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COLLEGE OF LAW AND GOVERNANCE STUDIES
SCHOOL OF LAW
LL.M PROGRAM- BUSINESS LAW STREAM

**“THE INTRODUCTION OF LIMITED LIABILITY PARTNERSHIP IN THE NEW
COMMERCIAL CODE OF ETHIOPIA”**

**A THESIS SUBMITTED IN PARTIAL FULFILMENT FOR THE REQUIREMENTS OF
MASTERS DEGREE OF LAW (LL.M)**

By:-ZELALEM ABERA

Advisor: -TILAHUN TESHOME (PROFESSOR)

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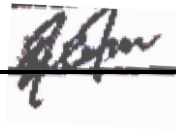
The thesis titled **THE INTRODUCTION OF LIMITED LIABILITY PARTNERSHIP IN THE NEW COMMERCIAL CODE OF ETHIOPIA** by Mr. **ZELALEM ABERA** is approved
For degree of Master of Laws (LLM)

Board of Examiners

Name

Signature

Advisor **TILAHUN TESHOME (PROFESSOR)** _____



Examiners (1) _____

(2) _____

I, the undersigned, declare that this thesis is my original work and has not been presented for a degree at any other university. I also confirm that all sources and materials referenced in this thesis have been properly acknowledged.

Declared by:

Name: Zelalem Abera Mamo
University Id.NO.GSE/9388/12
17January2025

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Abstract

The limited liability partnership (LLP) is a relatively recent form of business organization that has gained legal recognition, setting it apart from more traditional structures. This particular entity is specifically reserved for use by certain professional individuals, such as lawyers, physicians, accountants, medical doctors and so on. The primary advantage of the LLP is that it offers a shielding of personal liability for its partners, limiting their exposure to the extent of their individual ownership share in the partnership.

The primary objective of this research is to assess the clarity and adequacy of the legal framework governing LLPs. Key issues explored include the lack of specificity regarding the types of professionals eligible to establish LLPs, ambiguities in partner liability, and concerns over the fairness of cash payouts for departing partners. Additionally, the study addresses challenges in the decision-making process, particularly the implications of the two-thirds majority vote requirement in partnerships with only two members.

This research employs a mixed-methods approach, combining doctrinal analysis of pertinent legal texts with qualitative interviews of legal experts and practitioners. The findings aim to pinpoint gaps in the existing regulatory framework and propose recommendations to improve the clarity and fairness of LLP provisions. Ultimately, this study aspires to deepen the understanding of LLPs in Ethiopia, offering valuable insights for policymakers, legal practitioners, and stakeholders navigating an evolving business landscape.

List of Acronyms

Art.	Article
ARDA	Authentication and Registration of Documents Agency
BIRR	Ethiopian's Legal Currency
BO	Business Organization
EU	European Union
FDRE	Federal Democratic Republic of Ethiopia
MFSEDA	Federal Micro and Small Enterprise Development Agency
GDP	Growth Domestic Production
LLP	Limited Liability Partnership
MTRI	Ministry of Trade and Regional Integration
MOA	Memorandum of Association
PA	Partnership Agreement
SBA	Small Business Administration
SMEs	Small and Medium Enterprise
TIN	Tax Identification Number
UK	United Kingdom
USA	United State of America

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Chapter One

Introduction

1.1 Background of the study

The concept of Limited Liability Partnership (LLP) first emerged in the United States during the financial crisis of the late 1980s and early 1990s when hundreds of US savings and Loan firms were declared insolvent.¹ As a result of the collapse many accountancy and legal firms faced legal suits instigated by the US government.² These lawsuits, initiated by the U.S. government, posed significant risks, as successful claims could have made all partners ,including those not responsible for the failures ,liable for repaying millions of dollars in compensation.³ In 1991 Texas States of US for the first time introduced the concept of LLP.⁴ Finally the concept of LLP became popular and the majority of the US states eventually passed legislation.⁵

In the United Kingdom LLP Act was enacted in 2000.⁶ The Limited Liability Partnership Act 2008 was published in the official Gazette of India on 9 January 2009 and has been in effect since 31 March 2009.⁷

In Ethiopia, the House of Peoples’ Representatives of The Federal Democratic Republic of Ethiopia⁸ promulgated a new Commercial Code.⁹ Under this Commercial Code¹⁰, different types

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1. History and Legislation Relating to LLPs, Available at:<https://insolvencydirect.bis.gov.uk/technicalmanual/ch4960/chapter%53a/part%201/part%201.htm>, Accessed on August 1,2024
 2. Ibid
 3. Ibid
 4. Ibid
 5. Ibid
 6. Limited liability partnership – Wikipedia, <https://en.wikipedia.org/wiki/limited-liability-partnership#united-kingdom>, Accessed on August 1,2024
 7. Ibid
 8. “As per art.50 (3) of FDRE Constitution the House of Peoples’ Representative is the highest authority of the government.
 9. The FDRE Commercial Code of Ethiopia, Proclamation No. 1243/2021[Hereinafter the Commercial Code].
 10. Commercial Code of Ethiopia, Art. 174.

of business organizations are recognized as business entities .One of these recognized business entities is Limited Liability Partnership (LLP).¹¹ The adoption of LLPs in Ethiopia, as in others countries, allows accredited professionals to pool their capital, expertise and resources to provide specialized professional services.¹²

The objective of this research paper is to conduct an in-depth analysis of LLPs from Ethiopians perspectives. The study will examine the legal frame work governing LLPs in Ethiopia; including its formation, the extent of liability of the partners and partnership, the rights and obligations of partners, legal personality of partnerships and, conflict of interest between partners, share of a partner leaving ,decision- making process of the partners and so on.

1.2 Statement of the Problem

The focus of this research paper is the provisions governing Limited Liability Partnerships (LLP) in the current Commercial Code of Ethiopia. Specifically, the study examines Art.221 to 233 under Title Four of the Commercial Code, which contains a total of twelve provisions regulating various aspects of LLPs. The central issue addressed in this research is the degree to which these LLP – related provisions in the Commercial Code sufficiently and clearly define the subject matter. For example the provision, which defines the Limited Liability Partnership (LLP), does not clearly specify the types of professionals permitted to establish an LLP, resulting in an open-ended interpretation of its applicability. This ambiguity raises critical questions regarding the intended scope of the LLP structure whether it is designed to accommodate all professions or merely a select few. Furthermore, the provision fails to delineate the extent of liability among partners, as well as between the LLP and third parties, and between third parties and the LLP. Additionally, there is no clear articulation of the purposes for which an LLP may be established. In other words, the study aims to scrutinize and asses the adequacy and clarity of rules and regulations surrounding LLPs as laid out in the Commercial Code.

Therefore, a thorough analysis is necessary to clarify the eligibility criteria for LLP formation and to assess the implications of this ambiguity on the legal and professional landscape.

11. Commercial Code of Ethiopia, Art. 174.

12. Addis Fortune. 2020. Addis Fortune. Available at: <https://addisfortune.news> [Accessed 11 Dec. 2020].

The other problem in connection of LLPs is in relation to Art. 230 of the Commercial Code is, When a partner dies, becomes ill, goes bankrupt, or leaves the partnership for any other reason without out transferring his share, the person entitled to claim the partner's share shall only receive the cash value of that share. The process of valuing shares in an LLP underscores the importance of clear agreements and transparency among partners. It is essential for LLPs to have detailed operating agreements that specify how shares will be valued and the criteria used for this valuation. Having these guidelines in place can help prevent disputes and ensure that all partners feel treated fairly. Partners may join the LLP at different stages and under various circumstances. Some may come on board in the early phases, while others might contribute significant investments later. This variation leads to differences in their levels of participation and influence within the partnership. The overall value of the partnership can appreciate due to factors like service quality, goodwill, and the partners' reputations. These elements can enhance the LLP's market position and profitability, affecting how shares are valued.

The valuation of a partner's stake should reflect not only financial investments but also the professional services, expertise, reputation, quality of service, goodwill associated with the partnership. In sectors such as law, medicine, architecture and so on intangible assets like goodwill representing the established relationships, client loyalty, and brand strength are essential to the overall success of the LLP. By prioritizing cash valuation, Article 230 risks undermining the true worth of the partnership and failing to recognize the intangible contributions that enhance its value.

This limitation can disadvantage exiting partners by providing inadequate compensation for their comprehensive contributions and may deter prospective partners who seek a fair assessment of their potential value within the LLP. Therefore, there is an urgent need to reevaluate the provisions governing LLPs to incorporate comprehensive methods for share valuation that account for both tangible and intangible contributions, including goodwill.

The other problem in connection with LLPs is the Decision-making process of the LLP. Article 221 of the Commercial Code stipulates that the liability of partners is limited to the amount of their contributions. Articles 226 and 186 detail that partners' contributions can take various forms, including money, movable and immovable property, skills, trademarks, goodwill, patents,

Copyright, lease rights, or other contributions. By analyzing Articles 221 and 226 together, we can infer that a partner in a Limited Liability Partnership (LLP) can contribute in various forms, including skills. If a new partner lacks the ability to make financial or property contributions, their skills can still be considered valuable, but they must be converted into a monetary value. This means that while the partner's skills are recognized, the LLP will assess the worth of those skills based on the outcomes of their professional services. Therefore, the partner's contribution through skills is valid, but it must be quantified in a way that reflects its economic value to the partnership.

Furthermore, Article 225 of the Commercial Code requires that the shares of the partners must be written down in their Memorandum of Association (MOA), allowing for variations in share amounts among partners; thus, they are not required to have equal shares. so voting system of an LLP is determined based on the share of partners.

Art. 231(1) of the Commercial Code stipulates that, in principle, the amendment of an LLP's MOA is left to the free will and agreement of the partners. However, the law imposes a mandatory requirement that any MOA amendment must be approved by a two-thirds majority vote of the partners. When there is a disagreement among partners regarding the amendment of the MOA, business purpose, or other matters, this disagreement must be resolved by a majority vote of the partners. This presents a particular challenge when an LLP has only two partners and has equal number of share, in such a scenario, the two-thirds majority vote requirement effectively means that both partners must agree to any proposed on MOA amendment. What if the two partners of an LLP have different opposite stands in the amendment of the MOA? The provision is silent. The fate of the LLP and its MOA becomes precarious if the two partners are unable to reach the necessary consensus to amend the MOA. The rigid voting requirement could lead to a deadlock, preventing the LLP from making crucial changes to its governing document, even if such changes are deemed necessary or beneficial for the partnership. Resolving this issue would help to ensure that the LLP structure in Ethiopia remains adaptable, responsive, and aligned with the legitimate needs and interests of its partner-owners, ultimately strengthening the viability and utility of this business form. If the partners of a Limited Liability Partnership (LLP) hold different amounts or numbers of shares, the process for amending the Memorandum of Association (MOA) relies on the voting power associated with their shares. In this situation, a

Partner with a larger number of shares would have a greater influence on the decision-making process.

Besides, the decision-making process in LLPs extends beyond just the amendment of the Memorandum of Association (MOA). As per Article 231(2) of the Commercial Code, the partners of the LLPs are also required to vote on other critical matters, such as decisions regarding changes to the nationality or business purpose of the partnership. Similarly, these types of decisions also require a three-fourth majority vote of the partners. This presents a significant challenge when an LLP has only two partners and the partners has equal number of share. If the two partners are unable to reach a consensus what would be the legal solution? Besides, in partnerships with an even number of members, the potential for evenly split votes is a significant risk. For instance, in an LLP with six partners, if the voting results in three votes for and three against a proposal, the inability to achieve a three-fourth majority means that no decision can be made. This situation not only halts progress but can also foster frustration among partners, leading to a decrease in morale and collaboration. Furthermore, if there are three partners in an LLP, the dynamics can still present challenges. In this case, a two-thirds majority requires at least two out of the three partners to agree on any decision. While a tie is not possible, complications can arise if one partner is absent or chooses to abstain from voting. For instance, if one partner is absent and only two partners vote, both must agree for the decision to pass. If they disagree, the required majority is not achieved, which can prevent important decisions from being made. This situation illustrates how even with an odd number of partners, the partnership can face difficulties in functioning effectively due to voting dynamics. Here, in these cases, the provisions do not say anything. Conversely, if partners in a Limited Liability Partnership (LLP) hold different numbers of shares, a partner with a significantly larger shareholding can greatly influence decisions regarding the business's purpose or changes to the LLP's nationality. In such cases, the distribution of shares becomes crucial. Specifically, if a partner has a substantial number of shares, they may have the power to sway majority votes and seek to maintain or alter the direction of the LLP according to their interests. This means that even if a majority of partners support a decision, the influence of a partner with a large shareholding can impact whether a proposal is implemented, particularly concerning major changes affecting the LLP's operations or legal structure.

