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**COLLEGE OF LAW AND GOVERNANCE
STUDIES, SCHOOL OF LAW**

**INTRODUCING LIMITED LIABILITY
PARTNERSHIPS/LLPs IN TO THE ETHIOPIAN
LEGAL SYSTEM**

BY ALULA DINKISA

ADDIS ABABA

JANUARY 2018

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**INTRODUCING LIMITED LIABILITY PARTNERSHIPS IN
TO THE ETHIOPIAN LEGAL SYSTEM**

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(Approval Sheet)

**INTRODUCING LIMITED LIABILITY PARTNERSHIPS
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Declaration

I, the undersigned, declare that this thesis is my original work and has not been presented for a degree in any other university and that all sources of materials used in the thesis have been dully acknowledged.

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Alula D. Edesa

January, 2018

ACRONYMS AND ABBREVIATIONS

Art.	Article
CLRFC	Company Legislation and Regulatory Framework Committee
DPIN	Designated Partners Identification Number
DTI	Department of Trade and Industry
FDI	Foreign Direct Investment
FDRE	Federal Democratic Republic of Ethiopia
IRS	Internal Revenue Service
LLC	Limited Liability Company (Corporation)
LLOP	Limited Liability Ordinary Partnership
LLPs	Limited Liability Partnerships
MOJ	Ministry of Justice
NCLT	National Company Law Tribunal
NY	New York
PAYE	Pay As You Earn
PI	Professional Indemnity
PLCs	Private Limited Companies
ROC	Registrar of Companies
RUPA	Revised Uniform Partnership Act
SCs	Share Companies
SMEs	Small and Medium Enterprises
SPV	Special Purpose Vehicle
UK	United Kingdom
USA	United State of America
USAID	United States Agency for International Development

ABSTRACT

Partnerships and companies are the most common forms of business organizations operating in Ethiopia. In partnerships, the problem of unlimited liability, mutual agency and lack of perpetual succession are the main limitations. Whereas, in companies forms of business organizations enormous compliances and administrative requirement coupled with high capital requirement act as deterrents. The deficiencies in the two categories of business organizations i.e., partnerships and companies trigger the need for a new hybrid form of business organization with the view to bring emerging entrepreneurs to the same level with the international competitors and enable new entrants establish businesses in Ethiopia.

A critical shortcoming of the past and present regimes in Ethiopia is an inherent legal gap between partnerships and companies registered under the aged Commercial Code. In the absence of suitable forms of business vehicles, the number of unincorporated businesses is increasing. In consequence, there exists a disparity between the rates of incorporation vis-à-vis growth in businesses. With increasing growth in the Ethiopia's commercial landscape, there exists a need to introduce a new business entity form, which has the flexibility of a partnership alongside maintaining the benefits of a company.

The purpose of this paper is to analyze those jurisdictions which have adopted LLPs and examine the manner in which LLPs are to be introduced in to Ethiopia's corporate system. Consequently, the general concept of LLP is scrutinized and evaluated to ensure its prospective introduction in to the Ethiopian legal system.

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CHAPTER ONE

1. INTRODUCTION

1.1 Background of the Study

The concept of limited liability partnership (LLP) first originated in the United States during the financial crisis of the late 1980s and early 1990s when hundreds of US saving and loan firms were declared insolvent.¹ As a result of the collapse many accountancy and legal firms faced legal claims instigated by the US government.² Successful claims could have resulted in all partners, including those who were not responsible for the failure of the savings and loan firms, being liable to repay millions of dollars in compensation.³

In 1991, the state of Texas for the first time introduced the concept of LLP.⁴ The concept became popular and the majority of US states eventually passed legislation on LLPs. Thereafter, the concept of LLPs expanded to other parts of the world including UK, India, Singapore and the rest of the world in modified form to suit each country's scenario.⁵

In Ethiopia, in recent years, the number of business organizations has been increasing than any time before. The reality is the present day Ethiopia witnesses that the formation of business organizations in the form of Companies and Partnerships are increasing in all corners of the country. The advantage of limited liability remains common characteristic of multimember companies, without the same being made available to businesses in the form of partnerships.

Share holders of a company benefit from limited liability; they are not liable to pay more than the face value of their shares held.⁶ Expect for limited partners in Limited Partnership, liability is unlimited for all partners in other forms of partnerships.⁷ Thus, the detriment of unlimited liability for business debt is one of the disadvantages of doing business under partnerships. This

¹*History and Legislation relating to LLPs*, Available at: <https://www.insolvencydirect.bis.gov.uk/technicalmanual/Ch49-60/Chapter%2053A/Part%201/Part%201.htm>, Accessed on May 10,2017

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Limited Liability Partnership-An overview, Available at: <http://www.rna-cs.com/limited-liability-partnership-an-overview/>, Accessed on May 10, 2017.

⁶ Commercial Code of the Empire of Ethiopia, Proclamation No. 166/1960 [Hereinafter Commercial Code of Ethiopia] Art. 304(2) and 510 (1).

⁷ *Id.*, Art. 255/2, 280/1 and 296.

made them lose significance in today's business community.⁸ Recently, there was a move by the former Ministry of Justice (MOJ) to include the new concept of LLP in the forthcoming Commercial Code especially for professionals rendering services.⁹

The Oromia National Regional State recently issued a Proclamation¹⁰ to regulate the licensing and administration of Advocates and Paralegals of the Regional State. This Proclamation introduced a new form of partnership in to the Region's legal system. Accordingly, two or more advocates who have advocacy license with similar status may establish professional law firms by entering in to partnership agreements. The firms are established in the form of LLOPs.¹¹

1.2 Research Problem and Questions

Existence of separate legal entity, type of liability, number of members, capital requirement, and management system are among the criteria that help an investor choose a form of business organization. In Ethiopia, entrepreneurs who wish to do business have to either register as sole proprietors, get organized in the form of partnerships or as companies. In company form of business organization enormous compliances and administrative requirement coupled with high capital requirement act as deterrents in their formation. In partnerships on the other hand, the problem of unlimited liability, mutual agency and lack of perpetual succession have been the main limitations. Hence there emanated the need for a new hybrid form of business organization to bring the emerging entrepreneurs to the same level with the international competitors and enable new entrants establish businesses in Ethiopia. In this regard, LLP model provides an effective alternative to the complexity of incorporation and the personal risk associated with partnerships. As a result, this study is aimed to design existing legal frameworks in a way that has room for the new business entity that can solve these challenges.

Partnership business is relevant for small size businesses, because each partner in such small partnerships know each other and operates closely with each other. But as number of partners increases litigious environment increases and exposes the weaknesses of partnership structure.

⁸ See Recommendations and Position Paper of the Business Community on the Revision of the Commercial Code of Ethiopia (Prepared by A Team of Fourteen National Experts, Private Sector Development Hub/Addis Ababa Chamber of Commerce and Sectoral Associations, 2008) Hereinafter, A Team of National Experts.

⁹ See generally Book Two, Title IV of the draft Commercial Code entitled "Limited Liability Partnership" (Prepared by the former Ethiopian Ministry of Justice, Addis Ababa, 2016). Hereinafter, A Draft Commercial Code.

¹⁰ Oromia national regional state Licensing and Administration of Advocates and Paralegals Proclamation, Art. 17 (1,2)

¹¹ *Id.*, Art. 17(1, 2).

Here the main issue seen as a problem is that the personal asset of partners is exposed to litigation as a result of action of other partners. This has become its major problem especially for partners living in different countries¹². For LLPs on the other hand, members of the partnership enjoy limited liability as a result of which their own personal asset is protected from claims of third party creditors. Hence, these problems call for the introduction of LLPs in to Ethiopian Legal System.

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

- What is the significance of introducing LLPs in to the Ethiopian commercial business organization system?
- Is the existing law enough to safeguard the right of SMEs and professionals in the service industry?
- Will the LLP model provide an effective alternative to the complexity of incorporation and personal risks associated with partnerships?
- Will the introduction of LLPs model provide an effective protection to personal assets of partners and third parties?
- Will the introduction of the LLPs fill gaps between companies and partnerships in Ethiopia?

Existing Commercial Code of Ethiopia is not fit for the liability and governance structure intended for LLPs. Therefore, in accordance with the recommendations on policy document¹³ to collect contributions for the amendment of Commercial Code, it is felt appropriate to bring about a separate legislation for LLPs in the forthcoming Commercial Code.

1.3 Objectives of the Study

This study is intended to inform policy decision making to bridge the gap and limitations that prevails in the existing law and the government's policy, strategy and the commercial reality on the ground. The law of business organizations ought to have been amended in order to implement these government policies, strategies and procedures, while also help the country's trade become competitive in the global market. Accordingly, the purpose of this study is to create LLPs as business structures which confer limited liability on their investors or partners

¹²Armour Douglas, *Limited liability partnerships: The new legislation*, (Great Britain by Hobbs the printers, Southampton, 2001), 2.

¹³ See Policy document is (Prepared by A Team of Experts set up by the former Ministry of Justice, Addis Ababa, 2016) to work on the amendment of the commercial code. Here in after, Policy Document.

while allowing them to retain the flexibility of operating the business as partnerships firm with perpetual succession.

Specifically objectives of the study are:

- ✚ to look in to those jurisdictions which have adopted LLPs and determine whether there is a need for the introduction of LLPs in our country. To assess whether the LLP form has encouraged greater economic activity/likelihood of starting a business.
- ✚ to facilitate ways of including LLPs in to the Ethiopian Corporate System, initiate legislative reconsideration to enact compatible law with the current system of trade that helps to form them in simple, expeditious and economical way.
- ✚ to identify the compatibility of different businesses structure with LLPs forms of business organization. This can be done by identifying factors which are relevant to new and existing SMEs and industries in the service sector in deciding the most appropriate form to adopt; and to identify the factors underlying decisions to adopt or not adopt the LLP form.
- ✚ to evaluate the effectiveness's and incentives associated with setting up an LLP in assuring business security compared to other business forms.

1.4 Significance of the Study

Today, investors are looking for a business structure which has a limited liability along with less cumbersome setting up and taxation procedures for which LLP is the best option to go for.¹⁴ The two primary reasons for introducing LLPs are the risk factor and the enhanced global competitive advantage.¹⁵ In the event of business failure, the liability is limited to the partner responsible. There would be no recourse to attach the personal assets of the other partners. This lowers the risk factor associated with unlimited liability in a partnership and introduces the limited liability concept of companies' law to make such bodies more adaptive to international competition.

Many professionals in the service sector, such as advocates, accountants, architects, doctors etc, are precluded from practicing through companies due to objective of their establishment (non-

¹⁴ Utsar Gandhi and Ravi Thankur, *A study on Limited Liability Partnership As An Emerging Business Form for Entrepreneurs* (Research Paper Institute of Law, Nirma University, 2014), 301.

