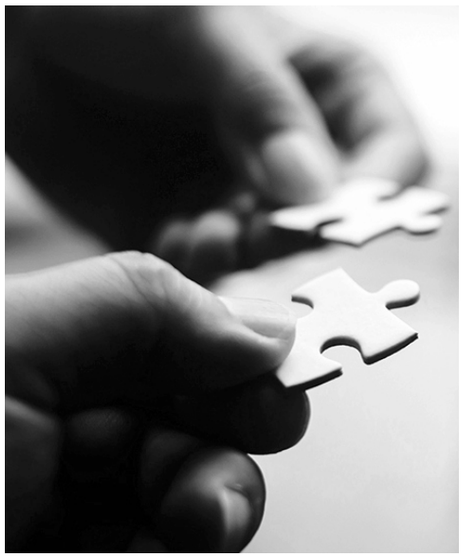
Inversely, in order to be able to hold property, is a ***PLLS*** LLP not required to transit to registration under ***CAMA***, since ***PLLS'*** LLPs are presumably invalid post-***CAMA***?[30] The same principle of not punishing innocent citizens should apply, and ***CAMA*** ought to have a transition compliance timeline in this regard.[31] Whatever the form of partnership, it is trite that partnership can hold property; this is underpinned for example by ***section 20 PA*** provision that *property must be held and applied by the partners exclusively for the purpose of the partnership in accordance with the partnership agreement*.[32]

LLP vs. LP and Regulatory Risk Management: Which Vehicle is Preferable?

This question may arise and would need to can be answered under two scenarios (i.e. whether ***CAMA*** applied or not), and in both, the preliminary answers are that the LP is preferable for the fact that it has gained wide acceptance in the PE industry, and therefore the industry has grown adept at it, arising from deep familiarity with its use.

However, in order to sidestep the issue of whether ***CAMA*** is competent to regulate LPs (since the *intra vires* of its LLP provisions are not in doubt), the LLP vehicle may be worth considering. This is especially as there may not be any need to register LLP under the ***PLLS***, thereby ensuring interface with, and regulation by, only the Corporate Affairs Commission (CAC), that oversights the ***CAMA***. This is moreso because of its other advantages such as separate legal personality/perpetual succession, and the incidentals, such as the ability to sue and be sued, etc. If an LLP is to be used, then the General Partner will become the Designated Partner.[33]

The other issue is whether in a regulation and compliance contest, Federal agencies will not insist that ***CAMA*** registration is a prerequisite to eligibility for sectoral approvals, permits and licences. For example, PE



funds and their managers require prior registration with Securities and Exchange Commission (SEC).[34] Post ***CAMA***, LPs registered under the ***PLLS*** approaching SEC for registration as PE funds are unlikely to be successful on the basis that they are not utilising a ***CAMA*** business vehicle. It may then be a question of business judgment whether the ***PLLS*** LP SEC applicant considers it worthwhile to challenge the SEC decision or proceed (as a form of being 'politically correct') to also register itself as a ***CAMA*** vehicle.[35]

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[28]Applying the doctrine of priority in defining the order of the applicability of provisions of ***CAMA*** to LPs: ***Part D*** comes first, followed by all the provisions of ***Part C*** (which ordinarily related to LLP, and to the extent they are not inconsistent with ***Part D***), and then the received ***PA***. *Quaere*: where the ***PA*** had been domesticated by a State, will the ***PA*** still apply pursuant to ***CAMA***?