Based on the aforementioned problems, the study tries to address the following research questions:

- To what extent do the LLPs provisions of the Commercial Code sufficiently and clearly define the subject matter of LLPs?
- How effectively does the Commercial Code's limitation of partners' liability to their contribution address the complexities of LLP partner liability?
- What challenges do successors or entitled parties face in accessing a departing partner's share value?
- What are the challenges associated with the decision – making process within LLP?

1.3 Objectives of the Study

The objectives of the study are the following:

- Examining and investigating the LLP provisions in the Commercial Code.
- Evaluating the sufficiency and clarity of the LLP to the subject matter of the study.
- Identifying legal gaps and shortcomings in the LLP regulatory framework.
- Proposing recommendations for improving the LLP provisions in the Commercial Code.

1.3.1 Specific Objectives of the study

The Specific objectives of the study are:

- Identify the legal definitions, requirements, and regulatory treatment of LLPs as per the Commercial Code.
- Critically analyze the Code's limitation of partner liability to his capital contribution.
- Identify any ambiguities, gaps, or potential exceptions in how partner liability is addressed.
- Examine the Code's requirements and processes for LLP partner capital contributions.
- Assess the fairness and equity of the Code's "respective share" principle for withdrawing partners.
- Propose specific modifications or additions to the Code to improve partner liability protections and ensure greater fairness.
- Suggest ways to clarify ambiguous or introduce safeguards to mitigate unintended

Consequences.

- Consider how revisions to the LLP framework could better align with evolving business practices and partner needs.

1.4 Significance of the study

The significance of the study lies in its comprehensive examination of the Limited Liability Partnership (LLP) provisions of the commercial code. By assessing the sufficiency and clarity of these LLP rules, the research contributes to a deeper understanding of the legal framework governing LLPs in Ethiopia. In addition to examining the sufficiency and clarity of the LLP regulatory framework, the study also addresses fairness concerns surrounding partner withdrawals from LLPs. It questions the adequacy of the current Commercial Code provision that only allows partners to take their share of the partnership's assets upon withdrawal.

The research also delves into the decision-making processes governing LLPs, identifying areas where the existing legal framework lacks clarity and sufficient guidance. By uncovering these gaps in the current regulations, the study will provide valuable insights to inform potential enhancements to the decision-making mechanisms within LLPs. This aspect of the research aims to shed light on the potential ambiguities or shortcomings in how the Commercial Code addresses decision-making procedures, voting rights, and the distribution of authority among LLP partners. The findings will help pinpoint specific areas where the law could be strengthened to ensure more transparent, inclusive, and efficient decision-making within LLP structures.

The insights and recommendations generated by this research will be beneficial for policymakers, legal practitioners, and LLP stakeholders. They will empower these key stakeholders to optimize the Commercial Code's oversight of this important and increasingly prevalent business structure, fostering a more robust, equitable, and adaptable LLP ecosystem.

1.5 Scope of the study

The scope of this study is limited to the analysis of Limited Liability Partnership in the Commercial Code, which govern the regulations surrounding limited liability partnerships (LLPs) in Ethiopia. The research will focus on evaluating the adequacy and clarity of the existing LLP provisions within this legal framework to determine if they provide a robust and well-defined structure for LLPs.

Additionally, the study will specifically address issues of fairness and equity in the context of partner withdrawals from LLPs. It will scrutinize the current provision that only allows partners to take their share of the partnership's assets upon withdrawal, and explore the discussion on equitable distribution of assets and overall fairness in the LLP dissolution process.

Furthermore, the research will investigate the decision-making processes governing LLPs, with the aim of identifying areas where the existing law lacks clarity and sufficient guidance. This aspect of the study will shed light on potential ambiguities or shortcomings in how the Commercial Code addresses decision-making procedures, voting rights, and the distribution of authority among LLP partners.

1.6 Limitations of the study

The study will specifically focus on the rules and provisions related to limited liability partnerships (LLPs) in Title Four of the present commercial code of Ethiopia, covering Articles 221-233. It will not encompass other areas of the commercial code or legal frameworks unrelated to LLPs.

1.7 Research Design and Methodology

The study will employ doctrinal research analysis. By employing doctrinal research, the study will involve a comprehensive review of relevant legal texts, scholarly literature, and legislation pertaining to limited liability partnerships (LLPs) and partnership law in the research context. The study will conduct in-depth, semi-structured interviews with a diverse range of participants, including 18(eighteen) legal experts, 10(ten) professionals from various fields, 4(four) regulatory representatives, and (eighth) LLP partners. This Doctrinal approach aims to gather rich, contextual insights into the practical application, challenges, and perspectives surrounding LLPs. The research will employ a purposive sampling technique, deliberately selecting interview participants with specific expertise and experience in LLPs, professional ethics, and partnership law. This targeted approach will ensure the acquisition of informed and valuable perspectives on the research problem.

1.8 Structure of the Paper

The research paper has four chapters and sub topics. Accordingly, the first chapter deals with introductory matters of the research paper.it covers background of the study, statement of

problem, research questions, objectives of the study and specific objectives of the study, significance of the study, the scope and Limitation of the study, research design and methodology of the study, the structure of the research and ethical consideration while conducting the research. The second chapter deals with the general conceptual overview of the concept of limited liability partnership such as the meaning of LLP, salient features of LLPs ,target groups of LLPs ,advantage and disadvantage of LLPs ,formation of LLPs , memorandum of association of LLPs ,contributions for LLPs ,registration and legal personality of LLPs ,rights and duties of LLPs . It also highlights on extent of liability of the partnership, extent of liability of a partner, conflict of interest among partners, departure of a Partner from of the LLP, liability of a partner leaving, share of a partner leaving from LLP, transfer of shares, decision- making process of LLP, admission of a new Partner, taxation of LLP, creditor's rights, Piercing of The Corporate Veil of LLP. the third chapter deals with dissolution and winding up of LLP, grounds for dissolution of LLP, powers and duties of manager during dissolution, restitution of Contributions, distribution of profit and loss. The last but not the least the fourth chapter, being the final chapter of the study, provides for conclusion and recommendation.

1.9 Ethical Considerations

While the researcher conducts this thesis, the researcher will take all necessary measures to avoid plagiarism and ensure appropriate ethical considerations. This includes properly citing and referencing any sources or authorities consulted, in accordance with the established citation guidelines.

Chapter Two

Conceptual overview of Limited Liability Partnership

2.1 Meaning of LLP

The Commercial Code defines a Limited Liability Partnership (LLP) ¹³ as "a business organization formed by two or more persons to render professional services and complementary services, where the liability of partners is limited to the amount of their contributions." Key elements of this definition include the notion of a business organization. This raises an important question: how professional services can be classified as a business organization? ¹⁴ The LLP is considered one form of business organization because the Commercial Code of Ethiopia states so. Besides, "The provision of consulting, auditing, and similar services, particularly when conducted on a larger scale using scientific, technical, and professional knowledge", is recognized under commercial law¹⁵ as trading activities. Consequently, this legal framework acknowledges LLPs as legitimate business entities.¹⁶

Without professionals, the LLP loses its relevance and cannot be considered as a viable business entity. Professionals within an LLP are typically not involved in the sale or purchase of goods or shares; instead, they provide specialized services. Given that an LLP is classified as a business organization, what is its fundamental purpose? Is it established solely for profit, or does it also aim to create opportunities for professional engagement? Article 221 of the Commercial Code does not explicitly address this question. However, the general understanding of any business organizations is that their primary objective is profit-making.¹⁷ this leads to further inquiries: Does this mean that an LLP exists solely for profit? Is it established primarily to avoid losses? Ultimately, the purpose of an LLP, as outlined in the Commercial Code, remains unclear.¹⁸

13. Commercial Code of Ethiopia, Art. 221.

14. *ibid*

15. Commercial Code of Ethiopia, Art. 5(31)

16. Commercial Code of Ethiopia, Art. 174

17. Commercial Code of Ethiopia, Art. 172(1)

18. Commercial Code of Ethiopia, Art. 172(1)

To set up an LLP, it needs at least two partners,¹⁹ but there is no upper limit²⁰ on how many partners may be involved. This requirement for at least two partners is important because it highlights teamwork. With multiple partners, responsibilities, decisions, and risks are shared. This helps the LLP function as a group instead of relying on just one person's skills. Having a minimum of two partners also supports the partnership structure and the principles of shared responsibility and governance. The term "persons" in this context specifically means both individual licensed professionals and LLPs that qualify based on the services they provide²¹.

Everyone has the right to choose occupation and profession.²² LLPs are primarily focused on providing professional services.²³ these licenses signify that the individuals offering the services possess the necessary qualifications and expertise in their respective fields. Additionally, LLPs may also engage in complementary services that are closely related to the professional services they offer. These complementary services are considered essential and supportive in delivering the professional services effectively. Some examples of professional service and complementary service like Doctor and Nurse, Lawyer and Clerk.....etc. Every profession typically requires a professional license.²⁴ when forming an LLP, the appropriate regulatory body carefully examines all the necessary documents to each professions and credentials of potential partners before granting permission for them to join the LLP. For example, in a partnership involving a doctor and a nurse or a lawyer and a clerk, the primary professional licenses are first issued to the doctor and the lawyer by the relevant government authority.

19. Commercial Code of Ethiopia, Art. 221(1).

20. "Limited liability partnership – Wikipedia," <https://en.wikipedia.org/wiki/limited-liability-partnership>, Accessed on August 12/2024

21. Commercial Code of Ethiopia, Art. 224(1).

22. Federal Democratic Republic of Ethiopia Constitution, Proclamation No.1/1995, Federal NegaritGazeta, year 1.NO1.

23. ፍቃዱ ዴግሮስ የኢትዮጵያ የኩባንያ ሕግ ሦስተኛ የተሻሻለ እትም :2014 ዓም ገጽ 42

24. Mesganawu Kifelewu(PHD),DagnachewWorku,FekaduPetros,GizachewSileshi ,2023.Law of Traders and Business Organization : A Text Book ,Addis Ababa :Ethiopia Law School's Association .

When forming an LLP, the appropriate regulatory body carefully examines all the necessary documents to each professions and credentials of potential partners before granting permission for them to join the LLP.

Art. 221(1) does not explicitly specify the types of professionals that can be partners of an LLP. The German Law preferred to use an illustrative listing approach of professionals.²⁵ the specific professions that are eligible to be members of an LLP's are; medical doctor, dentists, veterinaries, non-medical practicenor, physiotherapist, midwives, masseurs, certified physiologists, members of the law societies, patent attorneys, chartered accountants, tax consultants, consulting economists and business economists, sworn accountants, tax representatives, engineers, architects, analytical chemists, pilots, professional experts, journalists, press photographers, interpreters, translators, translators and members of similar professions as well as scientists, artists, writers, teachers, and educators. In USA, LLP is open to all business, but it is often used by large firms by Lawyers and Accountants.²⁶ Based on the experiences of the USA and Germany, LLPs typically grant professional licenses to a limited number of well-defined professions. These professions are often narrowed down to a specific set of specialized fields. In contrast, the Ethiopian law²⁷regarding LLPs appears to be more subjective and lacks clear guidelines on which professions are eligible to obtain a professional license under the LLP structure. The Ethiopian law²⁸ does not provide easily identifiable criteria or a definitive list of professions that can form an LLP.