¹⁵ Dr. Radheyshyam Sharma, *Limited Liability Partnership in India: Study of Different Aspects for Optimum Growth*, (University of Delhi, 2014), 722.

commercial nature of their activities). The LLP structure is particularly advantageous to those providing such professional services in the era of global customers with utmost sincerity. In addition to this LLPs are suitable vehicles for other SMEs. Furthermore, Ethiopia has formulated policies attracting Foreign Direct Investment (FDI) in various areas; which encourages small entrepreneurs to explore business ventures with foreign investments through the LLP format. Also, foreign entities having project offices in Ethiopia consider reducing risk by using the LLP structure. Any structure where different members want to control different segments and also bear full responsibility for their acts could conveniently use the LLP structure that includes infrastructure project Special Purpose Vehicle (SPV) where different partners bring in different expertise into the project.¹⁶

To this end, this research will provide baseline for law making because not only the issues with modern corporate form are resolved but also, the different approaches adopted in the world towards LLP are explored. The result of this study will help the upcoming entrepreneurs which are SMEs and businesses in the service industry to decide how useful LLPs will be as a business structure distinguished from partnerships firm and companies. So, this study will make some contributions towards the forth coming amendment of the Commercial Code of Ethiopia and will also serve as a basis for those who want to conduct further research in the area.

1.5 The Scope and Limitations of the study

The study focuses on giving an overview on LLPs and their prospective introduction in to the Ethiopian Legal System. It also focuses on important aspects of LLPs inter alia limited liability, separate legal existence, taxation aspect and perpetual succession. All issues that LLPs go through are discussed in the paper and moreover the paper also discusses the possible business models under LLPs and some suggestions for effective implementation of LLPs.

Some jurisdictions have restricted the formation of LLPs to professional services, whilst some have made them open to all types of businesses. The scope of this study is limited to notable literature on major corporate theories of LLPs and analyze whether it would be applicable to Ethiopian context. It also seeks to compare major legal frameworks governing LLP's in

¹⁶ *Id.*

comparative jurisdictions to show the legal and theoretical implications of introducing them into the Ethiopian corporate legal system.

Finding out the prospects of introducing LLPs concept in to Ethiopian legal system has a number of problems. Mainly, no literature is written before in the country on the subject matter. Business communities carrying out different commercial activities are unaware of the existence of LLPs. This had created some difficulty in getting literatures/resources in the area.

1.6 Research Design and Methodology

The assessment of this research paper is based on a qualitative method of data collection. The study follows doctrinal, forward looking, and comparative legal research methods. Data is collected from existing legislation as a primary sources related to the study. The study also uses secondary sources obtained from various literatures, books, journal articles, working papers, internet sources to review the conceptual basis of legal principles that deal with LLPs. It also follows comparative approach with most commonly benchmarked jurisdiction experiences and examines their prospective adoption of the concept in to our legal system. In this regard LLP legislations legal literatures and materials from selected bench mark jurisdictions are analyzed to facilitate the understanding of the operation of LLPs for the benefit of Ethiopia.

1.7 Organization of the Paper

Chapter I deals with proposal study, Chapter II deals with an overview of LLPs, this part gives full information on the concept of LLP from its formation to dissolution. It gives a definition, salient features of the concept and also analyzes the distinction between LLPs and other forms of business organizations. Chapter III provides Highlights of legal frameworks for LLPs in some major jurisdictions. Accordingly, this part analyzes those jurisdictions which have adopted the concept of LLPs and explore their prospective introduction in to Ethiopia. Chapter IV gives a glance on background and nature of existing Ethiopian corporate law in general and in the context of LLP in particular. Furthermore, this part provides discussion on the legal structure of LLP and piercing corporate veil of the new business venture. Lastly, Chapter V culminates the study with conclusion and recommendations by examining the overall impact of introducing LLP in to the Ethiopian corporate law.

CHAPTER TWO

2. GENERAL OVERVIEW OF LLPs (LIMITED LIABILITY PARTNERSHIPS)

2.1. Introduction

Partnerships have been one of the oldest forms of business entities and this can be evidenced by the fact that in complex businesses, partnerships have been replaced by companies, but they still are the preferred forms for small trading business enterprises. This structure has become quite popular among SMEs and service rendering professionals since this typical business form seeks to incorporate the operational flexibility of partnerships with the benefits of taxation and less compliance requirement.¹⁷

Gradually, partnership business form has lost its demand because of inherent demerits in it, primarily because of unlimited liability of partners. As a result, introducing another form of business structure that pervades the benefits of limited liability with flexible organization of internal structure became necessary. Moreover, many small professional firms are showing interest in such concept as they are attracted by the lower compliance cost, better control and management, greater flexibility in operations. For this and other reasons many countries around the world widely recognized the concept of LLPs as an alternative corporate business vehicle in different business sectors. Hence, it is believed that the introduction of the LLP structure as a new form of business vehicle for entrepreneurship, knowledge and risk capital will provide a further impetus to our country's economic growth.

An LLP is a body corporate which has legal personality separate from its members and combines features of both companies and partnerships. It is often viewed as an 'alternate corporate vehicle' which seeks to attain principal benefits of both forms of business organizations.¹⁸ An LLP provides flexibility of a partnership and also limits the owners' liability with respect to the partnership to their respective stakes in the LLP itself.¹⁹ Basically, the partners are able to protect themselves from being held liable for the losses incurred by one of their business partners.²⁰

¹⁷ Utsar and Ravi, *Supra note 14*, at 301.

¹⁸ Amit M. Sachdeva & Sachin Sachdeva, *The Indian LLP Law: Some Concerns for Lawyers and Chartered Accountants*, SEBI & Corporate Law, Vol. 92 No. 6, 2009, 1 available at <http://ssrn.com/abstract=1423766> (Last visited on March 22, 2017).

¹⁹ Ray, Deep, *The Emergence of Limited Liability Partnerships* (July 25, 2012), 1. Available at SSRN: <https://ssrn.com/abstract=2117240> or <http://dx.doi.org/10.2139/ssrn.2117240>, visited on March 22, 2017).

²⁰ *Id.*

Since the benefits of similar business organizations have been incorporated into the new business form, it would be necessary to highlight the advantages of LLPs over other similar business forms. It is as a result of these advantages that LLPs, as business vehicles, have been allowed in several jurisdictions and multiple pieces of legislation have been enacted to regulate them.

To this end, this part of the study provides general overview of LLPs from their formation to dissolution. Furthermore, the meaning, salient features of the entities and their distinguishing features from other forms of business organizations are also broadly discussed under this chapter.

2.2. Meaning and Salient Features of LLPs

An LLP is an alternative business organization to carry out business which combines the characteristics of a company and a partnership. Like a company, an LLP provides limited liability status to its partners, perpetual succession and like a partnership, offers the flexibility of internal arrangement through an agreement between the partners to be shielded from joint liability created by another partner's business decision or misconduct. Because of this features an LLP is called a hybrid of a company and a partnership that offers simple and flexible procedures in terms of its formation, maintenance and termination while simultaneously has the necessary dynamics and appeal to be able to compete domestically and internationally.

2.2.1. Meaning of LLPs

Different scholars and writers around the world tried to give definition for LLPs from different points of view. Most of them defined them based on distinctive attributes of its business structure as it offers both the characteristics of a company and a partnership. Among different literatures that defined the concept, the most notable ones define it in terms of liability. Blacks' law dictionary offers a more comprehensive definition of the concept as "a partnership in which a partner is not liable for a negligent act committed by another partner or by an employee not under the partner's supervision."²¹ Another literature defined in similar way for example, Anthony Mancuso defined an LLP as partnership in which all of the owners remain personally liable for their own acts (malpractice), but receive limited liability for the malpractice of other partners in the firm.²²

²¹ Black's law Dictionary, (8th ed.2004) "Limited Liability Partnerships"

²² Anthony Mancuso, *Limited Liability Companies*, (4th ed., Delta Printing Solutions, Inc., February 2007: USA), 73.

2.2.2. Salient Features of LLPs

The LLP is an alternative corporate business vehicle that gives the benefits of limited liability and allows its members the flexibility of organizing their internal structure as a partnership based on an agreement. It borrows the twin concepts of separate legal personality and limited liability from company law, but retains some salient features of the conventional partnership²³ such as a relationship based on agreement and the concentration of ownership and control in the hands of the partners. This is the common feature of the LLPs in most (if not all) jurisdictions of the world that recognized them.

Generally, LLPs in different jurisdictions have the following common features;

Firstly, LLP is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. No partner is liable on account of the independent or unauthorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct, and mutual rights and duties of the partners within a LLP are governed by an agreement between the partners or between the partners and the LLP as the case may be. The LLP, however, is not relieved of the liability for its other obligations as a separate entity.²⁴ Each partner in this type of vehicle is protected against the actions of the other partners which results in a liability.

Secondly, unlike other forms of partnerships LLP may not be dissolved by the death or incapacity of its members. It is an entity with a perpetual succession. Its life is not measured by the life of any of its members. It is independent of the lives of its members. Members may come and members may go, but a LLP continues its operation unless it is wound-up.

Thirdly, an LLP would have the capacity to enter into contracts and holding property, sue and be sued in its own name, own and otherwise deal with property, both movable and immovable and common seal. Being a separate entity, the existence, rights or liabilities of an LLP are not affected by a change in the partners as the entity would continue in spite of potential changes in its membership. As a result, the partners are agents of the LLP and not of each other and hence, are not in general liable for its debts and obligations.²⁵ Their relationship with the LLP will be of a fiduciary nature.

²³ In this paper, unless indicated otherwise, references to "partnership" mean the conventional partnership, regulated by Ethiopian Commercial Code.

²⁴ Ravi Meena and Renu Nainawat, *LLP in India: As Advantageous Business Model*: Global Journal of Management and Business Studies, Volume 3, Number 10 (2013), 1053.

²⁵ *Id.*, at 943.

In general, LLPs have been floated as unique business vehicles to address the vacuum that exists between partnerships and companies laws. Thus, it is a marriage of principles of company and partnership law in order to address the deficiencies in both the areas for small scale businesses and professional firms. Thus, the features of the LLP are a combination of both the company law and partnership law to create a distinct vehicle to bridge the gap between the two. Therefore, the LLP is a legal entity separate from that of the partners of the LLP, and with its own rights and liabilities distinct from those of the partners. It effectively shelters the individual partners from personal liability for the acts of another partner carried out in the course of business and for the debts and liabilities of the LLP.

2.3. Formation of LLPs

Any kind of business organization including partnership is established among persons who seek to join and work together. People come together to solve problems, to carrying out activities of an economic nature with a view to participate in the profits and losses arising there from. After completing all necessary legal requirements, the incorporation document is sent to the registering organ to acquire legal personality.²⁶ It would be no doubt if the existing provisions of the Commercial Code on this point remain intact after recognition of LLP. Upon receiving the incorporation document, the registrar will ensure that all legal requirements are satisfied. After ensuring fulfillment of mandatory legal requirements, the registering organ will issue a certificate of registration. As one form of business organization LLPs must also pass through the same establishment process before entering in to operation. Thus, LLPs being typical partnerships will also be required to get registered in the commercial Register.

2.3.1. Members of LLPs

In share Companies founders and promoters play important role from the very beginning of initiating and facilitating formation of a business organization. Before a LLP can be formed, there must be some persons who have an intention to form a business and who take the necessary steps to carry that intention into operation. Such person undertakes to form the partnership with reference to a given object and to set it going and who takes the necessary steps to accomplish that purpose and decide the scope and business of the LLP and prepare the necessary establishing documents.

²⁶ In Ethiopian law of business organizations any person shall be registered in the commercial register established and administered by Ministry of Trade. Registration is made pursuant to the relevant Provisions of the Commercial Code of Ethiopia (Art.86-123) and Commercial registration and Business Licensing Proclamation No.980/2016 (Art. 5-13).