[29]***Section 82 CAMA*** defines "*partnership property*" as meaning: "*all property and right and interests in property bought with the partnership stock or acquired whether by purchase or otherwise on account of the firms or for the purpose and in the course of the partnership.*" See also ***section 19(3) and (4) PLLS***: "*Property is partnership property if - (a) it is acquired in the name of the partnership; or (b) it is acquired in the name of one or more persons with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership whether or not the name of the partnership is indicated. Property may be acquired in the name of the partnership by - (a) a transfer to the partnership in its name; or (b) a transfer to one or more persons in their capacity as partners in the partnership if the name of the partnership is indicated in the instrument transferring title to the property*". *Cf.* that ***CAMA*** did not define partnership property and this represents a situation implicating the provisions of ***PA*** (such as ***section 20 PA***) which states that property acquired for the purpose and in the course of the partnership business is partnership property, and related ***PA*** case law. For example, it has been held that a partner may own or hold the property of the partnership as legal owners in trust for the partners, but he is made to render account: ***Littlewoods v. Basmadjian [1961] LLR 104***. A partnership agreement may be construed in such a way that determines the limit and extent that a partner may hold the property as a trustee but in the case of a corporate personality the property is owned in the corporate name. See M.C Okany, ***'Nigerian Commercial Law'***, *Africana, (2009), p. 601*; and Professor Joseph E.O Abugu ***(supra)***, *p. 26*.

[30]There are no specific transitional provisions on LPs or LLPs, for example envisaging that pre-existing LLPs convert to ***CAMA*** LLP. However, ***section 869(7) CAMA*** provides: "*Any Individual, firm or company who immediately before the coming into operation of this Act was registered as a business name under the enactment repealed, shall be deemed to be registered under and in accordance with the repealed Act*". Expectedly, ***section 869(1) CAMA*** does not include any State Law amongst those repealed by ***CAMA.***

[31]*Cf.* ***section 869(6) and (7) CAMA***: "*(6)* ***Nothing in this Act shall affect the incorporation of any company registered under any enactment repealed****. (7) Any* ***individual, firm or company who immediately before the coming into operation of this Act was registered as a business name under the enactment repealed****, shall be deemed to be registered under and in accordance with the repealed Act.*" Emphases supplied. Also, several provisions specifies compliance timeline for changes introduced by ***CAMA.*** For example, ***section 307(3) CAMA*** provides that: "*Any person who is a director in more than five public companies shall, at the next annual general meeting of the companies after the expiration of two years from the commencement of this Act, resign from being a director from all but five of the companies.*"

[32]*Cf. in pari materia* provisions of ***section 19(1) PLLS. Sections 20 (Property bought with partnership money), 21 (Conversion into personal estate of land held as partnership property) and other provisions of PLLS*** on partnership property shows that the law recognises ability of partnerships to own property. ***Section 21 PLLS*** provides that "*where land or its interest has become partnership property, it will, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner and the executors and administrators), as personal and not real property.*" Emphasis supplied.

[33]PE fund managers have to decide which vehicle (LLP or LP) to use for their new (***post-CAMA***) funds; and the foregoing considerations may be relevant, including deciding in order to avoid regulatory uncertainty pending judicial resolution, whether to switch from LP to LLP. Where such switch is to happen, the PE fund manager might as well unwind the ***PLLS*** LP as it would be incongruous to have LP at ***PLLS*** level and a ***CAMA*** LLP for the same PE fund.

[34]See ***section 158(1)(a)and (b) Investments and Securities Act Cap I24, LFN 2004.*** *Per* ***section 158(1)(b)***, fund managers also require prior registration with SEC; *invariably enforcement of the latter provision means that the relevant fund must be* ***CAMA*** *compliant for the fund manager to be registered by SEC.* See also generally ***Part XIII ISA (Collective Investment Schemes)***. Note that ***Rule 249D, SEC's Rules on Private Equity Funds 2013*** (as amended) defines "*Private Equity Fund*" as "***a type of collective investment scheme*** *that invests primarily in private equity/unlisted companies, whether or not in an attempt to gain control of the company.*" Emphasis supplied.

[35]See Afolabi Elebiju, *et al* ***(supra)*** *at p.1 (footnote 6 inter alia): "Pre-****CAMA****, LPs and LLPs in Lagos State also registered as Business Name; 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."* ***Section 80 PLLS*** also recognises that LLPs registered under it can also register as business names.