25. Miseganawu Kifelewu (PHD), DagnachewWorku, FekaduPetros, Gizachew Sileshi, 2023. Law of Traders and Business Organization: A Text Book. Addis Ababa: Ethiopian Law School's Association.

26. *ibid*

27. Commercial Code of Ethiopia, Proclamation No. 1243/2021.

28. *ibid*

Article 221(1) of the Commercial Code does not explicitly states that the liability of partners is limited to the amount of their contributions to the partnership. The liability of an LLP and its partners differs significantly: the LLP operates as a separate legal entity, responsible for its own debts and obligations, which mean it, can take on liabilities independently. In contrast, individual partners benefit from limited liability, meaning their financial responsibility is restricted to the amount they have contributed to the partnership. This structure safeguards their personal assets from being targeted by creditors beyond their initial investments in the LLP.

2.2 Nature of LLP

The nature of an LLP refers to its fundamental characteristics and typically includes the following aspects:-

- ❖ **Separate Legal Entity:** - The partnership has a legal personality that is distinct from that of its partners.²⁹ A Limited Liability Partnership (LLP) has its own legal identity, separate from its partners. This feature differentiates the LLP from other types of business organizations, making it unique in its functionality. As a corporate body, the LLP exists independently of its partners.³⁰ By acquiring legal personality, the LLP can enter into contracts, own property, and initiate or defend legal actions in its own name.
- ❖ **Perpetual Succession:** - Art. 222(2) read “the death, bankruptcy, departure from the partnership or any other fact that affecting the partners shall have no impact on the existence, rights or obligations of the partnership.” This provision underscores the principle of perpetual succession, which is a key characteristic of Limited Liability Partnerships (LLPs).

2.3 Target Groups of LLP

The main Targeted groups are:-

29. Commercial Code of Ethiopia, art.222(1)

30. <http://www.taxclue.in> and Commercial Code of Ethiopia, art.222(1)

2.3.1 Professionals

It is important to note that Limited Liability Partnerships (LLPs) in Ethiopia are specifically designed for licensed professional,³¹ such as lawyers, accountants, physicians, and auditors. This structure is not available for individuals or other entities seeking to operate their businesses outside of this professional context. The primary purpose of LLPs in Ethiopia is to provide a legal framework that allows licensed professionals to enjoy the advantages of limited liability while delivering their service.³²

The Commercial Code³³ does not provide an exhaustive list of specific professions eligible for LLPs; instead, it focuses on the nature of the services rendered and the professional knowledge required. This broad definition allows a wide range of licensed professionals to benefit from the LLP structure, provided their services align with the outlined criteria. The primary benefit of limited liability for professionals in an LLP is that their personal liability is generally confined to their contributions and actions. This means they are not typically held personally responsible for the LLP's debts and obligations. This limited liability protection is crucial for safeguarding the personal assets of the professionals involved, offering them financial security and peace of mind.

By targeting licensed professionals, LLPs facilitate a supportive environment for collaboration, risk management, and the delivery of specialized services, thereby enhancing the overall professional landscape in Ethiopia.

2.3.2 Small and Medium Enterprise (SME)

31. Commercial Code of Ethiopia, art.221 (1)

32. *ibid*

33. Commercial Code of Ethiopia, Proclamation No. 1243/2021, art.222 (1)

Despite the complexities, SMEs play a prominent role in today's global economic transformation³⁴. SMEs alleviate poverty and create employment and wealth for the public and government³⁵About 90% of global firms are SMEs employing over 70% of the work force.³⁶ in china and EU, SMEs constitute about 99% of all business firms, employ over 80% of the work force and constitute about 60 % of GDP³⁷

While Limited Liability Partnerships (LLPs) were initially created for licensed professionals, some jurisdictions permit a wider variety of businesses to operate as LLPs, including small and midsize enterprises (SMEs). SMEs are defined as businesses that operate below certain thresholds regarding revenue, assets, or the number of employees.³⁸ the definition of SMEs varies across countries, as each nation establishes its own criteria to determine what qualifies as an SME.³⁹

2.4 Advantage of LLPs

34. Liberto Daniel, 2022. 'Small and Midsize Enterprise Defined: Types Around the World', E-Journal of Humanities, Arts and Social Science, vol. 3, no.8

35. ibid

36. ibid

37. ibid

38. ibid

39. In the **United States**, the Small Business Administration (SBA) classifies small businesses based on factors such as ownership structure, number of employees, earnings, and industry. For instance, in the manufacturing sector; an SME is defined as a company with 500 or fewer employees. On the other hand, businesses involved in copper ore and nickel ore mining can have up to 1500 employees and still be considered SMEs according to the Small business Administration classification. The **Canadian** government issues Canadian industry statistics that define each type of business based on the number of employees it has small and midsize enterprise (SME) defined: micro business have 1-14 employees, small business have 5-99 employees, medium business have 100-499 employees, large business have 500+ employees. In **Ethiopia** context, for example, the present Federal Micro and Small Enterprise Development Agency (FMSEDA) proclamation no.201/2011 art.2 provide a definition of micro enterprise and small enterprise. a small enterprise is an enterprise having a total capital, excluding building, from 50,001.00 to birr 500,000.00. This definition emphasizes that the type of profession, the amount of birr (the Ethiopian currency), and the number of employees are important factors in determining whether an enterprise qualifies as a small enterprise

The following key points can be taken as Advantage of the LLP:-1) **No Requirement of Compulsory Audit:** - in LLP, there is no mandatory requirement of Audit.⁴⁰ 2) **Credibility and Professionalism:** - LLPs are frequently regarded as possessing greater credibility and professionalism compared to alternative business structures such as Sole proprietorship, General partnership, and Joint venture and so on, particularly in specific fields like accounting, law, and consulting. The designation of an LLP carries an impression of professionalism, expertise, and reliability to clients, suppliers, and other stakeholders. This can be advantageous in attracting clients, securing contracts, and cultivating a solid reputation.⁴¹ 3) **Easy Transfer of Ownership:** - In an LLP, partners can transfer their ownership interests without facing complicated procedures. This makes it simple for partners to sell or pass on their shares of the business, allowing for smooth transitions when partners leave or new ones join. This flexibility helps ensure the business can adapt and continue operating effectively. 4) **No requirement of minimum contribution:**-there is no minimum capital requirement in LLP.⁴²5) **LLP names are protected:** - LLPs generally enjoy name protection, which means that once a name is registered for an LLP, it is typically not available for use by any other entity within the same jurisdiction.⁴³

2.5 Disadvantage of LLPs

The following key points can be taken as disadvantage of LLP:-1) In an LLP with only two members, decision-making can become more difficult when there are disagreements or differing opinions between the partners. This can lead to deadlock situations, where reaching a consensus on important matters like strategic direction, financial decisions, or admitting new partners becomes challenging.⁴⁴ 2) Limited Liability Partnership is reserved only for professionals.⁴⁵ 3) **Limited Fundraising:** - LLP cannot issue shares to the public, which limits its ability to raise

40. Audit of LLP, <http://www.ieinteligensia.law.firm.com> ,visited on August 3/2024

41. ibid

42. LLP Benefit and Disadvantage <http://www.simpleinformation.com> , visited on April21/2024

43. ibid

44. LLP Benefit and Disadvantage , <http://www.simpleinformation.com> , visited on April21/2024

45. ibid

Funds from investors.⁴⁶ 4) An LLP must have at least two members. If one member chooses to leave the partnership the LLP may have to be dissolved⁴⁷.

2.6 Formation of LLP

When partners decide to form a limited liability partnership (LLP), they come together and submit a memorandum of association⁴⁸ along with their professional license numbers and types of professions⁴⁹ to the Ministry of Trade and Regional Integration or the regional organs responsible for commercial registration.⁵⁰ Upon receiving these documents, the Ministry of Trade or the registering organs ensure that all the necessary legal requirements are met. Once the registration process is complete, a certificate of registration is issued to the LLP. With this legal recognition, the business vehicle can engage in and operate its business activities.

Registration and legal personality are closely interconnected. For a business organization to attain legal personality, registration is essential. This process involves submitting necessary documents to the relevant government authority or commercial registrar, which enables the business to be recognized as a separate legal entity distinct from its owners or members. Once it is registered, the organization gains legal recognition and certain rights and obligations, such as the ability to enter into contracts, own assets, incur liabilities and engage in legal actions under its own name. According to commercial code,⁵¹ joint ventures do not have legal personality⁵² and its existence is unknown to third parties.⁵³ Consequently, the registration requirements that apply to other business entities do not pertain to joint ventures. In contrast, a Limited Liability

46. LLP: Advantages, Disadvantages , <http://margcompusoft.com> , Visited on November 25/2024

47. LLP Benefit and Disadvantage , <http://www.simpleinformation.com> , visited on November 25/2024

48. Commercial Code of Ethiopia, Art.185

49. Commercial Code of Ethiopia, Art.225

50. Proclamation no.980/2016 Commercial Registration and Licensing ,Art.4(2)

51. Commercial Code of Ethiopia, Proclamation No. 1243/2021.

52. Commercial Code of Ethiopia, Proclamation No. 1243/2021, art.234

53. *ibid*

Partnership (LLP) possesses a distinct legal personality separate from its partners, which is achieved through registration. The partners of an LLP must have resisted it with the appropriate authority, as no entity can obtain a business license without being registered with the commercial register.⁵⁴ A business Organization (BO) acquires legal personality upon registration,⁵⁵ and individuals or entities conducting business activities without proper registration may face criminal charges.⁵⁶ Once the LLP is registered, the BO must also be publicly announced in a newspaper with nationwide circulation at the time of its establishment.⁵⁷ The commercial register shall be open to the public at large ; third parties are entitled to look in to the registrar⁵⁸ .the registration of a business organization must take place at the location where its main office is situated.⁵⁹

2.6.1 Memorandum of Association (MOA)

The MOA is an essential document for establishing a business organization.⁶⁰ It serves as an instrument used to formalize the establishment of a BO.⁶¹ While the Ministry of Trade and Industry or another authorized government agency may develop a model of MOA, it is not mandatory, as partners have the right to create and draft their own MOA based on their freedom of contract.⁶² During the design process of MOA, partners should ensure compliance with the rules and

54. Commercial registration and licensing proclamation No.980/2016, Federal NegaritGazeta, 12th year No.101, art.7 (1)

55. *ibid*

56. Commercial registration and licensing proclamation No.980/2016, Federal NegaritGazeta, 12th year No.101, art.7 (2)

57. *ibid*

58. *ibid*

59. *ibid*

60. Commercial Code of Ethiopia, Art.173 (2)

61. *ibid*

62. *ibid*

regulations issued by the relevant government authority.⁶³ A BO's MOA is of supreme importance.⁶⁴MOA is the charter of the company.⁶⁵It sets out the constitution of the company and provides the foundation on which the company is built.⁶⁶It lays down the objects and scope of activities of the company with the outside world.⁶⁷The MOA shall contain the firm name, the head office and branches, the name, address and nationality of each partner and so on.⁶⁸it is not exhaust lists.