As any other forms of partnerships, LLPs are also established between persons intending to work together. The first members who initiate establishment of the partnership sign formation document. The application shall be signed by the manager or a person acting on his behalf. Members of LLP decide their rights and duties by mutual consent and namely partnership agreement. The agreement shall be w/o violating mandatory provisions of the laws. After signing the agreement, any new member can join the partnership with the existing members up on amendment of Memo of Association.

Members of an LLP decide together on various issues of different business operations, locations, management, sharing of profits and losses of the business and etc. In other comparative jurisdictions under consideration under chapter three, at least two members of an LLP have to be formally appointed as ‘*designated members*’ during the formation process. If no such nominations are made, all members are designated by the registering organ. Designated members have the same rights and duties towards the LLP as any other member but with extra responsibilities.²⁷ These include duties such as registering the LLP and ensuring the partnership and its members adhere to all statutory requirements, signing and delivering the accounts and annual returns and notifying the registering organ of any changes in membership, registered office address or name.²⁸

2.3.2. LLP Partnership Agreement and other Establishing Documents

Prior to incorporating business organizations including partnerships, it is mandatory to draw up a partnership agreement, to set out the rights and responsibilities of each member. Existing Commercial Code under article 210 provides it as a basis of any business form. A partnership agreement is the best way to clearly set out the terms of the partnership. This will ensure that every member his/her aware of their rights and obligations, regardless of whether the rights are equal or variant.

Like conventional partnerships, LLPs are also required to draw up a written agreement namely LLP partnership agreement, which sets out the relationship between the members, which is binding on all members and the LLP before starting a business.²⁹ The agreement determines and governs the mutual rights and duties of partners amongst themselves and those of the LLP as a

²⁷ Lucy Jones, *Introduction to Business Law*, (4th ed. Oxford University Press, 2017). 509

²⁸ *Id.*

²⁹ A guide to Limited Liability Partnerships (LLPs), Available at: <https://www.yourcompanyformations.co.uk/blog/a-guide-to-limited-liability-partnerships-llps/>, Visited on May 23, 2017.

separate legal entity.³⁰ Thus, in this respect, flexibility will be provided to the partners in order to customize the governance of their LLP as per their desires. This is a very useful step for members as it enables them to vary their risks and liabilities as per the agreement they form. They will have a great deal of flexibility to organize LLPs to suit their business interests. In the absence of express terms, provisions of the forthcoming amendment impose certain standard terms. I.e. in the gaps of a partnership agreement, the default rules set out for partnerships in the Commercial Code will come into effect. These includes but not limited to matters relating to contributions, management, rights and duties of partners, relation of the partnership and dissolution.

Under article 211 of the existing Commercial Code partnership agreement is defined as:

a contract whereby two or more persons who intend to join together and to cooperate undertake to bring together contributions for the purpose of carrying out activities of an economic nature and of participating in the profits and losses arising out thereof, if any. .

From the definition it appears that the intention of the contracting parties is one of the essential elements of a partnership agreement, the parties must intend to join together and to cooperate. Another important element is that partners must have undertaken to bring together contributions for the purpose of carrying out economic activities. Internal management structure and the mutual rights and duties of its partners are very much dependant on the partnership agreement. The partners are free to adopt a management structure that they desire subject to mandatory provisions of the law. The agreement might either be a tripartite agreement involving the LLP and the members, and the members with each other; or two linked agreements, one between the LLP and its members, and the other between the members themselves.³¹

The new draft of the commercial code of Ethiopia refers to the existing Commercial Code provisions on matters relating to the concept of LLP; however, aspects of existing partnership law not expressly referred should not be applicable. This is especially true since provisions of the law are limited in scope and many issues are not addressed, such as the nature and extent of the capital contributions to be made by the partners, agency issues, meeting procedures, rights of different classes of partners and dispute resolution. LLP members may agree on these terms to be included within the LLP partnership agreement which can be altered in the future if necessary.

³⁰ *Id.*

³¹ Geoffrey Morse, *Partnership Law*, (7th edition, *Oxford University Press*, 1991), 318

2.3.3. Contributions for LLPs

Members must undertake to bring in contributions in order that a contract subsists as a valid partnership agreement.³² Contribution can take the form of cash, kind or skill.³³ Capital contribution includes both tangible (movable or immovable) and intangible property such as copyrights, patents, trademarks, service marks, and including debts owed to and the use of property belonging to the contributor. The practice of allowing partners to contribute in kind is common in other jurisdictions such as US, UK and India. This will provide businessmen with more flexibility when they set up LLPs to conduct their business activities.

In some cases LLP could be formed without any minimum capital contribution as opposed to requirements for other forms of partnerships and companies. This could be especially true in relation to professional partnership forms rendering services. But, each partner is expected to bring minimum capital to start a business at the time of formation.

2.3.4. Registration and Legal Personality of LLPs

All business organizations carrying out business activities in Ethiopia other than joint ventures must be registered.³⁴ Commercial registration and business licensing proclamation³⁵ provides in the same manner requiring any person engaged in any commercial activity to get registered in a Commercial Register. Publicity to third parties is also cumulative fulfillment of the requirements involving publication of notice, deposit of documents, and registration in the Commercial Register.³⁶ To acquire legal personality, the members of the Partnership are required to provide their names to a registering organ and get their names registered on the commercial register.³⁷ Article 7(2) of the Commercial registration and Business Licensing Proclamation No.980/2016 provides that Business organizations shall acquire legal personality by registering in the commercial register and publicized in a newspaper having nationwide circulation at the time of their establishment.

As one form of partnerships and a separate legal entity from its partners, an LLP will also come into existence upon registration with the Registrar business organization provided under article 222 (1) of the existing Commercial Code. Like other forms of business organizations, LLPs will also have a formal registered address that is posted on the public record at Commercial Register

³² Commercial Code of Ethiopia, Art. 211.

³³ *Id.*, Art. 229.

³⁴ *Id.*, Art. 100 (1), 219-223.

³⁵ Commercial Registration and Business Licensing Proclamation No.980/2016, *Federal Negarit Gazeta*, 22nd year, No. 37, Art. 5(1).

³⁶ Commercial Code of Ethiopia, Art. 219(2).

³⁷ *Id.*, Art. 222 (1) *cum* Commercial registration and Business Licensing Proclamation No. 980/2016 Art. 7/1 .

before it can start to operate. In countries that recognized LLPs, a partnership qualifies as an LLP by registering with the appropriate authority and fulfilling legal requirements. Most of these countries provided information and documents for registration of an LLP and be made available for public inspection with details including its name, partnership agreement, its registered place of business office, a list of its members with details like name, address and nationality and the person appointed as the designated partner.³⁸ A statement must also be submitted to the registering organ that there has been compliance with all the requirements of the law and regulations with respect to formation and matters precedent and incidental thereto. The statement must be made by a subscriber to the establishment document and by a partner who is engaged in the formation of the LLP. The document must contain information such as the name of the LLP, its proposed business, address of its registered office, the name, address and photographs of the persons who are to be its partners and manager. Forgery or falsification of such information is punishable under existing Ethiopian criminal code.³⁹

Another condition is that every LLP is required to have either the words “limited liability partnership” or the acronym “LLP” as the last words of its name.⁴⁰ An LLP shall not be allowed to register with a name, which is undesirable or identical to a name of any other LLP or body corporate or to a registered trade mark, or a trade mark which is subject of an application for registration, of any other person under the trade mark law.⁴¹

The consequences of registration are that an LLP will be embodied with all the characteristics of a separate legal personality, i.e., suing and being sued, power to deal with its property, having a common seal and doing such other acts and things as bodies corporate may lawfully do and bear responsibilities as well.

³⁸ A guide to Limited Liability Partnerships (LLPs), Available at: <https://www.yourcompanyformations.co.uk/blog/a-guide-to-limited-liability-partnerships-llps/>, Visited on May 23, 2017.

³⁹ Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004 [Hereinafter The Criminal Code of Ethiopia] Art. 379(1).

⁴⁰ See Draft Commercial Code (Amharic Version), *Supra note* 9. The number of articles is not assigned/left empty on the draft.

⁴¹ Trade Mark Registration and Protection Proclamation No.501/2006, *Federal Negarit Gazeta*, 12th year No.37, Art. 7(1).

2.4. Rights and Duties of LLP partners

An LLP is owned and run by its members, who are in many ways similar to the partners in a conventional partnership. Membership of an LLP combines rights both to profits and to manage the business. An LLP has two or more partners, known as ‘members’⁴², who collectively own and manage the business. Partners may agree to vary the distribution of the profits of the business. Instead of the usual arrangement whereby all partners are entitled to share equally in the capital and profits of the business, the partners may make specific arrangements to the contrary.⁴³ The financial liability of each LLP member is limited to the amount s/he invests in the business, and to any financial guarantee s/he agrees to pay if the LLP is unable to pay its debts. These formal particulars are usually outlined in a partnership agreement.⁴⁴

The law of partnerships does not apply directly to LLPs.⁴⁵ Therefore the rights and duties of members between themselves and between the members and the LLP will be governed by the members’ partnership agreement which must be in writing. Unless the members’ agreement stipulates otherwise, the following principles will apply to an LLP partners:⁴⁶

2.4.1 Fiduciary Duty

A partner in an LLP owes fiduciary duties in the same way as partners do in the conventional partnership⁴⁷, although the duty is to the LLP and not to the other partners. LLPs borrow from the conventional partnership law provisions requiring each member to give true accounts and full information of all things concerning the LLP to any other member, prohibiting partners from carrying on competing businesses or gaining benefits from any transaction concerning the LLP or from the use of property, names or business connections of the LLP. The key difference is that these duties are default rules in an LLP. In a conventional partnership, the nature of the relationship is founded upon mutual trust and confidence.⁴⁸

⁴² The term “members” is often used in this paper interchangeably with the term “partners”, However, the term “members” is preferred for LLPs in different legal systems that recognized it.

⁴³ Partnerships, Available at <https://www.insolvencydirect.bis.gov.uk/casehelpmanual/P/Partnerships.htm>. Accessed on May 12, 2017.

⁴⁴ *Id.*

⁴⁵ What is a limited liability partnership (LLP)? Available at: <https://www.informdirect.co.uk/business-management/limited-liability-partnership-llp/>, Visited on May 24, 2017.

⁴⁶ *Id.*

⁴⁷ Commercial Code of Ethiopia, Art. 243.

⁴⁸ Mohammad Rizal Salim, *Limited Liability Partnership in Malaysia: A Corporate Governance Perspective* (SSRN Electronic Journal, University of Nottingham: January 2013), 7. Available at: <https://www.researchgate.net/publication/272215624>, Visited on March 12, 2017.

A partner can be charged together with an LLP if an LLP is alleged to have committed any offence and if the LLP is found guilty, the partner is deemed to be guilty of the offence unless the partner proves that the offence was committed without his knowledge, consent or involvement, and the partner has taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.⁴⁹

2.4.2 Equality of Members

All members of an LLP have the same rights and duties from the formation to dissolution of the partnership, but designated members are assigned additional legal responsibilities, in much the same way as a director or executive secretary assumes such responsibilities in a company.⁵⁰ Unless otherwise agreed to the contrary members should equally share in the profits and losses, take part in the conduct and management and render true accounts and full information of all things affecting the partnership to any member or his legal representative.