Another dimension to this issue are ***pre-CAMA PLLS*** registered LP funds that had been registered with the SEC – would they now be required to re-register as ***CAMA*** LP vehicles? Given that the typical PE fund has fixed lifespan, we submit that SEC should not impose such additional regulatory burden on the ***pre-CAMA PLLS*** LPs. Furthermore, in the absence of SEC requiring them to re-register, we believe that such LPs should enjoy the benefits of the presumption of regularity[36] Meanwhile, some PE fund managers may, even without SEC prompting, consider it prescient to re-register under ***CAMA*** even though their extant LPs continue to operate under ***PLLS***.[37]

In the absence of judicial resolution of the legality of ***CAMA*** LP *vis a vis* its ***PLLS*** counterpart, the easier option may be to register any new LPs under ***CAMA***.

The LP Disputes' Jurisdictional Question

The ***1999 Constitution*** primarily stipulates subject matter jurisdiction for the superior courts of record and stated tribunals in Nigeria. Thus, ***section 251(e) 1999 Constitution*** gives the Federal High Court (FHC), *exclusive civil jurisdiction on matters arising from the operations of* ***CAMA*** *or of companies incorporated under it.*[38]

Was it due to draftsman's error that after referencing operations of ***CAMA***, the latter provision then restricts itself to only companies incorporated under ***CAMA***? Maybe the earlier part will cover partnership disputes (for example on management issues), because such is a matter *arising from the operation of* ***CAMA***. Again, because of the disjunctive *"or"* (rather than conjunctive *"and"*, it means the first part of the provision is sufficient to bring partnership disputes before the FHC.

If ***CAMA's*** LP provisions are unconstitutional, then arguably the first leg of ***section 251(e) 1999 Constitution*** will be no longer be tenable for LPs;[39] the second leg is inapplicable anyway, since LPs (and LLPs) are not *"companies"* registered under ***CAMA***.[40]

However, if ***CAMA's*** LP provisions were valid, then partnership or other disputes related to the operation of ***CAMA's*** LP provisions (such as winding up and dissolution of an LP), would arguably be cognisable by the FHC.[41] It goes without saying that since there is no validity question about ***CAMA's*** LLP provisions, their partnership disputes will clearly be heard by the FHC.

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[36]Extant LPs under ***PLLS*** can bring an action to challenge the ***CAMA*** provisions on LPs, but it is doubtful whether they would. In the event that they choose to do so, Lagos State will be joined as co-Respondent.

[37]Note that ***pre-CAMA PLLS*** LPs and LLPs were also registered as BNs under ***CAMA 2004***. See Afolabi Elebiju, *et al* ***(supra)*** *at p.1 (footnote 6 inter alia): "Pre-****CAMA****, LPs and LLPs in Lagos State also registered as Business Name; 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."* ***Section 80 PLLS*** recognises that LLPs registered under it can also register as business names.

[38]***Section 251(1)(e) 1999 Constitution*** provides that –*"Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the [NA], the [FHC] shall have and exercise jurisdiction to the exclusion of any other court in civil cases and matters --* ***arising from the operation of the Companies and Allied Matters Act or any other enactment replacing the Act*** *or* ***regulating the operation of companies incorporated*** *under the Companies and Allied Matters Act".* Emphasis supplied.