2.6.2 Contribution

The partners must make contributions to form a Limited Liability Partnership.⁶⁹ These contributions are essential and can take various forms, including cash, movable or immovable property, skills, trademarks, goodwill, patents, copyrights, lease rights, usufruct, or other assets.⁷⁰ The provision does not impose restrictions on the types of property that can be contributed, allowing for a wide range of contributions.⁷¹ While the contributions can be made either as ownership or usage rights, the specific nature of each contribution is established through an agreement among the partners.⁷² Typically, contributions are expected to be equal among partners⁷³ unless stated otherwise. While monetary contributions are usually straightforward, assessing the value of in-kind contributions can be more complex. Partners must agree on the valuation of any non-monetary assets contributed. If a partner's in-kind contribution is valued higher than its actual worth, that partner must compensate the difference in cash.⁷⁴ the valuation

63. Commercial Code of Ethiopia, Art.173 (3)

64. Ashok K Bagrial, Company law,12th edition ,Department of Commerce Shivaji College (University of Delhi)

65. ibid

66. ibid

67. ibid

68. Commercial Code of Ethiopia, Art.185

69. Commercial Code of Ethiopia, Art.221 (1)

70. Commercial Code of Ethiopia, Art.186 (1)

71. ibid

72. Commercial Code of Ethiopia, Art.186(2) and (4)

73. Commercial Code of Ethiopia , Aart.186(3)

74. Commercial Code of Ethiopia ,art.186(5)

Of contributions such as trademarks, goodwill, patents, and copyrights (intellectual property) lacks clear guidelines from the Commercial Code.⁷⁵ to put the exact value of such intellectual property, being it is subjective and complex; it is beyond the scope of lawyer so it needs an accountant skill.

2.6.3 Prerequisite Requirement Needed for Registration of LLP

Partners looking to establish a professionals business in the form of a Limited Liability Partnership (LLP) structure at the federal level must submit their personal documents along with the Memorandum of Association (MOA), which outlines their agreement. This submission is made to the FDRE Authentication and Registration Document's Agency (FDRE ARDA), which is responsible for certifying and registering these documents, as outlined in pro.no. 922/2015. This includes authenticating documents and registering copies alongside the originals.

Once the personal documents and MOA are registered with FDRE ARDA, the partners can proceed to the Ministry of Trade and Regional Integration (MTRI) for further registration. MTRI has specific evaluation criteria that must be met, including the appointment of a general manager for the LLP, the submission of identification documents for each partner, photographs of the partners, and an agency document if any partner is absent. Additionally, partners must provide their Tax Identification Number (TIN). If the general manager lacks a TIN, they must obtain one from the Ministry of Revenue for legalization.

MTRI also verifies whether the proposed LLP name is already registered. If the name is available, MTRI will register the LLP; if not, the partners must select a different name. MTRI charges fees for its services, and it is important to note that registrations are only accepted online.

After the LLP is registered, partners may need to visit the sub-city office of MTRI branches to obtain necessary permissions to officially start their operations. However, the final authorization is granted by the relevant government authority based on the specific nature of the LLP's business. MTRI's role is primarily focused on online registration and facilitating the overall process.

75. Commercial Code of Ethiopia, Proclamation No. 1243/2021

2.6.4 Name of the Partnership

The LLP's name should be determined by mutual agreement⁷⁶ among the partners and should clearly indicate the purpose of the partnership.⁷⁷ However, the chosen name should not harm the interests of other traders, organizations, or infringe upon the rights of third parties.⁷⁸ Additionally, the name of the partnership must be followed by the phrase "limited partnership".⁷⁹

2.7 Rights of the partners of the LLP

Limited Liability Partnerships (LLPs) are business entities that combine the features of a partnership and a limited liability company. The rights of the partners of an LLP either emanates from the firm members or the MOA of the partnership.⁸⁰ The following key points can be taken as the rights of the partners:-

2.7.1 **Right to Participate:** One of the fundamental rights of partners in a partnership is the right to participate.⁸¹ This ensures that partners cannot be excluded from involvement in partnership matters. They are entitled to contribute to and engage in significant decisions that affect the partnership's operations, including discussions and voting on critical issues that require collective action.

Additionally, partners have the right to take part in the management of the partnership. This involvement allows them to actively participate in daily operations, strategic planning, and policy-making processes. The right to participate is vital for maintaining transparency, accountability, and fairness within the partnership, ensuring that all partners have a voice and the opportunity to influence important decisions.

76. Commercial Code of Ethiopia, Art.223

77. *ibid*

78. *ibid*

79. *ibid*

80. Commercial Code of Ethiopia, Art.190 (6)

81. Rights of partnership of LLP, <https://www.unacademy.com>, visited on April 12/2024.

In a Limited Liability Partnership (LLP), partners have the right to participate in management while enjoying protection for their personal assets. This allows them to engage in business decision-making without risking their personal finances beyond their investment in the partnership.

The partnership agreement plays a crucial role in this context. It outlines how partners can participate in management and defines their roles and responsibilities. This ensures that each partner's involvement aligns with their financial stake in the LLP.

To mitigate risks and ensure smooth operations, effective governance is essential. Clear roles and well-defined responsibilities help maintain accountability. Additionally, fostering regular communication and implementing conflict resolution strategies contribute to a healthy partnership dynamic.

2.7.2 Right to Share Profits: The right to share profits is a fundamental entitlement for partners in a Limited Liability Partnership (LLP).⁸² In an LLP, profits generated from business activities are usually distributed among partners according to the terms specified in the partnership agreement. This right is essential for ensuring fairness and equity among partners, allowing each to receive a share of the profits that reflects their contributions and the agreed-upon terms.

This principle of equitable distribution helps maintain a harmonious partnership and encourages motivation and commitment among partners. However, it is important to recognize that the right to share profits is governed by the partnership agreement and any relevant laws or regulations pertaining to LLPs. Therefore, the specific terms for profit distribution can differ based on the arrangements made by the partners.

In a Limited Liability Partnership (LLP), the concepts of limited liability and profit sharing can harmoniously coexist when supported by a well-defined and equitable partnership agreement. This agreement plays a crucial role in establishing clear roles and expectations for each partner, fostering an environment where everyone feels valued and secure. By effectively understanding and applying these principles, partners can cultivate a collaborative and successful business atmosphere that enhances their collective performance.

82. Commercial Code of Ethiopia, Art.190 (2)

2.7.3 **Right to Information:** The right to information is a significant right afforded to partners in a Limited Liability Partnership (LLP)⁸³ it refers to the entitlement of partners to access and receives relevant information about the affairs of the LLP. In an LLP, partners have the right to be informed about the financial, operational, and strategic aspects of the partnership. This includes access to financial statements, business reports, contracts, agreements, minutes of meetings, and any other documents that pertain to the LLP's activities and decision-making processes. The right to information serves several purposes within an LLP. Firstly, it ensures transparency and promotes open communication among partners.

The right to information in a Limited Liability Partnership (LLP) is crucial for promoting transparency, fairness, and accountability. When all partners have access to important information, it creates a collaborative environment where decisions are made wisely, conflicts are resolved effectively, and the partnership thrives. This access to information is key to the long-term success and sustainability of the LLP.

2.7.4 **Right to Inspect and Access the Books of Account:** The right to inspect and access the books of accounts is an important right granted to partners in a Limited Liability Partnership.⁸⁴ It entitles partners to review and examine the financial books, records, and accounts of the LLP.

The right to inspect and access books of accounts is crucial for maintaining transparency, accountability, and informed of the decision-making in a Limited Liability Partnership (LLP). It allows all partners to stay inform about the financial status of the partnership, ensuring everyone is involved and aware. This openness helps the partnership succeed and remain stable.

2.7.5 **The Right to Dissent:** The right to dissent is a significant right granted to partners in a Limited Liability Partnership (LLP) ⁸⁵ it refers to the ability of a partner to express disagreement or opposition to a decision, action, or proposal of the partnership. In an LLP, dissenting views can be considered as part of the voting process, but they are not always directly tied to it. The voting process in an LLP typically involves partners casting their

83. Rights of partnership of LLP, <https://www.unacademy.com> , visited on April 12/2024.

84. Rights of partnership of LLP, <https://www.unacademy.com> , visited on April 12/2024.

85. *ibid*

Votes to make decisions on various matters that affect the partnership. When partners have differing opinions on a particular matter, it is common for a voting process to be conducted to reach a decision. During this process, partners may express their dissenting views by voting against a proposal or by abstaining from voting. Dissenting votes or abstentions can indicate disagreement or opposition to a specific course of action.

The right to dissent is vital for ensuring democratic decision-making, accountability, and teamwork in a Limited Liability Partnership (LLP). It allows all partners to share their opinions, making the decision-making process more inclusive and effective. This openness helps strengthen the partnership and supports its long-term success.

2.7.6 Equality of Members of Partners: The right to vote is a fundamental right granted to partners in a Limited Liability Partnership (LLP)⁸⁶ it refers to the ability of partners to participate in the decision-making process by casting their votes on different matters of the partnership.

The right to vote allows partners to express their preferences, opinions, and choices on various matters, such as approving business strategies, entering into contracts, making investments, admitting new partners, or amending the partnership agreement. Partners can exercise their voting rights during formal meetings, where resolutions are proposed and decisions are made through a voting process. Furthermore, the right to vote enhances transparency and accountability within the (LLP).⁸⁷ the voting process allows partners to see how decisions are made and the outcomes of those decisions. This transparency helps build trust among partners and ensures that the decision-making process is fair and in the best interest of the partnership.

The principle of equality among partners in an LLP is crucial for creating a fair, transparent, and collaborative atmosphere. This equality enhances governance, encourages active participation, and builds trust among partners, all of which contribute to the partnership's success and

86. Rights of partnership of LLP, <https://www.unacademy.com> , visited on April 12/2024.

87. *ibid*

Long- term stability.

2.7.7 Voting Right: The right to vote is a fundamental right granted to partners in a Limited Liability Partnership (LLP)⁸⁸ it refers to the ability of partners to participate in the decision- making process by casting their votes on different matters of the partnership.

The right to vote allows partners to express their preferences, opinions, and choices on various matters, such as approving business strategies, entering into contracts, making investments, admitting new partners, or amending the partnership agreement. Partners can exercise their voting rights during formal meetings, where resolutions are proposed and decisions are made through a voting process.

The right to vote is essential for upholding the principle of equality among partners in an LLP. It ensures that all partners have an equal opportunity to participate in decision-making, promoting collaboration, transparency, and accountability. This equal participation ultimately strengthens the partnership and supports its long-term success.

2.7.8 The Right to Enjoy Others Right: - partners of an LLP enjoy other rights and benefits which emanate from firm membership or the MOA of the partnership⁸⁹. Partners, by virtue of their membership in the partnership, hold several inherent rights. These rights include the ability to actively participate in meetings, contribute to discussions, and influence decisions that affect the direction and operations of the partnership. This engagement is essential for fostering a collaborative environment where all partners can share their insights and make collective choices that benefit the business.

The memorandum of association specifies particular rights within the partnership, including profit-sharing percentages, decision-making powers, and defined roles for each partner. As a foundational agreement, it establishes the framework for how the partnership functions and operates.

88. Commercial Code of Ethiopia, Art.190 (1)

89. Commercial Code of Ethiopia, Art.190(6)

2.8 Duties of the Partnerships of the LLP:

The responsibilities of partners in a Limited Liability Partnership (LLP) arise from either the Memorandum of Association (MOA) or the members (partners) of the firm,⁹⁰ or from the law. These duties can be summarized by the following key points

2.8.1 **Duty of Loyalty:** The duty of loyalty is a fundamental obligation that partners in a Limited Liability Partnership (LLP) have towards the partnership and their fellow partners⁹¹. The duty of loyalty is a key principle in a Limited Liability Partnership (LLP). It requires partners to act in the best interests of the partnership. This duty helps create accountability and good governance among partners. The partnership agreement, or contract, is crucial because it clearly defines this duty and explains how it should be followed. By doing so, it helps prevent conflicts and encourages a supportive working environment. When partners understand their responsibilities and how to balance their personal interests with their obligations to the LLP, it leads to a more successful partnership overall.

2.8.2 **Fiduciary Duty:** - Fiduciary duty⁹² is a significant responsibility that partners in a partnership, including an LLP, have. It involves a legal and ethical obligation to prioritize the best interests of the partnership and its stakeholders. Fiduciary duty sets a higher standard of care and loyalty that partners must uphold, ensuring their actions align with the partnership's welfare.