Unless there appears to have been fraudulent or wrongful trading in the course of the winding up, a member's liability is limited to the amount of capital s/he has contributed or agreed to contribute to the LLP. Every member of the LLP is an agent of the LLP and can bind the LLP unless they are not authorized to act, or they have ceased to be a member and the person dealing with the LLP knows they have no authority or has notice that they have ceased to be a member.⁵¹ In comparative jurisdictions under consideration, an LLP to be eligible for formation has to have at least two partners called the Designated Partners; however, it may also have more than two partners.⁵² There is no limit to the maximum number of partners in an LLP. Designated partners are responsible for looking after the statutory compliance of the LLP. Further, designated partners have to subscribe their names to establishment document. The document is akin to a memorandum of association required to be filed under the Commercial Code of Ethiopia. The particulars of all the designated partners, as well as any changes thereto, are required to be filed with the registrar and procedural requirements for formation an LLP.

⁴⁹ Criminal Code of Ethiopia, Art. 716.

⁵⁰ Makarand Lele, *Formation, Conversion and Changes in Limited Liability Partnership* (Central Council Member of ICSI, 2014), 13.

⁵¹ See Book II, Title IV of A Draft Commercial Code.

⁵² Utsar and Thankur, *Supra note 14*, at 309.

2.4.3 Members' Mutual Rights and Duties

As mentioned above, the relationship and mutual rights and duties of partners in an LLP are to be set out in a written partnership agreement.⁵³ In addition, partners may also prepare constitutional document comprising the memorandum and articles of association.⁵⁴

Inclusion of mutual rights and duties of members promote certainty at the expense of flexibility. Relationships change over time, so does understandings and expectations which may not be captured in the partnership agreement. The existing provisions of the Commercial Code states for specific elements of fiduciary duties between partners but failed to provide a more fundamental statement of the duty of good faith to the partnership, or a duty to act in the interests of the Partnership.

2.4.4 Creditors' protection

Creditors' protection in an LLP is achieved in three ways.⁵⁵ First, LLPs must lodge an annual declaration of solvency/insolvency, containing the opinion of any two partners (most of the time by Designated partners) that the LLP appears to be able to pay its debts as they become due in the normal course of business, or otherwise. A partner who makes the declaration without having reasonable grounds for his opinion commits an offence which is punishable under the criminal code.⁵⁶

Second way is by making certain distributions or returns of assets to partners illegal when made at a time when the LLP is insolvent.⁵⁷ This restriction is to prevent the partners misappropriating LLP property during, or shortly before, insolvency. In Jersey a partner or former partner who receive a distribution from an LLP to return to the LLP the amount or value of the distribution if it was received before the commencement of the winding up of the LLP, if the partner or former partner knew or ought to have known at the time of distribution that the LLP was insolvent or would become insolvent as a result of the distribution.⁵⁸

Lastly, a partner can be made personally liable in tort for his own wrongful act or omission, and so does the LLP, if the act or omission was carried out in the course of business of the LLP or

⁵³ Limited liability partnership agreement is defined as a written agreement between the partners or between LLP and its partners which determines the mutual rights and duties of the partners themselves and in relation to a LLP

⁵⁴ See Book II, Title IV of A Draft Commercial Code.

⁵⁵ *Concept Paper on Limited Liability Partnerships*, (Legal Department of Mauritius Financial Services Commission, 2013), 6.

⁵⁶ Criminal code of Ethiopia, Art. 389.

⁵⁷ This action is commonly known as claw back; whereby a member or benefactor takes back money that has already been disbursed, sometimes with an added penalty.

⁵⁸ Art. 5/3 of Jersey State Limited Liability Partnerships Law, 1997 (Revised Edition).

with the LLP's authority. An arrangement should be made for partners in professional practices to cover their liability through professional indemnity insurance.⁵⁹

2.5. Dissolution and Winding up of LLPs

The membership of a member in LLP would cease on death, incapacity or bankruptcy of a member.⁶⁰ Additionally, the partnership dissolution or any agreement among partners would also cease the membership of a member. Dissolution designates the point in time when the partners cease to carry on the business together.⁶¹ Dissolution does not automatically terminate the business, but has to go through the winding up process. Winding up on the other hand means putting an end to the life of the LLP. It is the legal process by which the LLP is dissolved.⁶²

Although, winding up and dissolution are sometimes taken as the same, there is difference between the two. The *Black's Law Dictionary* defines winding up as "the process of settling accounts and liquidating assets in anticipation of a partnership's or a corporation's dissolution."⁶³ Thus, from this definition it is clear that there is a difference between winding up and dissolution. The LLP like a company is not dissolved immediately at the commencement of winding up.

The existing Commercial Code of Ethiopia under articles 217-218 provides for grounds of dissolution applicable to all forms of business organizations. The legal provisions can be grouped in to three categories namely legal, consensual and judicial. Business organizations can be dissolved by operation of the law where the business purpose has been achieved or cannot be achieved and where the term for which the business organization was formed expires, unless the partners agree to continue the business organization.⁶⁴ Secondly, a given business organization is dissolved consensually, where the partners agree to dissolution prior to the expiry of the term for which the business organization was formed.⁶⁵ Lastly, a business organization may be dissolved for good cause by the court on the application of a partner.⁶⁶

⁵⁹ See Book II, Title IV of A Draft Commercial Code.

⁶⁰ *Id.*

⁶¹ Lawrence J. La Sala, *Partner Bankruptcy and Partnership Dissolution: Protecting the Terms of the Contract and Ensuring Predictability*, (Fordham Law Review, Volume 59, Issue 4, 1991), 619.

⁶² *Id.*

⁶³ Black's Law Dictionary, *Supra* note 21, "winding up"

⁶⁴ Commercial Code of Ethiopia, Art. 217 (a and c).

⁶⁵ *Id.*, Art. 217(b).

⁶⁶ *Id.*, Art. 218(1).

Partnerships may be dissolved at any time by any partner by giving six months notice especially in conditions provided under article 258 of the Commercial Code. It can also be dissolved where one of the partners dies or is no longer able, under the law, to be a partner or where partner is declared bankrupt or where one of his personal creditors causes his share to be disposed of under art 256(3).⁶⁷ Unlike a conventional partnership, an LLP will not be affected by the incapacity, death or bankruptcy of a partner.⁶⁸ An LLP will not be dissolved automatically if, the membership falls below a certain level. Instead, explicit steps must be taken to terminate a LLP.⁶⁹ This is consistent with the doctrine of separate legal entity that accords with LLPs perpetual succession. However, like other forms of business organization, an LLP can be voluntarily dissolved by its partners or by a court order in certain circumstances. Partners may specify events the occurrence of which can dissolve an LLP. Where the winding up is a result of an event in the members' agreement the relevant person appointed in accordance with that agreement will wind up the affairs of the LLP.⁷⁰

The court can also declare dissolution on conditions specified in the Commercial Code. Where the winding up is as a result of a court order the court shall appoint a liquidator to wind up the affairs of the LLP. If during the course of the winding up, the LLP has gone into insolvent liquidation and a person knew or ought to have concluded that there was no reasonable prospect of the LLP avoiding insolvent liquidation, and that person was a member of the LLP at the time, the court may declare that person shall be personally liable to make such contribution to the LLP's assets as the court thinks proper.⁷¹

2.6. Comparing LLPs with other forms of Business organizations

The Ethiopian Commercial Code recognizes six forms of business organizations: ordinary partnership, joint venture, general partnership, limited partnership, private limited company and Share Company.⁷² Joint ventures, general partnerships, and limited partnerships could be constituted as commercial or non-commercial business organizations. On the other hand, an

⁶⁷ *Id.*, Art. 260 (1,2).

⁶⁸ Peri Pakroo, *Limited Partnerships and Limited Liability Partnerships*, Available at <https://www.nolo.com/legal-encyclopedia/limited-partnerships-limited-liability-partnerships-29748.html>, Accessed on May 13, 2017.

⁶⁹ The New draft of the Commercial Code provides for six months for a partner to look for another partner.

⁷⁰ Winding up and dissolution of Limited Liability Partnerships (LLPs), Gournsey Registry, 2015, Available at: <http://www.guernseyregistry.com/CHttpHandler.ashx?id=93658&p=0>, Accessed on March,23 2017

⁷¹ See Book II, Title IV of A Draft Commercial Code.

⁷² Commercial Code of Ethiopia, Art. 212.

ordinary partnership is always a non-commercial business organization. Likewise, private limited companies and share companies are always commercial organizations.⁷³

In order to understand the concept of LLP's, it is important to understand the difference between LLP's and other forms of business organizations. LLPs are distinct entities from either a partnership or a company and therefore, a comparison between LLPs and other business forms will highlight the distinct features of an LLP structure. Once a comparison is drawn it becomes evident that recognizing LLP's have certain advantages as compared to other forms of business organizations.

2.6.1. General Partnerships Vs LLPs

First and foremost a comparison is drawn between an LLP and a general partnership. Both business structures enjoy legal status or existence separate from the partners who constitute them. In terms of the extent of liability, an LLP is different from a general partnership in the following sense: in a general partnership, partners are personally, jointly, severally and fully liable as between themselves and to the partnership for the partnership firm's undertakings.⁷⁴ The partners cannot even limit their external liability in their partnership agreement. Individual partners are liable for debts due by the partnership after payment is demanded from the partnership and the partnership could not discharge the debt.⁷⁵ The basis for this sort of liability is perhaps the law itself. In an LLP, on the other hand, since partners are not agents for one another, no partner is liable for the actions of any other partner beyond the extent of his share in the LLP.⁷⁶

A general partnership is administered by managers who may or may not be partners. Each partner takes part in the management of the business and also takes responsibility for the liabilities of the business in case where no manager is appointed.⁷⁷ An LLP is managed by designated partners (equivalent to manager of a partnership). In General partnerships every partner is liable, jointly, severally and fully liable with all the other partners and also alone in his individual capacity for all the acts of the firm or other partners in course of the business of the partnership. If a claim is made and substantiated, a partner is liable to meet the claim in full irrespective of his proportion of personal responsibility, and his or her personal assets will be at

⁷³ *Id.*, Art. 10 (2).

⁷⁴ *Id.*, Art. 280(1).

⁷⁵ *Id.*, Art. 294.

⁷⁶ Andrew Richmond, *Law Firm Partners as Their Brothers Keepers*, (Kentucky Law Journal), 263-273

⁷⁷ Commercial Code of Ethiopia, Art. 287 (1 and 2).

risk when the assets of the partnership or professional indemnity insurance, if any, are not sufficient to cover those liabilities.⁷⁸ Under the LLP structure, however, no partner is liable on account of the independent or un-authorized acts of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful acts or misconduct.⁷⁹

After incorporation, LLP acquires independent legal status and provides limited liability to its members, or 'partners'. This reduced financial responsibility is very advantageous, because it protects members' personal finances beyond their capital contribution or any financial guarantees they have made to the LLP. Financial and legal obligations fall on the LLP itself, rather than its members. This makes an LLP more appealing than a general partnership in which members are accountable for all financial liabilities of the business.

Finally, a general partnership can be dissolved where one partners dies or is no longer able under the law to be a partner. However, business life of LLPs cannot be affected by the death or bankruptcy of a partner.