[39]See and *cf.* for example, ***Babington-Ashaye v. EMAG Ent (Nig) Ltd [2011] 10 NWLR (Pt. 1256) 479, at 522E-H*** where *Peter Odili, JCA* held that: *"… the simple fact that a company or a body is registered under the [CAMA], does not qualify every action brought by or against it as matters arising from the operation of [CAMA] or any other enactment replacing the Act or regulating the operation of companies incorporated under the [CAMA], as contemplated by the provision of section 251 of the 1999 Constitution. Neither is it the law that a consideration of the parties is required before vesting the [FHC] with jurisdiction…"* There is no statutory definition of *"matters arising from the operation of"* ***CAMA***. However, in ***Tanarewa (Nig) Ltd v. Plastifarm Ltd [2003] 14 NWLR (Pt.840) 355 at 376G-B*** *Salami, JCA* held: *"… an action involving regulating running or management or control of companies the [FHC] would be vested with jurisdiction. Action could be maintained and entertained in matters affecting formation or winding-up of a company, memorandum and article of association; shares and share-holding; appointment, removal or change or alteration of directors... It also includes appointment of receiver and his various obligation such as giving notice of his appointment, filing statement of accounts with the Corporate Affairs Commission these are contained in the various provisions of the Companies Act, Cap. 59, particularly sections 393, 396,398 and 399. These provisions control the conduct of a receiver and any claim arising from a breach thereof or enforcing right thereunder will qualify as an action arising from the operation of the said Act or regulation.* ***But where the dispute does not involve the control or administration of company and deals with ordinary routine business of a company, it seems to me, a [SHC] and not [FHC] has jurisdiction to entertain and determine the matter. That is to say that any matter that can be decided without recourse to either Companies and Allied Matters Act, or any enactment regulating operation of companies under the said Act belongs to a [SHC]…"*** – Emphasis supplied.

[40]***Section 868 CAMA*** defines *"company"* to mean: *"… a company formed and registered under this Act or, as the case may be, formed and registered in Nigeria before and in existence on the commencement of this Act"*. Arguably, the context does not admit of other business vehicles registered under ***CAMA*** (LPs and LLPs) being entitled to access the FHC as venue of ***CAMA*** related disputes?

[41]For example, ***section 806(2) and (3)CAMA*** provides that: *"(2) A[n] [LP] shall not be dissolved by the death or bankruptcy of a limited partner and the lunacy of a limited partner shall not be a ground for the dissolution of the partnership by* ***the Court*** *unless the lunatic's share cannot be otherwise ascertained and realised. (3) In the event of the dissolution of a [LP], its affairs shall be wound up by the general partners unless* ***the Court*** *orders otherwise."* ***Section 868 CAMA***, defines *"'Court' or 'the Court' used in relation to a company means the [FHC], and to the extent to which may be made to it as; court include the Court of Appeal and Supreme Court of Nigeria"*. The FHC is a court of enumerated jurisdiction which means that it can only orbit within the universe of the enumerated issues or as may be conferred upon it by an Act of the NA: ***Edision Automotive Ind. v. NERFUND [2022]4 NWLR (Pt. 1821) 419 at 449-450G-D***. Whatever is not specifically provided would normally fall outside its scope. See ***Onuorah v. KRPC [2005] 6 NWLR (Pt.921) 393.*** See also ***CBN v. Ojo, [2021] 18 NWLR (Pt.1809) 461 at 513G-B*** where the SC held: *"…The [FHC], on the other hand, also has subject-matter and party jurisdiction. Its jurisdiction is not just determined by only the party but also the subject-matter. The two must go together…"* Thus, it would be offensive to legal reasoning to assume jurisdiction by the FHC where the matter has no legislative origin.

On the flip side, third party contractual disputes, actions founded on tort such as for negligence would be heard by the relevant State High Court (SHC), since the SHC has unlimited jurisdiction, unless the subject matter is specifically excluded.[42]

Obversely, ***section 81 PLLS*** provides that: *"The High Court of Lagos State will exercise jurisdiction with respect to the interpretation and application of the provisions of this Law relating to registered [LLPs] and all matters arising from this Law."* Given the incompetence of SHA to legislate on LLPs, this provision will not be the basis why partners must resort to the SHC for dispute resolution, but because of ***section 251 1999 Constitution***.

Conclusion

In line with the foregoing analysis, we believe and respectfully submit that the ***CAMA's*** provisions on LPs are *ultra vires* and unconstitutional; unlike those on LLPs – whilst the *vice versa* is also applicable to ***PLLS'*** LLP provisions; they are also defective for lack of valid legal basis.