Partners are expected to demonstrate competence, diligence, and careful judgment in overseeing the partnership's operations. They bear the responsibility of making well-informed decisions, fulfilling their roles with proficiency, and safeguarding the partnership's financial and operational interests.

90. Commercial Code of Ethiopia, Art.191

91. Duties of Partnership of LLP, <https://www.indiafilings.com>, visited on April 19/2024

92. *ibid.*

2.8.3 Duty of Care: LLP partners have a duty of care towards the LLP and fellow partners.⁹³ they are expected to exercise the same level of care, skill, judgment as a reasonable person in similar circumstances when making decisions for the LLP.

The duty of care extends to various aspects of partnership operations, including financial management, strategic planning, risk assessment, and compliance with legal and regulatory requirements. Partners should stay informed about industry trends, seek professional advice when necessary, and take reasonable steps to mitigate risks and protect the partnership's assets.

The duty of care is important in a Limited Liability Partnership (LLP) because it ensures that partners make careful and informed decisions. This responsibility helps the LLP succeed and protects its resources, while also encouraging teamwork among partners.

Ordinary members of LLP shall exercise reasonable care in their investment decisions and remain informed about the LLP's overall performance .while they do not participate in daily management; they are responsible for ensuring the managing members act in the best interests of the partnerships. Ordinary members are expected to be aware of significant developments and risks affecting the LLP, fulfilling their duty of care through vigilance and informed oversight.

Managing members of a LLP are required to exercise the highest standard of care, skill, and judgment in their decision-making and operational management .they must actively oversee the-day-to-day affairs of the LLP, identifying and mitigating risks while ensuring compliance with legal and regulatory requirements. Managing members are expected to stay informed about industry trends, seek professionals' advice when necessary, and make well-informed decisions that prioritize the best interest of the partnership and its stakeholders.

Paid agents of a Limited Liability Partnership (LLP) are required to exercise a high standard of care, skill, and judgment in the performance of their duties. They are accountable for their actions and decisions, expected to act in the best interests of the LLP, and fulfill their contractual obligations.

93. Duties of Partnership of LLP, <https://www.indiafilings.com> , visited on April 19/2024

Due to their professional status and compensation, paid agents must maintain a level of professionalism consistent with industry standards, applying due diligence and care in their work to ensure the effective management and protection of the partnership's interests.

Unpaid agents of a Limited Liability Partnership (LLP) are expected to act in good faith and exercise reasonable care in their contributions to the partnership. While they do not receive financial compensation, they should avoid actions that could harm the interests of the LLP. Their duty of care reflects their informal status, and they are encouraged to provide advice and support in a manner that aligns with the best interests of the partnership, recognizing the goodwill and trust placed in them by the LLP.

2.8.4 Duty of Disclosure: LLP partners must disclose relevant information to the LLP and fellow partner's.⁹⁴ They must share any pertinent information and notify the partners of any action taken on behalf of the LLP.⁹⁵ The duty of disclosure is a responsibility that partners in a Limited Liability Partnership (LLP) have to provide relevant and accurate information to the partnership and their fellow partners. It involves a requirement to disclose material facts, information, and potential conflicts of interest that may impact the partnership's affairs.

The duty of disclosure is essential in an LLP because it fosters transparency and accountability among partners. When partners share important information, they can make informed decisions that contribute to the partnership's success. This duty is in line with the fundamental principles of an LLP, enhancing trust and cooperation while safeguarding the interests of the partnership.

2.8.5 Duty to Act in Good faith: - The duty to act in good faith is a fundamental obligation of partners in an LLP.⁹⁶ It entails partners being honest, fair, and sincere in their interactions with the partnership and each other.⁹⁷

94. Duties of Partnership of LLP, <https://www.indiafilings.com> , visited on April 19/2024

95. ibid

96. ibid

97. ibid

Acting in good faith means that partners should not engage in deceptive practices, misrepresent information, or act with a hidden agenda⁹⁸. They should approach their responsibilities with integrity, avoiding self-serving actions or decisions that could harm the partnership or other partners.

It's important to note that the duty to act in good faith is a subjective standard, as it depends on the intentions and motivations of the partners. However, courts and legal systems generally expect partners to act honestly, fairly, and with a genuine commitment to the partnership's welfare⁹⁹.

The duty to act in good faith is fundamental to the principles of an LLP, as it promotes trust, cooperation, and ethical behavior among partners¹⁰⁰. By being honest and fair in their dealings, partners can protect the partnership's interests and foster a positive working environment. This duty not only supports the LLP's success but also aligns with its core values of collaboration and mutual respect.

2.8.6 Duty to pay contribution: One of the obligations of a partner in a Limited Liability Partnership (LLP) is the duty to pay contributions.¹⁰¹ Contributions refer to the capital or assets that partners are required to invest or contribute to the LLP. If a partner fails to pay contribution in due time he /she shall be liable to pay interest or penalty based on their partnership agreement (MOA).¹⁰²

98. Duties of Partnership of LLP, <https://www.indiafilings.com> , visited on April 19/2024

99. ibid

100. ibid

101. Commercial Code of Ethiopia, Art.191 (a)

102. Commercial Code of Ethiopia, Art.189

The duty to pay contributions is vital to the principles of an LLP as it ensures shared financial responsibility among partners. By requiring partners to invest in the business, the LLP promotes Fairness, accountability, and financial stability. This duty not only supports the partnership's success but also aligns with the overall structure and goals of the LLP.

2.8.7 Duty of Liability: Partners of LLP have joint and several liabilities for the debts and obligations of the partnership.¹⁰³ this means that each partner is individually responsible for the entire debt of the partnership, not just a proportional share based on their contribution or ownership interest. If the partnership is unable to meet its obligations, creditors can seek recovery from any individual partner's personal assets to satisfy the debt.

The duty of liability means that partners in an LLP are jointly and individually responsible for the partnership's debts. This concept both supports and complicates the idea of an LLP. While LLPs usually give partners limited liability protection, the shared responsibility for debts ensures that partners are accountable for their actions. This encourages them to make thoughtful decisions and manage the business responsibly¹⁰⁴.

This setup protects creditors by allowing them to seek repayment from any partner if the partnership cannot pay its debts. At the same time, it fosters teamwork among partners, which is vital for the partnership's success. In summary, the duty of liability balances individual accountability with the overall health of the partnership, aligning well with the LLP structure¹⁰⁵.

2.9 Management of LLPs

The management of a Limited Liability Partnership (LLP) refers to the activities and processes involved in running and operating the LLP effectively.

103. Commercial Code of Ethiopia, Art.191 (d)

104. Duties of Partnership of LLP, <https://www.indiafilings.com> , visited on April 19/2024

105. *ibid*

When we talk about the management of an LLP, it involves the tasks and responsibilities carried out by the LLP itself, including obtaining professional licenses and employing supportive staff who provide complementary services to the primary profession. The LLP's management staff, led by a general manager who must be a natural person,¹⁰⁶ plays a crucial role in working diligently to achieve the goals of the LLP. They handle the day-to-day activities of the partnership, ensuring smooth operations.

The authority and rights of the managing partners are determined by the partners of the LLP. The manager, who represents the partnership, must always act in the best interest of the partners. It is their responsibility to make decisions and take actions that benefit the partners and contribute to the overall success of the LLP.

The management of the partnership can be carried out by one or more managers, and these managers may or may not be partners' themselves.¹⁰⁷ This allows for flexibility in determining who takes on managerial roles within the partnership .If there are multiple managers, their specific duties and responsibilities should be clearly outlined in writing.¹⁰⁸This is to ensure clarity and provide a clear understanding of the responsibilities and roles of each manager. If a manager of the partnership acts on behalf of the partnership but for their own personal gain, the partnership itself will be held responsible and liable to third parties who conducted business with the manager in good faith.¹⁰⁹ However, if it can be proven that the third parties were aware of the manager's improper use of the partnership's name, then the manager alone will be held personally liable.¹¹⁰

Unless all the partners unanimously agree, a manager of a partnership is not allowed to engage in transactions or conduct business that benefits them personally or benefits third parties.¹¹¹

106. Commercial Code of Ethiopia, Art.224 (2)

107. Commercial Code of Ethiopia, Art.198(1)

108. Commercial Code of Ethiopia, Art.198(2)

109. Commercial Code of Ethiopia, Art.200(1)

110. *ibid*

111. Commercial Code of Ethiopia, Art.200(1)

In other words, without the unanimous consent of all the partners, the manager cannot enter into agreements or deals that serve their own interests or the interests of third parties.

A manager of a partnership is not allowed to conduct transactions that are similar to those performed by the partnership, whether it's on behalf of a third party or for their own personal benefit, without first obtaining the consent of the other partners. Additionally, the manager is Prohibited from becoming a partner in another firm that operates in a similar business and has joint and several liabilities.¹¹²

If a partner is appointed as a manager in the Memorandum of Association (MOA) or through an amendment to the MOA, the partners have the authority to dismiss that partner from their managerial position.¹¹³ the rules governing the approval or amendment of the memorandum will also apply to the process of dismissing the manager.¹¹⁴

2.10 Extent of Liability of Partnership

The liability of an LLP may arise when employees or professionals associated with the LLP cause harm to customers or any third parties. an LLP can be held liable in situations where a partner or employee intentionally, fraudulently, or negligently causes harm while performing tasks related to the partnership.¹¹⁵ In such cases, the partnership is jointly and severally liable, without any limits, along with the responsible partner or employee for the fault or damage.¹¹⁶ The parties affected by the actions of a partner or employee may include individuals, businesses, or any other entities that have experienced harm. Any party whether a person, organization, or company that has been impacted by these actions is entitled to seek compensation for the damages they have incurred.¹¹⁷

112. Commercial Code of Ethiopia, Art.202

113. *ibid*

114. Commercial Code of Ethiopia, Art.203

115. Commercial Code of Ethiopia, Art.228(1)

116. *ibid*

117. *ibid*

The provision¹¹⁸ does not specify where the fault of the partner originates or how it is determined. The source of fault can be determined by various factors, including the terms outlined in the partnership's MOA (Memorandum of Association) or partnership agreement (PA), applicable laws and regulations. The MOA or PA may provide guidelines on the standard of care expected from partners, their duties and responsibilities, and the consequences of breaching those obligations. It is crucial for partnerships to have well-drafted MOAs or Partnership agreements that clearly define the rights, responsibilities, and liabilities of the partners. Internal liability refers to the responsibilities and obligations among the partners within the LLP itself. It typically involves issues such as disputes between partners, responsibilities for debts incurred by the LLP, or breaches of partnership agreements. External liability refers to the responsibilities the LLP has towards third parties, including customers, clients, or any entities affected by the LLP's operations. External liability arises when a partner or employee causes harm to an external party while performing tasks related to the LLP. The LLP can be held liable alongside the responsible individual. These agreements can help to establish the criteria for determining fault and allocate responsibility among the partners in case of wrongful actions or damages. The determination of the extent of damage would typically depend on the specific circumstances of each case. It would be assessed based on the actual harm suffered by the affected party or parties as a result of the actions of the partner or employee. The affected party would need to demonstrate the nature and extent of their losses in order to seek appropriate compensation.

2.10.1 Legal Defenses of an LLP against Actions of Partners

The partnership may have the opportunity to raise a legal defense to argue that it should not be held liable for the actions of its partner or employee. There may be situations where the partnership can present a legal defense to contest its liability for the actions of a partner or an employee. By raising this defense, the partnership would be asserting that it should be relieved from the responsibility or legal consequences associated with the actions of its partner or employee.