2.6.2. Ordinary Partnerships Vs LLPs

In various ways, LLPs operate in exactly the same way as ordinary partnerships, but there are a few important differences.⁸⁰ Commercial business organizations cannot adopt ordinary partnership form of business organization.⁸¹ i.e. it is always non-commercial business organization. When it carries out commercial activity, it will cease to be an Ordinary Partnership and assimilated to be General Partnership in which creditors of the partnerships can claim personal property of the partners when the asset of the firm is insufficient to satisfy the debt⁸². Then it would be subjected to the harsh provisions of Article 280(1). LLPs type of business structure on the other hand is suitable for different types of both profit and non-profit making businesses, social enterprises who want to generate personal income from the sale of goods and/or services with reduced personal responsibility for business debts. Unlike an ordinary partnership, an LLP itself is responsible for any debts that it runs, not the individual partners.

⁷⁸ Kitty LAM, *Limited Liability Partnership and Liability Capping Legislation for the Practice of Law in Selected Places* (Research and Library Services Division Legislative Council Secretariat, Hong Kong, 15 March 2005), 3

⁷⁹ What is LLP? Available on: http://www.llponline.in/what_is_llp.php, Accessed on April 12, 2017.

⁸⁰ An Introduction to Limited Liability Partnerships (LLPs), Available at: https://www.sthelsenchamber.com/assets/0002/1232/An_Introduction_to_Limited_Liability_Partnerships__LLPs_.pdf, Accessed on March 23, 2017.

⁸¹ Commercial Code of Ethiopia, Art. 227 and 213.

⁸² *Id.*, Art. 255.

In an Ordinary Partnership, all the partners shall have the right to act as managers, unless one or more of the partners or a third party is appointed by partnership agreement.⁸³ Therefore each partner is considered as an agent of the partnership. LLPs register at least two partners as ‘designated’ members who will take on additional administrative and managerial responsibilities on behalf of an LLP and other members.⁸⁴

The creditors of an ordinary partnership may claim against the assets of the partnership.⁸⁵ Creditors may also claim against the personal property of the partners who shall, unless otherwise agreed, and unless third parties knew of such agreement be jointly and severally liable to them for the obligations of the partnership. The liability of an LLP partners is limited to the amount of contribution except in cases of malpractice and fault of the partner.⁸⁶

2.6.3. Limited Partnerships Vs LLPs

A limited partnership consists of general partners⁸⁷, who are fully liable for partnership liabilities, and limited partners whose liability is limited to the amount of their contribution, provided that they do not take part in the management of the business.⁸⁸ In many cases, the limited partners are merely investors who do not wish to participate in the partnership other than to provide an investment and to receive a share of the profits. LLPs have many of the same advantages as limited partners in limited partnerships, with the added benefit that the members of an LLP can take an active role in the business of the partnership without exposing themselves to personal liability for the acts of their other partners beyond the value of their investment in the partnership.

In Limited partnerships only general partners may act as managers. The firm may be managed by one or more managers. Provisions intended to govern the management of General Partnerships shall *mutatis mutandis* apply to Limited Partnerships.⁸⁹ In LLPs on the other hand members have

⁸³ *Id.*, Art. 236.

⁸⁴ An Introduction to Limited Liability Partnerships (LLPs), Available at: https://www.sthenschamber.com/assets/0002/1232/An_Introduction_to_Limited_Liability_Partnerships__LLPs_.pdf, Accessed on March 23, 2017.

⁸⁵ Commercial Code of Ethiopia, Art. 255.

⁸⁶ See Book II Part IV of a Draft Commercial Code.

⁸⁷ Commercial Code of Ethiopia, Art. 296.

⁸⁸ William F. Griffin, Jr. Davis, Malm & D'Agostine, *An Introduction to Business Organizations*. March 2004, 4

⁸⁹ Commercial Code of Ethiopia, Art. 303.

a collective (joint) responsibility, to the extent that they may agree in an "LLP agreement", but no individual (several) responsibility for each other's actions.⁹⁰

2.6.4. Private Limited Companies Vs LLPs

The legal structure of a business is one of the most important decisions to make in the startup process. LLP is a common legal structure for two or more entrepreneurs to set up business together, while limiting their personal liability.⁹¹ An LLP is similar to a private limited company in that both have a separate legal identity and limited liability. The main difference between the two is that the members of an LLP can set their rules governing the internal operation of the LLP whereas the rules governing the internal operation of PLCs is set largely by the provisions of the Commercial Code.

An LLP requires a minimum of two partners while there is no restriction as to the maximum number of partners in contrast to PLC where there is a restriction of not having more than fifty.⁹² The PLC is required to get their accounts audited and deposit legal reserve fund.⁹³ But in case of an LLP, there is no such mandatory requirement. This is perceived to be a significant compliance benefit of LLPs.

An LLP also has a simpler and less expensive process of formation as compared to PLCs. This is because the yearly cost of compliance in case of PLC can be substantial. For instance, the law provides for minimum capital requirement for the establishment of a PLC⁹⁴ as opposed to an LLP where there is no minimum capital requirement.

PLC and LLPs also differ on the flexibility of internal management structure and taxation of profits. PLCs are taxed both for corporate and dividend tax on all profits.⁹⁵ LLP members are self-employed for tax purposes. LLPs must register for self-assessment, pay income tax on their share of business profits and prepare their own tax returns and the LLP itself is not taxed as a whole.⁹⁶

Internal structure and management rules of LLPs are set out in the articles of association and partnership agreement. An LLP is owned and managed by members, or 'partners'. There is no

⁹⁰ *Concept Paper on Limited Liability Partnerships*, (Legal Department of Mauritius Financial Services Commission, 2013, 4

⁹¹ Sammi Caramela, *How to choose the Best Legal Structure for your Business* (Rowan University:2016), 1

⁹² Commercial Code of Ethiopia, Art. 510.

⁹³ *Id.*, Art.539.

⁹⁴ *Id.*, Art. 512.

⁹⁵ Federal Income Tax Proclamation No. 979/2016, Federal Negarit Gazeta, 22nd year No. 104 , Art 2(2 C).

⁹⁶ Chris Tapley, *A Guide to Limited Liability Partnerships (LLPs)*, Available at: <https://www.1stformations.co.uk/blog/a-guide-to-limited-liability-partnerships-llps/>, Accessed on March 12, 2017.

possibility in which managers be appointed other than members. At least two LLP members are required to be 'designated members'. They share the same duties and rights as other members, but they have the additional administrative responsibility of ensuring that LLPs are managed lawfully and adhere to all filing, reporting and accounting requirements.

CHAPTER THREE

3.HIGHLIGHTS OF LEGAL FRAMEWORKS FOR LLPs IN SOME JURISDICTIONS

3.1. Introduction

This part gives an overview of the legislative framework of the countries where LLPs have been introduced. Research has shown that many countries have implemented legal frameworks for the regulation of LLPs. The overview deals with the most commonly bench marked jurisdictions such as US, UK, India and Singapore. In these countries, the LLP structure has become quite popular among professional services and small businesses.⁹⁷ It is a vehicle for doing business, combining the limited liability feature of a company and the flexibility of the internal organization of a partnership.⁹⁸ LLPs in different jurisdictions render the privilege of limited liability to the innocent partners, so as to insulate their personal assets from claims incurred by the faults of other partners.

3.2. Development of LLPs in Different Legal Systems

3.2.1. United States

In the United States LLPs were formed in the aftermath of the collapse of real estate and energy prices in Texas in the 1980s.⁹⁹ This collapse led to a large wave of bank and savings and loan failures.¹⁰⁰ Because the amounts recoverable from the banks were small, efforts were made to recover assets from the lawyers and accountants that had advised the banks in the early 1980s.¹⁰¹ The reason was that partners in law and accounting firms were subject to the possibility of huge claims which would bankrupt them personally, and hence the first LLP laws were passed to shield innocent members of those partnerships from liability.¹⁰²

⁹⁷ Utsar Gandhi and Ravi Thankur, *Supra note 14*, at 301.

⁹⁸ Kitty LAM, *Supra note 78*, at 6.

⁹⁹ Utsar and Ravi, *Supra note 14*, at 303.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Robert W. Hamilton, *Registered Limited Liability Partnership: Present at the Birth (Nearly)*, (University of Colorado Law Review, 1995), 1065-1069.

Initially, there was hesitation both in academic as well as legislative circles in disturbing the long settled principles of unlimited liability of partners of a partnership firm on the grounds of its moralistically weak foundations and its discriminatory nature. However, it was soon overcome by the commercial expediency of the legislation. Claimants were not able to recover all the losses from the principal wrongdoers. Claims were then filed against those professional firms of accountants and lawyers who had represented the failed financial institutions, for their malpractice insurance and wealthy partners' personal assets.

More than one third of all the bank failures during the crisis occurred in Texas.¹⁰³ Thus, the first law on LLP came into existence in Texas, through the enactment of Texas House Bill 278 which was passed on 26th August 1991 in response to the massive failure of banks and savings and loans associations in the 1980s.¹⁰⁴ After Texas passed its LLP legislation, most other states quickly followed and today all 51 states have passed laws that permit the formation of LLPs.¹⁰⁵ With the promulgation of the Revised Uniform Partnership Act (RUPA) in the US in 1994, a number of states permitted the formation of LLPs, which was followed by the incorporation of comprehensive provisions dealing with LLPs in the RUPA in 1997.¹⁰⁶

Among the professional firms lobbying for limited liability, a law firm in Texas drafted a bill limiting the personal liability of innocent partners from malpractice claims. The original proposal, which only applied to professional partnerships, was viewed as a “help a lawyer bill”¹⁰⁷ and was rejected by the legislature of Texas.¹⁰⁸ The bill was later revised to extend the LLP structure to all types of businesses and subsequently approved by the Texas legislature.¹⁰⁹

Formation of an LLP typically requires filing certificates with the county and state offices. An LLP is considered as a special type of partnership that requires a special filing with the State where the partners operate. They must register by filing a written statement with the Secretary of concerned State or similar office (along with a filing fee) usually setting forth the name and principal office address, name and address of its agent for service of process, a brief statement of

¹⁰³ *Id.*

¹⁰⁴ Donald J. Weidner, *Pitfalls in Partnership Law Reform: Some United States Experience*, 26 *J. Corp. L.* 1031 (2001), Available at: <http://ir.law.fsu.edu/articles/132>, Accessed on May 12, 2017.

¹⁰⁵ Alberta Law Reform Institute (1999), *Limited Liability Partnership Final Report* No.77 (April, 1999), 37, Available at: <http://www.assembly.ab.ca/lao/library/egovdocs/alilr/1999/67876.pdf>, Accessed on May 10, 2017.

¹⁰⁶ The act drafted by the National Conference of Commissioners on Uniform State laws and approved by the American Bar Association on February 4, 1997 is applicable on all states.

¹⁰⁷ Hamilton, *Supra note* 102, at 1078.

¹⁰⁸ Kitty LAM, *Supra note* 78, at 22.

¹⁰⁹ *Id.*

the partnership's business, the federal employer identification number of the partnership, and a statement that the partnership is registering as a LLP.¹¹⁰

LLP partnership agreement is not a legal requirement. However, owners of a LLP should create one to avoid a number of state imposed restrictions.¹¹¹ The partnership agreement establishes the provisions and conditions of the relationship between the partners. By putting these provisions in writing, future conflicts can be resolved; the partnership agreement is used as the framework to mitigate problems associated with distribution, liability and management.