There are strong policy arguments why uniform LP and LLP provisions should apply across Nigeria, especially from ease of doing business perspectives, and attraction *cum* stimulation of local and foreign investment. That way, no State is left behind and questions about whether a State registered vehicle can transact outside the State borders, becomes unnecessary.

However, these are arguably not compelling views because on other issues (in ***CLL*** and ***RL***), States are free to plot their paths and enact ***Laws*** as they deem fit in line with their local peculiarities, and priorities. Furthermore, in the United States of America (USA) probably the closest federal model to Nigeria, States actually: incorporate companies (LLCs and Corporations); register partnerships (LPs, LLPs, and the less common limited liability limited partnership (LLLP)); and compete to host businesses by offering various incentives.[43]

However, it is trite that the express provisions of the ***1999 Constitution*** is the ruling yardstick and if there is unanimity that the NA should regulate LPs, then it would be apposite for the ***1999 Constitution*** to be amended accordingly.[44]

The present duality of Nigerian LP regime may discourage businesses that would have otherwise

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[42]See ***Edision Automotive Ind. v. NERFUND (supra)***, where the SC held, *per Jauro, JSC* that: *"It is the [SHC] or the High Court of the Federal Capital Territory and not the [FHC] that has jurisdiction to entertain actions predicated on breach of contract. The provisions of* ***section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)*** *are very clear and unambiguous. It is the section that confers jurisdiction on the [FHC], which jurisdiction does not include dealing with any case of simple contract or damages for negligence."* *Cf.* also, the ***pre-CAMA*** case of ***Shonubi v. Onofeko [2003] 12 NWLR (Pt. 834) 254*** where the Court of Appeal, upholding the trial court decision, held that the erstwhile ***PLL*** would govern the transaction and not ***CAMA 2004*** because, the: (a) applicable law to the partnership is ***PLL*** and not ***CAMA 2004***; and (b) Parties have executed a Partnership Agreement and are bound by the terms thereof, which had nothing to do with ***CAMA 2004***.

[43]See ***'How to Register a Company in USA?'***, *UpCounsel:* https://www.upcounsel.com/how-to-register-company-in-usa. *Per* excerpts *"Although specific elements may depend on your situation, these are the general steps to take when you want to register a US company: - Decide what type of business organization is right for you. -* ***Decide in which State you will form your LLC*** *(Limited Liability Company)…."* Emphasis supplied. See also, Steven Kelman, ***'Competition Among the States: The Ethics of Regulatory Competition'***, *AEI, 12.06.1982:* https://www.aei.org/articles/competition-among-the-states-the-ethics-of-regulatory-competition/; and Janelle Fritts and Jared Walczak, ***'2023 State Business Tax Climate Index'***, *Tax Foundation, 25.10.2022:* https://taxfoundation.org/2023-state-business-tax-climate-index/ (both accessed 28.02.2023).

[44]It is trite that the literal rule of construction is primarily used in interpreting constitutional provisions. Also, in ***A-G Federation v. A-G Lagos State [2013] 16 NWLR (Pt.1380), 249 at 302B-C***, the SC *per Galadima, JSC's* leading judgment reiterated it was loathe of *"borrowing definition or interpretation from other countries which have no constitutional provisions, resembling that of this country, but different constitutional structures…"* In that case, the SC was unimpressed by reference to Ireland which operates a unitary system. Even in federal systems like the USA, Canada, India, Australia, Brazil, Malaysia, Germany and Mexico the provisions of their constitutions will merely be persuasive and no more.

preferred LP as their business vehicle, from doing so, unlike LLPs where businesses can validly ignore the ***PLLS'*** LLP option, focusing only on ***CAMA*** LLP. The LP dilemma becomes even more worrisome if for example (please note that the authors have not conducted any analysis in this regard), the ***PLLS'*** LP regime is more business friendly than ***CAMA's***.

That means until judicial determination, businesses would have to be complying with the assumed more onerous ***CAMA*** requirements. Heavier or multiple regulatory compliance burden will definitely be a cog in the wheel of business and potentially affect the performance of firms, such as PE funds which are structured as LPs.

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