118. Commercial Code of Ethiopia, Art.228(1)

The partnership will not be held liable if the injured party had knowledge that the partner or employee responsible for the damage was not authorized to perform the specific task.¹¹⁹The partnership must obtain insurance coverage to provide compensation for damages that arise from professional faults committed by its partners or employees.¹²⁰The partnership is obligated to secure insurance coverage to mitigate potential financial losses resulting from professional faults. The insurance coverage will serve as a means of compensating those who suffer harm or damages due to the actions or omissions of the partners or employees. Professional faults typically refer to errors, omissions, or negligence in the course of conducting professional duties or services. The specific extent of the insurance coverage will be determined by the agreement between the partnership and the insurer.

2.10.2 Extent of liability of a partner and creditor's right

There are two basic models of limited liability partnerships (LLPs) observed globally regarding the extent of limited liability.¹²¹The first is the Texas LLP model, under this model, the partners' vicarious liability is limited to the wrongful acts of the partnership and not for liability arising in the ordinary course of business.¹²² In this model, partners are not personally liable for the wrongful acts of the partnership in the ordinary course of business. However, they can still be held liable for specific wrongful acts that they commit. Partners can be held personally liable for their own negligent or wrongful acts, such as malpractice or fraud. The second model, known as the Delaware model, is one where all obligations of the LLP are solely the liability of the LLP and the partners are not personally liable for any action arising in tort, contract, and etc.¹²³ Here all obligations and liabilities of the LLP are the responsibility of the LLP itself.¹²⁴

119. Commercial Code of Ethiopia, Art.228(1)

120. Commercial Code of Ethiopia, Art.228(4)

121. Ray, Deep, The Emergence of Limited Liability Partnership, Available at SSRN:

<https://ssrn.com/abstract=2117240> or <http://dx.doi.org/10.2139/ssrn.2117240>, Visited on December 1/2024

122. *ibid*

123. *ibid*

124. *ibid*

Partners are not personally liable for any action, whether arising from torts, contracts, or other legal matters. Partners are not personally liable for the debts and obligations of the LLP. This means creditors cannot pursue personal assets of the partners for the LLP's liabilities. This model offers partners strong protection from personal liability. A Delaware LLP is a popular choice for businesses due to its strong liability protection¹²⁵ for partners, flexible management, privacy benefits, and supportive legal environment.

pertaining to Art.228 (1) of the Commercial Code if a partner or employee of the LLP intentionally, fraudulently, or negligently causes harm while performing duties for the partnership, both the partnership and the responsible individual will be held jointly and severally liable for the resulting damage.¹²⁶ This means that third parties can pursue the partnership for the full amount of damages, potentially exceeding what any individual partner contributed. The Ethiopian commercial code's provision for joint and several liabilities reflects a structure similar to the Texas LLP model, where partners can be held accountable for their own wrongful actions while providing some liability protection for the partnership¹²⁷.

Understanding the liability in the context of relationships among partners, between partners and third parties, and between partners and the partnership itself requires further clarification. ¹²⁸ The current provisions may not adequately cover these subtle distinctions, emphasizing the necessity for more comprehensive guidelines.

125. Ray, Deep, The Emergence of Limited Liability Partnership, Available at SSRN: <https://ssrn.com/abstract=2117240> or <http://dx.doi.org/10.2139/ssrn.2117240>, Visited on December 1/2024

126. *ibid*

127. *ibid*

128. Mesganawu Kefiyalewu (PHD), Dagnachew Worku, Fekadu Petros, Gizachew Sileshi, 2023. *Law of Traders and Business Organization: A Textbook*. Addis Ababa : Ethiopian Law School's Association.

2.11 Piercing of the Corporate Veils of LLPs

Limited Liability Partnerships (LLPs) are designed to shield their partners from personal liability for the partnership's debts and obligations. However, the degree of this protection varies widely based on local laws¹²⁹. In certain jurisdictions, partners are safeguarded from personal liability for debts incurred by other partners, but they may still be responsible for the partnership's own financial obligations. Some regions offer protection solely for liabilities resulting from torts (wrongful acts) while excluding contractual liabilities (debts from agreements)¹³⁰. Conversely, other jurisdictions provide broader protections that limit partners' liability for all types of debts and obligations related to the partnership.

Partners in limited liability entities, such as LLPs, may mistakenly assume that the term "limited liability" protects them from any personal responsibility. However, recent controversies in various professional firms have raised doubts about how effective this protection truly is. Such doubts bring attention to the legal principle known as "piercing the corporate veil," which allows courts to hold partners personally liable for the partnership's debts or wrongful actions. The doctrine of piercing the corporate veil has its origin in common law legal system particularly in England.¹³¹ Originally; it was a reaction to a rigid stand of the House of Lords on a famous decision that is known for establishing the principle of distinct entity of the company¹³². In the Salomon and Co. Ltd case, the House of Lords decided that a corporation is different from its

129. Bruck Kefyalew (2003) Lifting the Corporate veil in Corporate Groups Under the Commercial code of Ethiopia ,Senior Thesis, Faculty of Law ,Addis Ababa University , (Unpublished), p. 60.

130. *ibid*

131. *ibid*

132. *ibid*

Shareholders, stating that: “the company is at law a different person altogether from the subscribers to the memorandum;.....and it is not in law the agent of the subscribers or trustee for them .Nor are the subscribers as members liable, in any shape or form.¹³³” This veil provides protection to shareholders by shielding their personal assets from claims made by creditors.¹³⁴ However, this privilege of limited liability may not always apply,¹³⁵ especially when the company’s legal identity is misused for illegitimate or unlawful purposes.¹³⁶When it is demonstrated that the company's legal personality has been abused, courts may disregard this protective veil and treat the company as a collection of individuals rather than a separate legal entity.¹³⁷ In such cases, individual members, directors, or managers may be held personally liable for any wrongdoing associated with the use of the company. This legal action is known as piercing or lifting the corporate veil.¹³⁸ Thus, while the corporate veil provides significant protections for partners in an LLP, it can be set aside in instances of misconduct, ensuring that individuals are held accountable for the misuse of the partnership structure. If the corporate veil is pierced, partners of an LLP may be held personally liable for the debts and obligations of the partnership, thereby losing the protections usually provided by the LLP structure. This means that the limited liability coverage for the partners can be disregarded.

Importantly, partners can still face criminal or civil consequences for their own misconduct. If a partner engages in illegal or unethical behavior, they may be subject to lawsuits or prosecution. Furthermore, partners who choose to overlook misconduct within the partnership to safeguard its interests may also find themselves in legal jeopardy. This highlights the responsibility of all partners to act ethically and diligently, as negligence can result in personal liability.

133. Bruck Kefyalew (2003) Lifting the Corporate veil in Corporate Groups Under the Commercial code of Ethiopia ,Senior Thesis, Faculty of Law ,Addis Ababa University , (Unpublished) , p. 60.

134. The Doctrine of Piercing the Corporate Veil: It’s Legal and Judicial Recognition in Ethiopia, available at <http://www.dx.doi.org/10.4314/mir.v6i1.3> , Accessed on June8/2024.

135. *ibid*

136. *ibid*

137. *ibid*

138. *ibid*

While being part of a limited liability entity typically provides some protection from personal liability, this safeguard is not absolute. If partners fail to follow proper operational procedures¹³⁹, it can jeopardize this protection and lead courts to question the legitimacy of the business's activities. Engaging in dishonest practices can further weaken the limited liability shield, allowing creditors and claimants to challenge this protection. Much like how they can pierce the corporate veil of a corporation, they may also hold individual partners accountable for the partnership's actions under certain circumstances. Piercing the corporate veil is essential for protecting creditors, ensuring accountability, preventing abuse of limited liability protections, and maintaining the overall integrity of the business environment.

Misrepresenting the business's assets¹⁴⁰ significantly undermines the credibility of the limited liability structure. Additionally, transactions that benefit individual partners at the expense of the partnership can expose them to personal liability. If partners withdraw assets in a way that leaves the business unable to meet its obligations, they may be held liable for any resulting damages incurred by creditors. In these situations, the principle of piercing the corporate veil comes into play, emphasizing the need for partners to operate with transparency and integrity to maintain their limited liability protections.

Circumstances that can lead to piercing the corporate veil include several critical factors. Undercapitalization¹⁴¹ occurs when a business is inadequately funded from the beginning, lacking enough capital to meet its debts and obligations. Additionally, failure to maintain corporate formalities¹⁴², such as holding regular meetings and keeping proper records, can jeopardize the entity's legitimacy. Commingling personal and business finances blurs the lines between the individual and the entity, further complicating liability issues.

139. Alula Dinkies (2018) *Introducing Limited Liability Partnership in to the Ethiopian Legal System*, Senior Thesis, Faculty of Law, Addis Ababa University, p. 65.

140. *ibid*

141. *ibid*

142. *ibid*

Engaging in fraudulent conduct¹⁴³, such as deceitful practices or misrepresenting information to creditors, undermines the entity's credibility. Misrepresentation of assets can lead creditors to believe the business is more solvent than it really is, while self-dealing transactions indicate a lack of good faith when partners prioritize their interests over the partnerships. Ignoring legal obligations, such as regulatory compliance, signals to courts that the entity isn't being treated as a separate legal entity.

Insolvency¹⁴⁴ can also play a role; if a partner withdraws assets while the business is unable to pay its debts, they may face liability for any harm caused to creditors. Lastly, if the entity appears to exist solely to shield individuals from liability rather than for legitimate business purposes, courts may disregard the limited liability protection. Each of these factors can lead to courts allowing creditors to pursue personal liability against individuals involved in the entity.

2.12 Conflict of Interest

Art. 227 of the Commercial Code reads as “without prejudice to the relevant laws regarding professions, a partner may, on his behalf or on behalf of a third party, engage in an undertaking which is similar to the one carried out by the partnership, or be a partner in another firm pursuing similar business purpose only with the consent of all the partners. “ The article¹⁴⁵ does not explicitly define "conflict of interest," but it does address the concept indirectly by outlining legal requirements for partners in a partnership. It is important to note that engaging in such activities is subject to relevant laws governing the profession or industry in which the partnership operates. These professional laws may impose additional restrictions or requirements that need to be considered and complied with.

Additionally, the statement¹⁴⁶ emphasizes that engaging in a similar undertaking or becoming a partner in another firm pursuing a similar business purpose requires the unanimous consent of all the partners in the existing partnership.

143. Alula Dinkisa (2018) Introducing Limited Liability Partnership in to the Ethiopian Legal System , Senior Thesis, Faculty of Law, Addis Ababa University, p. 65.

144. *ibid*

145. Commercial Code of Ethiopia, Art.227

146. Commercial Code of Ethiopia, Art.227

This means that all partners must agree and give their approval for a partner to pursue these activities. The requirement for unanimous consent ensures that all partners have a say in and collectively decide on any additional business activities undertaken by a partner that may overlap with or compete with the partnership's interests.

The purpose of this rule is to avoid conflicts of interest among partners and within the partnership as a whole. When a partner engages in similar activities, there are certain risks involved. For instance, if a partner starts working for another firm in the same profession, there is a risk of them copying the work or practices of the partnership. This could lead to unfair competition or compromise the partnership's intellectual property.

Additionally, the partner's involvement in a similar firm could attract customers who were originally associated with the partnership. This could result in a loss of clients or revenue for the partnership, potentially causing financial harm.

To prevent these risks and maintain a harmonious partnership environment, the rule requires unanimous consent. This ensures that all partners are aware of the potential consequences and collectively decide whether to allow the partner's engagement in similar activities or partnership with a similar firm.