There are differences in the administration of the provisions of the Partnership Act, in various states, as the enforcement of the Act is at the state level. For e g, filings for registration and changes in the details of the partners vary from state to state. However, the rules for enforcement of the LLP Act are made by the Central Government and hence there is uniformity in the provisions applicable to LLPs.¹¹² In this respect, The RUPA of 1997 is a standard statute adopted for the governance of business partnerships by U.S. States.

LLP offers all partners the right to participate in the management and the operation of a partnership without subjecting themselves to unlimited personal liability as is the case in conventional partnerships.¹¹³ The LLP partnership agreement defines the operating procedures of the LLP. Meetings are carried out depending upon state law or the Partnership Agreement prepared by the Partners.¹¹⁴ Partners are entitled to call for an accounting or inspect the financials of the LLP. Depending on each individual state law, they may also be entitled to annual reports.¹¹⁵

Partners of LLPs are not liable for professional malpractices that do not involve the concerned partners. The original Texas LLP statute only protected its members from personal vicarious liability for liabilities of the firm arising from negligent or otherwise wrongful acts or omissions of other members or employees of the firm in the provision of professional services. All members of such partial shield LLPs remained personally liable for the firm's ordinary contractual obligations. All states that enacted LLP legislation followed this partial shield approach until 1995. In that year Minnesota enacted an LLP statute that gave members of LLPs

¹¹⁰ Limited Liability Partnership and Legal Definition, Available at www.uslegal.com/limitedliability_partnership. Accessed on June 1, 2017

¹¹¹ *Id.*

¹¹² Section 1001-1003 of the Uniform Partnership Act (1997).

¹¹³ *Id.*, Section 401 (f).

¹¹⁴ *Id.* Section 1104(2)

¹¹⁵ *Id.* section 1003 (a)

essentially the same sort of limited liability as is enjoyed by shareholders of a Company.¹¹⁶ Partners of a full-shield LLP are not liable, as such for any obligations of the LLP. Many states that originally adopted the partial-shield approach have now adopted the full-shield approach. Finally, the full shield approach rapidly overtook the partial shield approach in U.S.¹¹⁷

The liability of partners varies from state to state. An obligation of a partnership incurred while the partnership is an LLP, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership.¹¹⁸ A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner.¹¹⁹ However, a sizable minority of states only extend such protection against negligence claims, meaning that partners in an LLP can be personally liable for contract and intentional tort claims brought against the LLP.¹²⁰

Section 306 of the RUPA is the standard statute adopted by bulk of states in the US. This legislation grants a LLP with a form of limited liability protection similar to that of a corporation. The legislation states the following:

An obligation of a partnership incurred while the partnership is a LLP, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner.

Some states implement their own laws in addition to those provided by RUPA to govern the formation and activity of a LLP. For instance, some states will only provide liability protection against negligence claims.¹²¹ This provision states that partners in a LLP can be held personally liable for intentional tort and contract claims brought against the broader formation.¹²²

In general, partner in a registered LLP is not individually liable for debts and obligations of the partnership arising from errors, omissions, negligence, incompetence, or malfeasance committed in the course of the partnership business by another partner or a representative of the partnership not working under the supervision or direction of the first partner at the time the errors,

¹¹⁶ Limited Liability Partnership and Legal Definition, Available at www.uslegal.com/limitedliability_partnership. Accessed on June 1, 2017

¹¹⁷ Carter G. Bishop, *The Limited Liability Partnership Amendments to the Uniform Partnership Act* (1997), 53.

¹¹⁸ Uniform Partnership Act (1997) *Prefatory Note*.

¹¹⁹ Uniform Partnership Act, Section 306 (C).

¹²⁰ Limited Liability Partnership Vs Limited Liability Company, Available at <http://the-llc-company.com/businessideas/llpvsllc>, Accessed on May 25, 2017.

¹²¹ Limited Liability Partnerships, Available on: <https://business.laws.com/limited-liability-partnership>, Accessed on May 17, 2017.

¹²² *Id.*

omissions, negligence, incompetence, or malfeasance occurred, unless the first partner was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other partner or representative; or had notice or knowledge of the errors, omissions, negligence, incompetence, or malfeasance by the other partner or representative at the time of occurrence. However, it does not affect the joint and several liability of a partner for debts and obligations of the partnership arising from any other causes and the liability of partnership assets for partnership debts and obligations.

The state of Minnesota enacted an expansive LLP statute in 1994. This piece of legislation provided that a partner in an LLP is not liable to a creditor or for any obligation of the partnership.¹²³ It further provided, however, that a partner was personally liable to the partnership and co-partners for any breach of duty, and also allowed a creditor or other claimant to pierce the limited liability shield of a partner in the same way a claimant may pierce the corporate veil of a corporation and personally sue an individual member of the corporation.¹²⁴

As in a partnership or Limited Liability Company (LLC), the profits of an LLP are allocated among the partners for tax purposes, avoiding the problem of double taxation often found in corporations.¹²⁵ Entities operating as a LLP are taxed under the partnership classification by the Internal Revenue Service (IRS) through the pass-through taxation process without being taxed at the entity level.¹²⁶ Income received from a LLP by a limited liability partner must be reported on his or her individual tax return. Income or losses is generally regarded as active income.¹²⁷ Under this classification, the partnership's profits are passed down to the partners who are then required to report their individual earnings on their tax returns. This process enables the entity's profits to skip the corporate level, thus avoiding a federal income obligation.¹²⁸

Although LLP is found in many business fields, the LLP is especially popular form of organization among professionals, particularly lawyers, accountants, and architects. In some U.S. states, namely California, New York, Oregon, and Nevada, LLPs can only be formed for such

¹²³ Walter W. Steele, Jr., *How Lawyers Protect the Family Jewels...The Invention of Limited Liability Partnerships*, 39 S. Tex. L. Rev. 621 (1998).

¹²⁴ *Concept Paper on Limited Liability Partnerships*, (Legal Department of Mauritius Financial Services Commission, 2013), 13.

¹²⁵ Limited Liability Partnership Vs Limited Liability Company, Available at <http://the-llc-company.com/businessideas/llpvsllc>, Accessed on May 25, 2017.

¹²⁶ Income Tax in the United States, available at: https://en.wikipedia.org/wiki/Income_tax_in_the_United_States, Accessed on May 22, 2017.

¹²⁷ *Id.*

¹²⁸ *Id.*

professional uses.¹²⁹ Under the NY Partnership Law, only general partnerships whose partners are licensed professionals may apply to operate as LLPs¹³⁰. As per section 2 of the New York partnership law the term professionals accompany attorneys, licensed physicians, as well as individuals authorized to practice those professions designated in the New York Education Law.¹³¹ No LLP may render a professional service except through individuals authorized by law to render such professional service as individuals.¹³²

LLPs come to an end in conformity with the partnership agreement or when the Court is of the view that it is equitable to wind up the partnership business or affairs.¹³³ An LLP may decide to wind up its affairs voluntarily if the partners are of the opinion that the LLP will be able to pay its debts. The LLP has to appoint a liquidator or provisional liquidator to wind up its affairs and file the necessary notifications required under the LLP statute.

An LLP may also be wound up under an Order of the Court under certain circumstances e.g. the LLP is unable to pay its debts. The Court may appoint a liquidator to wind up the affairs of the LLP. Where no liquidator is appointed by the Court, the Official Receiver shall be the liquidator of the LLP. The liquidator will file the necessary notifications required under the LLP law.¹³⁴

3.2.2. United Kingdom

Following the introduction of the concept of LLPs in Texas, major accounting firms in the UK raised a campaign for the creation of LLPs in order to limit the liability of an individual partner for acts specifically involving that particular partner.¹³⁵ Prior to the mid-1990s, some of the professions, especially the accountants, lobbied for some time to have the law on liability changed against a background of substantial claims for professional negligence.¹³⁶ Accordingly, the UK Companies Act, 1989 was amended to allow accounting firms to work as LLCs. General partners in charge of the ordinary day to day activities of the firm were, however, still held

¹²⁹ See Thomas E. Rutledge and Elizabeth G. Hester, *Practical Guide to Limited Liability Partnerships*, section 8, 5 State Limited Liability Company & Partnership Laws (Aspen 2008).

¹³⁰ Section 121-1500 of the NY Partnership Law (2013).

¹³¹ Kitty LAM, *Supra note 78*, at 24.

¹³² NY Partnership Law, Section 121-1500(n).

¹³³ Uniform Partnership Act, Section 801.

¹³⁴ *Id.*

¹³⁵ Ray, Deep, *Supra note 19*, at 6.

¹³⁶ Kitty LAM, *Supra note 78*, at 7.

jointly and severally responsible. This was achieved by a campaign in the 1990s calling for proportional liability in partnership firms.¹³⁷

The announcement of the government's intention to introduce LLP legislation was followed by a consultation paper issued by the Department of Trade and Industry (DTI) in February 1997, offering firms the ability to incorporate with limited liability whilst retaining the organizational flexibility of a partnership. A draft of the LLPs Bill and the related regulations was published in 1998 for further consultation.¹³⁸

Their investigation focused particularly, but not exclusively, on the joint and several liability of professional defendants, seeking to ascertain whether there was an arguable case for replacing joint and several liability by, for example, a system whereby each defendant might be liable for only a proportionate share of the loss. Although the remit did not extend to the question of joint and several liabilities within partnerships, the DTI took the opportunity to consult on the distinct but related question whether to amend the law in the country to allow LLPs. This question was asked in the knowledge that the concept of LLPs was well known in some overseas jurisdictions, particularly the USA.¹³⁹

The government, in its 1997 and 1998 consultation papers, stated that the objective of introducing the LLP legislation was to add to the choice of legal organizations available to businesses in Great Britain and to keep the legal framework for businesses up to date with good international practice. The government emphasized that LLP legislation would allow Great Britain registered firms to operate competitively with their overseas counterparts.¹⁴⁰

The LLPs Act 2000 (herein after referred to as the UK LLPs Act) was approved by Parliament on 28 June 2000. The LLPs Act and the LLPs Regulations 2001 came into force on 6 April 2001. The legislation provides an LLP the organizational flexibility and taxation status of a partnership along with limited liability for its partners. LLPs are governed by the LLPs Act 2000 in Great Britain and the LLPs Act 2002 in Northern Ireland. The Act is based on three broad principles namely limited liability, corporate personality and partnership flexibility. The existence of an

¹³⁷ Ashish Ahuja, *Limited Liability Partnership Act, 2008 Some Issues*, Available at http://www.bcasonline.org/webadmin/res_material/resfiles/LM%20Ashish%20Ahuja%204Feb09.pdf (Last visited on March 26, 2017).

¹³⁸ *Id.*

¹³⁹ Margaret Bartschi, (2000), *Foundations of Business Organizations for Paralegals*, Delmar, West Legal Studies, 3

¹⁴⁰ *Id.*

LLP in the UK as a separate legal entity means that it has its own rights and liabilities, distinct from those of its members.¹⁴¹

The 2000 LLP Act took effect in the United Kingdom, introducing a completely new form of incorporation for business structure combining features of a partnership and a company in the UK.¹⁴² The new LLP is available to businesses with registered offices in England, Wales or Scotland; following devolution, only the tax aspects of the new Act apply to Northern Ireland.¹⁴³ This change has been keenly advocated by large number of professional firms. The UK is now following many other jurisdictions which permit a combination of partnership structure and limited liability (notable among common law jurisdictions are the US State of Delaware, Canada and Australia).