2.13 Departure of a Partner from the LLP

A partner of an LLP shall leave from the partnership on the following grounds:-1) In the event of the partner death or, in the case of a legal entity, its dissolution.¹⁴⁷ 2) If the partner's entire share is taken or disposed of by their personal creditors or if the partner is declared bankrupt, they shall leave the partnership.¹⁴⁸3) If the partner's professional license is revoked or, unless otherwise agreed, suspended for a long period, they may leave the partnership.¹⁴⁹

147. Commercial Code of Ethiopia, Art.229 (1-b)

148. Commercial Code of Ethiopia, Art.229 (1-c)

149. Commercial Code of Ethiopia, Art.229 (1-d)

4) If the partner becomes permanently incapable of carrying out their duties as a partner due to illness, infirmity, or any other reason, they may leave the partnership.¹⁵⁰ 5) In the case where a court rules to expel the partner for a good reason, they shall leave the partnership.¹⁵¹ Unless otherwise stated in the Memorandum of Agreement (MOA), a partner may voluntarily leave the partnership by providing a written notice of intention to withdraw, at least three months in advance.¹⁵² If a partner leaves the partnership without providing the required three-month prior notice, the partner will be held responsible for any damages caused by his/her failure to comply with the notice requirement.¹⁵³ The purpose of this provision¹⁵⁴ is to protect the partnership from sudden disruptions and ensure a smooth transition when a partner decides to leave. By providing sufficient notice, the remaining partners have an opportunity to make necessary adjustments, such as finding a replacement or redistributing responsibilities, to mitigate any negative impact on the partnership's operations and financial stability. When a partner leaves the partnership, they are still responsible for any debts and liabilities incurred before their departure, and they cannot be relieved of these obligations.¹⁵⁵ The purpose of this provision¹⁵⁶ is to ensure that the partnership's creditors are protected and that there is continuity in fulfilling financial commitments made by the partnership. It prevents a departing partner from escaping their share of the partnership's pre-existing debts and obligations by simply leaving the partnership.

It's important to note that partner expulsion through a court ruling is typically a last resort, and courts generally consider these matters on a case-by-case basis. The specific grounds for expulsion and the process involved can vary depending on the partnership agreement and applicable laws.

150. Commercial Code of Ethiopia, Art.229 (1-e)

151. Commercial Code of Ethiopia, Art.229 (1-f)

152. Commercial Code of Ethiopia, Art.229 (1-a)

153. Commercial Code of Ethiopia, Art.229 (2)

154. Commercial Code of Ethiopia, Art.229 (2)

155. Commercial Code of Ethiopia, Art.229

156. Commercial Code of Ethiopia, Art.229

Good reasons for a court to rule to expel a partner from a partnership can vary depending on the jurisdiction and the specific circumstances of the case. While the following list is not exhaustive, here are some common examples of valid reasons for partner expulsion that may be considered by a court:-1) **Breach of partnership Agreement:** - If a partner consistently and substantially violates the terms and obligations set forth in the partnership agreement, it may be considered a valid reason for expulsion.2) **Misconduct or Unethical Behavior:**-for example fraud, theft, or dishonesty, can be grounds for partner expulsion.3) **Conflict of Interest:** - Engaging in activities that create a conflict of interest with the partnership's best interests or competing with the partnership may be considered a valid reason for expulsion.4) **Incompetence or Inability to Perform Duties:** - If a partner consistently demonstrates an inability to fulfill their duties or responsibilities, such as a lack of necessary skills or qualifications, it may be considered a valid reason for expulsion.5) **Serious Disagreements or Irreconcilable Differences:** - If disputes or conflicts between partners become so severe that they significantly impair the partnership's ability to function or achieve its goals, a court may rule for expulsion.6) **Failure to Contribute:** If a partner consistently fails to fulfill their financial obligations or contribute their fair share to the partnership's capital or operations, it may be considered a valid reason for expulsion.7) **Illegal Activities:** - Engaging in illegal activities that harm the partnership's reputation or expose it to legal liabilities can be a valid reason for expulsion.

2.14 Share of a Partner Leaving

If a partner in a partnership passes away or departs due to illness, bankruptcy, or any other reason without transferring their share to another partner or an approved third party, the entitled individual will receive the cash value of that share.¹⁵⁷ However, they will not have the right to become a partner as a replacement for the partner who died or left the partnership.¹⁵⁸ If a partner passes away, only the cash value of their share can be given to their successor. However, the successor cannot directly take the place of the deceased partner in the partnership. If a partner dies, the successor will receive a cash payment equal to the value of the share, but they will not automatically become a partner in the LLP.

157. Commercial Code of Ethiopia, Art.230 (1)

158. *ibid*

Instead, they will receive financial compensation that reflects the share's value, without gaining partnership rights. If a partner voluntarily transfers their shares to other members while they are still alive, this action would not create complications. In this case, the transfer of shares is a straightforward process, and the new members would assume the responsibilities and rights associated with those shares, avoiding the issues that arise when a partner dies.¹⁵⁹

If a partner becomes bankrupt, their share in the partnership may not be transferred to a successor. Bankruptcy involves liquidating or distributing the partner's assets to pay off creditors. In this context, the bankrupt partner's share is considered an asset that could be used to settle outstanding debts. Therefore, transferring the share to a successor may not be possible, as it must first address the claims of creditors.

One concern is that the value of the deceased partner's share may be tied to different types of property, such as Real Estate or Investments, which can appreciate or depreciate over time. If the value of the property increases due to inflation or other factors, the cash amount provided to the successor may not fully reflect the true value of the share. As a result, the successor may feel disadvantaged or perceive the arrangement as unfair. To address these concerns, it may be beneficial for the partnership agreement to include provisions that account for potential changes in property value or inflation. This could involve periodic reassessments of the value of the deceased partner's share or considering alternative methods of compensation that better reflect the true value of the share.

The provision mentioned, which involves transferring the value of the deceased partner's share in cash,¹⁶⁰ can give rise to disagreements and legal disputes. These disputes may occur if the successor of the deceased partner disagrees with the valuation of the share or believes that the cash amount provided does not accurately reflect the true value of the share. The provision regarding the transfer of the deceased partner's share in cash may lead to disputes, as the successor could potentially escalate the matter to the FDRE Federal Cassation Court, challenging the valuation of the share.

159. Commercial Code of Ethiopia, Art.230 (1)

160. *ibid*

The timeline for transferring the share of a deceased, bankrupt, or ill partner is typically specified in the partnership agreement or governed by relevant laws. It may vary depending on the complexity of the partnership's assets, valuation process, and any legal requirements. If an ill partner recovers and wishes to rejoin the partnership after a short period of time, their request would typically be subject to the consent and agreement of the remaining partners. The partnership agreement would govern the conditions and procedures for allowing a partner to rejoin. As far as this issue is concerned the provision¹⁶¹ is silent.

The "share value" generally refers to the financial worth of a partner's interest in the partnership at a specific moment. This value is usually assessed based on two main factors: 1) **Partnership Profit**: This is the portion of profits that the partner would have earned if they had continued in the partnership. 2) **Asset and Liabilities**: - This refers to the total value of the partnership's assets such as property and equipment after subtracting any debts or obligations. When calculating the cash value of a partner's share, several factors will be taken into account. These include the partner's contributions to the partnership, any surplus assets remaining after all Partnership debts have been settled and their share of accumulated profits, as well as any outstanding profits from ongoing transactions at the time of their departure.¹⁶²

2.15 Admission of a new Partner

What is the process for a new partner to join a Limited Liability Partnership (LLP)? Is a vote necessary, or can a new partner join without any formal procedure? Unless the Memorandum of Agreement (MOA) specifies otherwise, the unanimous consent of all existing partners is required to admit an outsider into the partnership.¹⁶³ In other words, if there is no provision in the MOA that specifies an alternative decision-making process, the unanimous consent of all partners is required.¹⁶⁴ The purpose behind this requirement is to ensure that all partners are in agreement when it comes to admitting a new individual into the partnership.

161. Commercial Code of Ethiopia, Art.230 (1)

162. *ibid*

163. Commercial Code of Ethiopia, Art.193

164. *ibid*

Unanimous consent acts as a safeguard, allowing each partner to have a say and protecting the interests of existing partners from potential disagreements or conflicts that may arise from adding an outsider into the partnership.

2.16 Taxation Aspect of LLP

Limited Liability Partnerships (LLPs) are treated as partnerships for tax purposes. Once an LLP is established and recognized as a separate legal entity, the partnership itself becomes responsible for paying taxes. LLP is liable for payment of income tax and share of its partners in LLP is not liable to tax¹⁶⁵. Thus no dividend distribution tax is payable¹⁶⁶. When the partners provide their professional services to customers, they enter into agreements with the customers using the partnership's name. In this way, taxes are collected on behalf of the partnership. The profits of the LLP are not taxed at the level of the LLP¹⁶⁷ but instead are "passed through" to the partners to be reported on their individual tax returns. This prevents the double taxation that occurs in corporations where profits are taxed at the company and shareholder levels¹⁶⁸.

165. Alula Dinkisa (2018) Introducing Limited Liability Partnership in to the Ethiopian Legal System , Senior Thesis, Faculty of Law, Addis Ababa University, p. 65.

166. *ibid*

167. *ibid*

168. *ibid*

CHAPTER THREE

DISSOLUTION AND WINDING UP OF LLP

A Limited Liability Partnership (LLP) exist independently of its partners.¹⁶⁹ The death, bankruptcy, or departure of any partner does not impact the LLP's continuity, rights, or obligations.¹⁷⁰ Therefore, an LLP can exist perpetually, as the death, bankruptcy, or incapacity of partners does not lead to its dissolution.¹⁷¹

Dissolution of LLP is the stage of liquidation through which it is brought to an end.¹⁷²The assets and property of the concerned entity are redistributed.¹⁷³ Generally Dissolution of LLP refers to the process of formally closing or terminating the LLP as a legal entity.¹⁷⁴ winding up is the process of bringing an end to a company's operations and affairs. It involves the orderly closure of the company, settling its debts, and distributing its assets to the stakeholders. The dissolution of an LLP occurs first, followed by the winding-up process.¹⁷⁵Dissolution and winding up are related but distinct processes.¹⁷⁶ Dissolution is the formal process of terminating the legal existence of a partnership. This can happen for various reasons, including a mutual decision by the partners or the expiration of the partnership term and so on. Winding up is the process that follows dissolution and involves finalizing the partnership's affairs. This includes liquidating assets, settling debts, and distributing any remaining assets to the partners. An LLP is not immediately dissolved upon the initiation of the winding-up process.

3.1 Grounds for the Dissolution of LLP

169. Mesganawu Kefiyalew (PHD), Dagnachew Worku, Fekadu Petros, Gizachew Sileshi, 2023.Law of Traders and Business Organization: A Textbook, Addis Ababa: Ethiopian Law School's Association.

170. Commercial Code of Ethiopia, Art. 222(2)

171. Dissolution of a Limited Liability Partnership: Available at <http://www.legalwiz.com>, Accessed on September 5/2024.

172. ibid

173. ibid

174. ibid

175. ibid

176. Commercial Code of Ethiopia, Art. 181(3)

According to Articles 181 and 232 of the commercial code, the grounds for dissolving a business organization (BO) can be effectively classified into three distinct categories: legal, consensual, and judicial. Business organization can be dissolved by operation of law under several circumstances: **Bankruptcy:** When a court declares an organization bankrupt, ¹⁷⁶ it must be wound up to address its insolvency. This legal action facilitates the fair settlement of the organization's debts and obligations, allowing creditors to receive payments according to established legal priorities based on the organization's remaining assets. **Expiration of Term:** Organizations created for a specific duration will automatically dissolve when that term ends, unless the members collectively agree to extend the business.¹⁷⁷ If the number of partners falls to one and no new partner is brought in to meet the required membership level within six months, the organization will be dissolved.¹⁷⁸ **Reduction of Partners:** If the number of partners in a business organization decreases to one and no new partner joins within the designated timeframe, the law requires dissolution.¹⁷⁹ this rule ensures that partnerships remain viable and function as intended, rather than becoming ineffective or unbalanced. **Achievement or Impossibility of Purpose:** If the original purpose for which the organization was created has been achieved or is no longer attainable, it may dissolve automatically by law.¹⁸⁰ this ensures that organizations do not continue to exist without a clear objective. A business organization can be dissolved by consensual grounds: **Agreement among Members:** Members can agree together to dissolve the business organization.¹⁸¹ this shows that the decision is made collectively by all partners. A business organization can also be dissolved by judicial grounds: **Court Dissolution for Good Cause:** A court may dissolve the business organization if there is serious disagreement between members and the disagreement obstructs the attainment of the purpose of the organization major disputes that

177. Commercial Code of Ethiopia, Art. 181(2)

178. Commercial Code of Ethiopia, Art. 232(1)

179. *ibid*

180. Commercial Code of Ethiopia, Art. 181(1)

181. Commercial Code of Ethiopia, Art. 181(3)

Hinder the organization's goals.¹⁸² this legal action ensures that all members' interests are considered and that conflicts are resolved appropriately.

3.2 Powers and Duties of Managers during dissolution

The managers of an LLP will continue to hold their authority until a liquidator is appointed to carry out the dissolution process.¹⁸³ this period represents the transition period from the manager's authority to that of the liquidator. However, once a decision to dissolve the partnership has been made, the manager is prohibited from initiating any new business activities.¹⁸⁴ the managers of the partnership are required to transfer all partnership assets and relevant documents to the appointed liquidators. Additionally, they must provide a detailed report of their management activities, including financial records, up until the date of the handover.¹⁸⁵ the purpose of this provision¹⁸⁶ is to ensure a smooth transition of authority and facilitate the liquidators' understanding of the partnership's affairs. By transferring the partnership's assets and documents, as well as providing a comprehensive account, the managers enable the liquidators to effectively carry out their duties, which include the proper handling of assets, settlement of debts, and distribution of remaining funds or assets to the stakeholders of the partnership.

Upon the request of the liquidators, the managers may carry out essential management tasks that are specifically required to complete the liquidation process.¹⁸⁷ During the winding-up process, if the liquidators deem it necessary, they can request the managers of the partnership to perform certain acts of management. However, these acts of management are limited to activities that are directly related to the completion of the liquidation process¹⁸⁸.

182. Commercial Code of Ethiopia, Art.181 (3)

183. *ibid*

184. Commercial Code of Ethiopia, Art.206 (1)

185. *ibid*

186. Commercial Code of Ethiopia, Art.206 (3)

187. *ibid*

188. *ibid*

3.3 Restitution of Contribution

In the event of winding up or dissolution, the partnership's assets are utilized to settle any outstanding debts and liabilities. Once these obligations are satisfied, the remaining assets of the partnership are available for distribution among the partners. Once the debts and liabilities of the partnership have been settled, each partner has the right to receive back their initial contribution made to the partnership.¹⁸⁹The return of contributions is typically done in proportion to each partner's ownership or interest in the partnership, as specified in the partnership agreement.

If a partner has contributed solely the use of property to the partnership, they have the right to reclaim that property upon the dissolution of the partnership.¹⁹⁰This provision¹⁹¹ states that in the case where a partner has made a contribution to the partnership by offering only the use of a specific property, that partner is entitled to regain possession of that property when the partnership is dissolved.¹⁹²

If a partner has contributed the ownership of a property to the partnership may not claim it back, they are not entitled to reclaim the property upon dissolution.¹⁹³ Instead, the partner has the right to receive the monetary value of the property at the time of its contribution.¹⁹⁴ When a partner contributes property to a partnership, they cannot get that property back when the partnership is dissolved. Instead, they have the right to receive the monetary value of the property based on its worth at the time they contributed it. However, there are reasons why the partner might not receive the full amount they expect.

For example, if the partnership owes more money than it owns, the partner may not receive anything. Additionally, if the liquidator sells the property for less than its original value, that could reduce the amount the partner gets.

189. Commercial Code of Ethiopia, Art.210 (1)

190. *ibid*

191. *ibid*

192. *ibid*

193. *ibid*

194. *ibid*

In some cases, if the contributed property isn't enough to cover the debts to creditors, those debts must be paid first, and the partners might receive nothing at all.

For example, if the partnership owes more money than it owns, the partner may not receive anything. Additionally, if the liquidator sells the property for less than its original value, that could reduce the amount the partner gets. In some cases, if the contributed property isn't enough to cover the debts to creditors, those debts must be paid first, and the partners might receive nothing at all.

The liquidator is essential in this process. Their job is to evaluate the assets, manage the sale of the property, and ensure that all creditor claims are settled correctly.

If a partner has contributed a skill to the partnership, they are entitled to receive the monetary value of that skill based on its estimated worth at the time of the contribution.¹⁹⁵ However, this right to receive value is subject to the settlement of creditor claims by the liquidator. There is a possibility that the partner may not receive the full value of their contributed skill, as the partnership's debts could exceed its assets. In some cases, if the total value of the partnership's assets is insufficient to cover the claims of creditors, the partner might end up receiving nothing at all.

3.4 Distribution of the residue or the excess debt among partners

If there is an excess amount of assets remaining after settling all debts and returning contributions, that surplus will be distributed among the partners.¹⁹⁶ In the event of a surplus of assets after all outstanding claims and liabilities have been settled and the partners' initial contributions have been returned, the remaining surplus will be distributed among the partners of the partnership.¹⁹⁷

195. Commercial Code of Ethiopia, Art.210 (4)

196. Commercial Code of Ethiopia, Art.211 (1)

197. Commercial Code of Ethiopia, Art.211 (2)

If the assets of a partnership are not enough to repay the partners' contributions after settling debts, expenses, and advances, the resulting excess debt will be distributed among the partners.¹⁹⁸ In the situation where a partnership's assets are insufficient to fully repay the contributions made by the partners after settling the partnership's debts, expenses, and advances, the resulting loss will be shared among the partners.¹⁹⁹

If the Memorandum of Association (MOA) does not specify any other proportion, the distribution of profits and losses among the partners will be made equally in equal shares.²⁰⁰ It also states that in the absence of any specified proportion for the distribution of profits and losses in the Memorandum of Association (MOA), the default method is to distribute them equally among the partners in equal shares.

3.5 Cancellation from Commercial Register

In the event of the dissolution and winding-up of a business organization, the liquidators are responsible for initiating the process of canceling the organization's registration from the commercial register. Once the cancellation is completed, the business organization will lose its legal personality, effective from the day following the cancellation date.²⁰¹ When a business organization is dissolved and its affairs are being wound up, the liquidators, who are typically appointed to oversee the liquidation process, have the responsibility to take the necessary steps to cancel the organization's registration from the commercial register. The commercial register is a public record that maintains official information about businesses. The removal of a business organization from the commercial register must be announced through publication in a widely circulating newspaper in the area where the organization's head office was located.²⁰²

198. Commercial Code of Ethiopia, Art.211 (2)

199. Commercial Code of Ethiopia, Art.182 (1)

200. *ibid*

201. *ibid*

202. Commercial Code of Ethiopia, Art.182 (2)

Chapter Four

Conclusions and Recommendations

4.1 Conclusions

After analyzing of the statement of problems stated, research questions posed and objectives of the study set under the first chapter, the research study has identified the following significant legal gaps which are associated with a Limited Liability Partnership under the commercial code.

The **first** major legal problem associated with a limited liability partnership, as stated in Article 221, pertains to the subject matter of LLPs. The definition of an LLP lacks strict clarity and instead focuses primarily on the minimum number of partners required for its formation. Moreover, the definition only addresses the extent of liability of partners, stating that it is limited to their contributions.

Furthermore, a significant issue arises from the fact that the definition of an LLP does not clearly specify the specific types of professionals who are required to hold a professional license. This omission adds to the overall lack of clarity and subjectivity within the law. Implement a system for periodic review and updates of the regulations to keep them current with evolving professional standards and practices. Provide clear guidelines on which professions require licensing, as well as the process for obtaining and maintaining that license within the context of an LLP. By implementing these measures, the legal framework surrounding LLPs will become clearer and more effective.

The **Second** problem related with Limited Liability Partnership is that, it concerns the analysis of fairness and equity in relation to the share of a departing partner. Article 230(1) of the commercial code explicitly states that if a partner leaves the partnership due to reasons such as death, illness, bankruptcy, or any other cause without transferring his/her share to another partner or an approved third party, the entitled person should receive the value of the share in cash. This approach often overlooks key factors like reputation, goodwill, and expertise, which are vital to the partnership's overall success. To ensure a fair evaluation of a partner's share, it is essential to recognize these intangible assets. Therefore, regulations governing LLPs should be revised to include comprehensive methods for share valuation that account for both tangible and intangible

Contributions. This will promote fairness among partners and support the long-term success of the partnership. The current provisions governing LLPs often lack clarity regarding how to evaluate the share value of a deceased partner or the individual entitled to inherit that share. This ambiguity makes it difficult to determine a fair value. Therefore, there is a clear need for well-defined regulations that provide detailed guidelines for share valuation, ensuring that all factors both tangible and intangible are appropriately considered. This would help facilitate a smoother transition and equitable treatment for all parties involved.

The **Third** significant legal problem associated with Limited Liability Partnerships (LLPs) pertains to the decision-making process within the partnership. By default, decisions in an LLP are made by a majority vote of the partners, unless otherwise specified in the LLP's Memorandum of Association (MOA). However, even if the partners have agreed differently in their MOA, changing the business purpose of the partnership requires the approval of three-fourths of the partners as mandated by the commercial code. This requirement poses a challenge when an LLP consists of only two partners. In such cases, the decision-making process outlined in the commercial code cannot be effectively implemented, as obtaining three-fourths approval from two partners is not feasible. Furthermore, making amendments to the MOA also presents a hurdle. Unless the parties to the LLP have agreed otherwise, amending the MOA typically requires a two-thirds majority vote. However, if an LLP has only two partners, it becomes impractical to fulfill this requirement. Furthermore, making amendments to the MOA also presents a hurdle. Unless the parties to the LLP have agreed otherwise, amending the MOA typically requires a two-thirds majority vote. However, if an LLP has only two partners, it becomes impractical to fulfill this requirement. Consequently, the fate of the LLP in these situations becomes uncertain. The existing legal framework does not adequately address the decision-making challenges faced by LLPs with a limited number of partners. This lack of flexibility and adaptability can hinder the effective functioning and governance of the LLP, potentially raising concerns about its viability.

The **fourth** problem related with the extent of Liability of partner and the partnership is that, in principle, the extent of an LLP's liability is limited to its assets. The law clearly establishes that in cases of negligence or intentional misconduct, the LLP can be held liable for harm caused by its partners or employees during their duties. However, the law does not explicitly address the LLP's

Liability in cases of fraudulent conduct, undercapitalization, or insolvency. This lack of clarity creates uncertainty regarding how these situations may impact claims from third parties. Consequently, while the liability of the LLP in cases of negligence and intentional misconduct is well-defined, there is a risk that partners and the LLP could face greater liability in other scenarios. Clearer regulations are needed to ensure comprehensive protection for all parties involved, including the LLP itself.

4.2 Recommendations

The following points can be taken as recommendations for addressing the identified research problems;

1. Update the legal definition of a Limited Liability Partnership (LLP) to include specific requirements for professional licensing and clearly delineate the types of professionals eligible to form an LLP. Additionally, establish clear distinctions between the roles and responsibilities of partners versus the LLP, as well as the relationships between third parties and both partners and the LLP.
2. Implement a system for regular updates of LLP regulations to align with evolving professional standards and practices.
3. Establish clear regulations for share valuation that provide detailed criteria for assessing both tangible and intangible assets, particularly in cases of inheritance.
4. Amend the decision-making process in the commercial code to accommodate LLPs with a limited number of partners, ensuring that governance remains practical and effective.
5. Create clearer regulations regarding the LLP's liability in cases of fraudulent conduct, undercapitalization, and insolvency and so on to protect all parties involved.
6. Promote awareness and understanding of LLP regulations among partners and stakeholders to enhance compliance and effective governance.

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