In English law, unlike a company and LLP, a general law partnership has no legal personality.¹⁴⁴ In addition to this, such a partnership needs no formal steps to come into existence: if two or more individuals fulfill the tests for acting as partners, the law so treats them. And in theory one partnership ends and another begins when a partner retires or a new partner joins (unless there is a partnership deed providing for these events). However, a company or a LLP, both creatures only of statute, can only be brought into life through a series of prescribed steps, ending in registration with Companies House.¹⁴⁵ This official coming into the world is just the start of ongoing requirements to report publicly, which apply to both a company and a LLP. And once a company or LLP does exist, the entity thus created can continue potentially indefinitely, so long as it remains registered. It can own property and be the subject of rights and duties; It can also survive changes in the identity of its partners. In the UK, an LLP differs from a company to the extent that the former has greater organizational flexibility and is taxed as a partnership. Furthermore, LLPs are accorded ‘entity’ treatment whilst partnerships are governed by the provisions of the UK Partnership Act and are generally treated as aggregates of individuals.¹⁴⁶ Except for organizational flexibility and taxation, an LLP has more in common with a company. Substantial provisions of the company and insolvency laws are applicable to LLPs and protect

¹⁴¹ Yeo Hwee Ying, *Liability of Partners in a Limited Liability Partnership Regime*, (2003) 15 SAclJ 392; *See Re, Rogers*, [2006] EWHC 753 (Ch) (in this case it was determined that if a will appointed partners in a firm as executors, this would include the profit-sharing members of the LLP as well).

¹⁴² Philip Britton, *Limited Liability Partnerships: a New Legal Form for Business in the UK*, (University of London, 2016), 1.

¹⁴³ *Id.*

¹⁴⁴ Kitty LAM, *Supra* note 78, at 3.

¹⁴⁵ Philip Britton, *Supra* note 142, at 1.

¹⁴⁶ Section 1(2) of the UK LLP Act (2000).

those parties who have dealings with an LLP. In essence, the disclosure and winding up safeguards for LLPs are at least up to the level required for limited companies.¹⁴⁷

An LLP is a body corporate with legal personality separate from that of its members.¹⁴⁸ Before lawyers operate through an LLP, the LLP must obtain recognition from the Law Society of England and Wales as a recognized body.¹⁴⁹ It is incorporated by registration with the Registrar of Companies in England and Wales under the LLPs Act.¹⁵⁰ An English LLP registered at Companies House will receive a certificate of registration, like a LLC. It will be a corporate body and will be required to file certain information at Companies House.¹⁵¹

For a LLPs to be incorporated two or more persons associated for carrying on a lawful business with a view to profit must have subscribed their names to an incorporation document, there must have been delivered to the registrar either the incorporation document or a copy authenticated in a manner approved by founders, and there must have been so delivered a statement in a form approved by the registrar, made by either a solicitor engaged in the starting up of the LLP or anyone who subscribed his/her name to the incorporation document.¹⁵²

The LLP structure offers an option for businesses to incorporate with limited liability whilst enabling them to organize themselves in a flexible manner as partnerships. Agreements between the members, and between the members and the LLP, are confidential and not prescribed by statute¹⁵³, govern their mutual relationships and the operation of the LLP¹⁵⁴. On the incorporation of a LLP its members are the persons who subscribed their names to the incorporation document. Any other person may become a member of a LLP by and in accordance with an LLP partnership agreement with the existing members. A person may cease to be a member of a LLP in accordance with an agreement with the other members or, in the absence of agreement with the other members as to cessation of membership, by giving reasonable notice to the other members.¹⁵⁵

The LLP startup document must be in a form approved by the registrar (or as near to such a form as circumstances allow), state the name of the LLPs, state whether the registered office of the

¹⁴⁷ Kitty LAM, *Supra* note 78, at 8.

¹⁴⁸ Section 1(1) of the UK LLP Act.

¹⁴⁹ Kitty LAM, *Supra* note 78, at 52.

¹⁵⁰ Section, 9(1a) of the UK LLP Act.

¹⁵¹ *Id.* Section 3.

¹⁵² *Id.*, Section 2(1, 2).

¹⁵³ If no partnership agreement is formed, there are default rules governing the rights and duties between an LLP and its members and the members inter se under Regulation 7 of the LLPs Regulations 2001.

¹⁵⁴ Section 5 of the UK LLPs Act (2000).

¹⁵⁵ *Id.*, Section 4(3).

LLPs is to be situated in England and Wales, in Wales or in Scotland, state the address of that registered office address, state the name and address of each of the LLP partners who are to be members of the LLPs on incorporation, and either specify which of those persons are to be designated members or state that every person who from time to time is a member of the LLPs is a designated member.¹⁵⁶

Members of an LLP can be an individual, another LLP, or a company but not a limited or general partnership.¹⁵⁷ An LLP must notify the Companies House for any changes to its membership and its members' residential addresses.¹⁵⁸ There must be at least two or more members to form an LLP.¹⁵⁹ If the incorporation document does not specify who are to be designated members any member may become a designated member by and in accordance with an LLP agreement with the other members, and a member may cease to be a designated member in accordance with an agreement with the other members.¹⁶⁰ But if there would otherwise be no designated members, or only one, every member is a designated member.¹⁶¹ A LLP may at any time deliver to the registrar: notice that specifies members are to be designated members, or notice that every person who from time to time is a member of the LLP is a designated member. A notice shall be in a form approved by the registrar, and shall be signed by a designated member of the LLP or authenticated in a manner approved by the registrar.¹⁶² A person ceases to be a designated member if he ceases to be a member.¹⁶³

In UK, LLP structure is open to all types of businesses, although in the original proposal, only members of a regulated profession were allowed to set up LLPs, with the view that professional regulation would help safeguard the interests of those parties dealing with the firm. It provides an ideal structure for numerous businesses not simply professional practices. The only activities that cannot adopt LLP status are those that are unlawful, not intended to be profitable and which do not constitute the carrying on of a trade, profession or occupation.¹⁶⁴ The structure is commonly used by accountants, as a company may not act as auditor to another company. They are also

¹⁵⁶ *LLP Main Characteristics, Key Characteristics of an LLP in the UK* Available at: <https://www.ukincorp.co.uk/limitedliabilitypartnershipstartup/maincharacteristicsoflimitedliabilitypartnerships/>, Accessed on May 23, 2007.

¹⁵⁷ Section 2 of the UK LLPs Act (2000).

¹⁵⁸ *Id.*, Section 9(1).

¹⁵⁹ *Id.*, Section 12 (1a).

¹⁶⁰ *Id.*, Section 8.

¹⁶¹ *Id.*, Section 2(2f).

¹⁶² *Id.*, Section 8 (5b).

¹⁶³ *Id.*

¹⁶⁴ *LLP Main Characteristics, Key Characteristics of an LLP in the UK* Available at: <https://www.ukincorp.co.uk/limitedliabilitypartnershipstartup/maincharacteristicsoflimitedliabilitypartnerships/>, Accessed on May 23, 2007.

becoming more common by firms in the legal profession such as solicitors and attorneys that by law are prohibited incorporating as companies. Other professionals, such as architects, pharmacists and doctors, are also allowed to operate through LLPs. Some professionals are required to satisfy certain conditions set by their professional bodies to do so. Therefore, if one is contemplating setting up business or reconsidering the structure of an existing business, an LLP could be an option worth investigating.¹⁶⁵ For professional service partnerships, conversion to LLPs offer an attractive prospect at the moment as the number of negligence claims against professional firms are increasing, and as a result professional indemnity¹⁶⁶ (PI) cover is becoming more expensive.

In UK LLP members have the privilege of limited liability. Members have a collective (joint) responsibility, to the extent that they may agree in an LLP partnership agreement, but no individual (several) responsibility for each other's actions. It is from the fact of the legal personality of the LLP that the limited liability flows, as the members of the LLP are not agents of each other but are (in principle) agents only of the LLP itself.¹⁶⁷ But a LLP is not bound by anything done by a member in dealing with a person if the member in fact has no authority to act for the LLP by doing that thing, and the person knows that he has no authority or does not know or believe him to be a member of LLP.¹⁶⁸ It is therefore the assets of the LLP alone which may be put at risk by the actions of its members (and employees). If the LLP does become insolvent, modified aspects of both partnership and company procedures will apply, so there is the risk of claw back¹⁶⁹, under which certain transactions transferring capital from the LLP to a member or ex member up to two years before the insolvency may be challenged. Equally, when insolvency strikes, a member of a LLP may be accused of wrongful or fraudulent trading and be disqualified from future involvement with a LLP or company. Also, like a company director, there are exceptional situations where a LLP member may take on personal liability to a client of the LLP, but these will be rare.¹⁷⁰

The LLP itself, though a separate legal entity, is not itself subject to taxation, nor is it the employer of its members. Instead, these members are treated, as far as possible, as if they were

¹⁶⁵ *Id.*

¹⁶⁶ Insurance designed for professionals who provide advice or services to their customers. It protects a business against legal costs and claims by third parties for damages arising from acts, omissions or breaches of professional duty in the course of business.

¹⁶⁷ Section 6(1) of the UK LLPs Act (2000).

¹⁶⁸ *Id.*

¹⁶⁹ Provisions relating withdrawals (including drawings, loan repayments and property distributions) by a member during the two years prior to an LLP becoming insolvent based on court discretion power.

¹⁷⁰ Philip Britton, *Supra note 142*, at 3.

still partners under a general law partnership and the real objects and subjects of tax law. Hence when former partners become members of a LLP, they retain their self employed status, with all the linked tax and social security benefits, and movements of capital between members of LLPs will not normally attract capital gains tax.¹⁷¹

The profit of the business of an LLP is taxed as if the business is carried on by partners in partnership, rather than by a body corporate.¹⁷² Partnerships do not pay corporation tax. Partners are considered as self employed for tax purposes. Because of this, members are responsible for their own tax. This ensures that the commercial choice between using an LLP or a partnership is a tax neutral one. The taxation clauses in the Act are expressed in broad terms so that the existing rules for partnerships and partners will, in general, simply apply to LLPs, and members of UK LLPs, which are carrying on businesses, as if these were partnerships and partners respectively.¹⁷³

LLP is tax transparent or pass-through, that is to say it pays no UK tax but its members do in relation to the income or gains they receive through the LLP. No tax is payable by the LLP itself, instead, the UK tax authorities will look to the respective partners in assessing liability to tax principally from partners' self employed status. The taxation base of a LLP follow the procedure operated in the past for partnerships.¹⁷⁴ The LLP itself is not be liable for taxation on profits or gains arising within the partnership, but the profits or gains will be assessed to tax separately on the individual partners.

The flexibility of management structures is carried over to the LLP. The 2000 Act provides a basic principle that allows the founding members of a new LLP wide freedom to adopt appropriate arrangements in a members' agreement the direct equivalent of the familiar partnership deed.¹⁷⁵ Every LLP must prepare annual accounts that report on the financial performance and position of the LLP during the financial year. The first accounting reference period is automatically set as the first anniversary of the last day in the month in which the LLP was incorporated.¹⁷⁶

¹⁷¹ *Id.*

¹⁷² UK LLP Act 2000 *Explanatory Notes*, No. 18.

¹⁷³ Section 10 of the UK LLPs Act (2000).

¹⁷⁴ *Id.*

¹⁷⁵ UK LLP Act 2000 *Explanatory Notes*, No. 13

¹⁷⁶ *LLP Main Characteristics, Key Characteristics of an LLP in the UK* Available at: <https://www.ukincorp.co.uk/limitedliabilitypartnershipstartup/maincharacteristicsoflimitedliabilitypartnerships/>, Accessed on May 23, 2007.

In the UK there are three methods of winding up LLP: member's voluntary winding up, creditors' voluntary winding up and winding up by the court.¹⁷⁷ A voluntary winding up of either type is deemed to commence at the time when the LLP determines that it be wound up voluntarily.¹⁷⁸ Members' voluntary winding up is a solvent winding up under which the designated members make a statutory declaration that, having made full inquiry, they are of the opinion that the LLP will be able to pay its debts in full with interest at the official rate within a period not exceeding 12 months from commencement of the winding up.¹⁷⁹ The statutory declaration must be made within the five weeks immediately preceding the determination by the LLP that it is wound up voluntarily.¹⁸⁰ The declaration must embody a statement of the LLP's assets and liabilities as at the latest practicable date before the making of the declaration. Creditors' voluntary winding up is appropriate where a declaration of solvency cannot be made, and the LLP is wound up as a creditor voluntary winding up. A meeting of the creditors must be called and held within 14 days of the determination by the LLP that it is wound up voluntarily.¹⁸¹ Finally, LLP may be wound up by the Court (compulsory winding up) under any of the following circumstances:¹⁸²

- (a) The LLP has determined that it may be wound up by the Court;
- (b) The LLP is unable to pay its debts.
- (c) The court is of the opinion that it has just and equitable for the LLP to be wound up.
- (d) The LLP does not commenced business within a year from its incorporation or has suspended its business for a whole year;
- (e) The number of members of the LLP falls below two.

In the UK the major corporate insolvency and winding up procedures contained in the Insolvency Act 1986 and its amendments apply to LLPs.¹⁸³ This includes a provision granting the court discretion to order repayment of any withdrawals made by a member of an LLP within the 2 years prior to winding up.¹⁸⁴ This will only apply in the event that the member knew or ought to have concluded that after such a withdrawal there was no reasonable prospect that the LLP would avoid going into insolvent liquidation.

¹⁷⁷ Section 14 of the UK LLPs Act (2000).

¹⁷⁸ Section 86 of UK Insolvency Act (1986), as modified.

¹⁷⁹ *Id.*, Section 89.

¹⁸⁰ UK Limited Liability Partnerships Regulations 2001, Section 89, Subsection (2a).

¹⁸¹ *Id.*, Section 98.

¹⁸² *Id.*

¹⁸³ *Id.*, Section 14.

¹⁸⁴ *Id.*

3.2.3. India

The idea of introducing LLPs in India was floated as long ago as 1957 to the Law Commission of India.¹⁸⁵ However, the suggestion was not accepted by the Commission at that time due to inherent shortcomings of the LLPs which might render the provisions of the Companies Act, 1956 which were recently made stricter.¹⁸⁶ However, it was the Naresh Chandra Committee Report in 2003 that re-introduced the need to start LLPs in the service industry, which, it described, in a legal perspective, as a hybrid between a company and a partnership, but much closer to the private company form.¹⁸⁷ This was soon followed by the recommendations of the J. J. Irani Expert Committee on Company Law in 2005 to enact a separate legislation for LLPs in India, and also to extend the scope of LLPs to the small enterprises.¹⁸⁸ As a result, on November 2, 2005, the Ministry of Company Affairs introduced a concept paper on LLPs with a view to stimulating public debate over ideas, which finally led to the promulgation of the proposed LLP Bill, 2006.¹⁸⁹ On January 7, 2009, the LLP Bill received the assent of the President and was thereafter notified in the Official Gazette in 2009, and the LLP Act was put into force by the Central Government on March 31, 2009.¹⁹⁰

Keeping in view the international business trends where a range of services is being offered by professionals and businesses in the form of LLPs, the Indian Legislature has enacted LLP Act. The Act is broadly based on the UK LLP Act of 2000 and the Singapore LLP Act of 2005.¹⁹¹ Hence, a brief history regarding the legislation of US, UK and Singapore enhanced the understanding for the need for an LLP structure in India.

In India, LLP is governed by LLP Act, 2008 and LLP Rules, 2009.¹⁹² The LLP rules, 2009 contains administrative provisions for the formation, management, reconstruction and winding up of LLPs. The LLP Act on the other hand has provisions starting from the incorporation, conversion to LLP, up to the winding up of the LLP. Detailed emphasis has been given to the role of partners. Their rights and liabilities have been elucidated. It is widely believed that while some more fine-tuning of the LLP Act is required, the LLP Act along with all the related recent

¹⁸⁵ Yeo Hwee Ying, *Supra* note 141, at 392.

¹⁸⁶ See The Law Commission of India, Seventh Report on Partnership Act, 1932, (1957).

¹⁸⁷ *Id.*, at 8.

¹⁸⁸ *Naresh Chandra Committee II, Report of the Committee on Regulation of Private Companies and Partnership, para 3.11, Recommendation 3.1* Available at http://www.llponline.in/naresh_chander_committee.php, (Visited on May 1, 2017).

¹⁸⁹ See Recommendations of the J.J.Irani Committee, Available at http://www.llponline.in/jj_irani_committee.php (Visited on May 1, 2017).

¹⁹⁰ Utsar and Ravi, *Supra* note 14, at 304.

¹⁹¹ *Id.*, at 303.

¹⁹² *Concept Paper on Limited Liability Partnerships*, (Legal Department of Mauritius Financial Services Commission, 2013), at 5.

legislative enactments has genuinely been an additional benefit to Indian business interests. Furthermore, the Central Government can make applicable any provision of Companies Act to LLP with suitable modifications by issuing a notification. Since the time that LLP has been introduced in India, it has become an additional option for entrepreneurs, business owners and investors starting new ventures to incorporate their business as an LLP, instead of a traditional partnership firm or a company.

As per the Act, LLPs are a body corporate and a legal entity separate from its partners with perpetual succession; like a corporation.¹⁹³ There is no upper limit on number of partners in LLP unlike an ordinary partnership firm. Two or more partners are required to form an LLP. Any individual or a body corporate can be a partner in a LLP provided the said person is of sound mind, is not insolvent and has not applied for adjudication for insolvency. In case if individual is a partner, S/he should not be found to be of unsound mind or an undercharged insolvent or a person who has applied to be adjudicated as insolvent and the application is pending.¹⁹⁴ The framework of LLP is not restricted to professional services alone. Several business activities can be undertaken using the LLP structure.

LLP shall have at least two designated partners who are individuals and at least one of them shall be resident in India.¹⁹⁵ In case one or more of the partners of a LLP are bodies corporate at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners. Designated partner is responsible for compliance with the provisions of LLP Act. Such partner is required to obtain Designated Partner Identification Number (DPIN) from the Central Government.¹⁹⁶ Application for allotment of DPIN needs to be submitted online on the LLP website along with the necessary proof duly attested and certified as prescribed.

Procedure for incorporation of LLP is similar to the procedure for incorporation of a company under the Companies Act, 1956. This covers provisions from section 11 to 21 of the Act. Applicants are first required to file the application for reservation of name with the Registrar of Companies (ROC). Once the name applied is approved by the ROC, the documents for incorporation of LLP need to be filed. LLP is required to file with the ROC, the LLP agreement ratified by all the partners within 30 days of incorporation of LLP.

¹⁹³ Section 3(1) of India LLPs Act (2008).

¹⁹⁴ *Id.*, Sections 5 and 6.

¹⁹⁵ It means a person who has stayed in India for minimum 182 days during the immediately preceding 1 year.

¹⁹⁶ Section 7(6) of India LLPs Act (2008).

Mutual rights and duties of partners of an LLP and those of the LLP and its partners is governed by partnership agreement between the partners, or between the LLP and its partners.¹⁹⁷ In the absence of any such agreements, the mutual rights and duties is governed by the LLP Act. Cessation of a partner on grounds like resignation, death, dissolution of LLP, declaration that a person is of unsound mind, declared/applied to be adjudged as insolvent etc. will not be effective unless the person has notice that the partner has ceased to be so or notice of cessation has been delivered to ROC.¹⁹⁸ The notice of cessation may be filed by the outgoing partner if s/he has reasonable cause to believe that LLP has not filed the said notice.

A contribution of a partner to the capital of LLP may consist of any of the tangible, intangible, movable or immovable property, other benefit to the LLP including money, promissory notes, and contracts for services performed or to be performed.¹⁹⁹ The obligation of a partner for the contribution is as per the LLP agreement. Creditor, which extends credit or acts in reliance on an obligation described in the LLP agreement, without the notice of any compromise made between the partners, may enforce the original obligation against such partner.²⁰⁰

While the LLP is a separate legal entity, it is liable to the full extent of its assets; the liability of the partners is limited to the extent of agreed contribution to the LLP. A liability of LLP is met out of properties of LLP. Further, no partner is liable on account of independent or unauthorized actions of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful business decisions or misconduct.²⁰¹ Every partner of a LLP is, for the purpose of the business of LLP, the agent of LLP, but not of other partners.²⁰² However, LLP is not bound by anything done by a partner in dealing with a person if the partner in fact has no authority to act for the LLP in doing a particular act and the person knows that he has no authority or does not know or believe him to be a partner of the LLP.²⁰³ It is liable if the partner of a LLP is liable to any person for wrongful act/omission on his part in the course of

¹⁹⁷ *Id.*, Section 23/1.

¹⁹⁸ *Id.*, Section 24/1.

¹⁹⁹ *Id.*, Section 32/1.

²⁰⁰ *Id.*, Section 33/2/

²⁰¹ *Id.*, Section 27.

²⁰² *Id.*, Section 26.

²⁰³ *Id.*, Section 27/1.

business of LLP/with its authority.²⁰⁴ Partner is not personally liable for the obligations of LLP solely by reason of being a partner of LLP. The liability of the LLP and partners who are found to have acted with intent to defraud creditors or for any fraudulent purpose is unlimited for all or any of the debts or other liabilities of the LLP.²⁰⁵

LLPs maintain the prescribed books of accounts relating to its affairs on cash or accrual basis and according to the double entry system of accounting.²⁰⁶ Every LLP is expected to prepare a statement of account and solvency for the said financial year within a period of six months from the end each financial year.²⁰⁷ The statement is signed by the designated partners of the LLP. The accounts of the LLP is also required to be audited, except in situations provided by the law in relation with the amount of turnover in a given financial year or contribution. Central Government has powers to exempt certain class of LLP from requirement of compulsory audit.²⁰⁸

The rights of a partner to a share of the profits and losses of the LLP and to receive distribution in accordance with the LLP agreement are transferable, either wholly or in part.²⁰⁹ However, such transfer of rights does not cause either disassociation of the partner or a dissolution and winding up of the LLP. Such transfer of right, does not, by itself entitle, the assignee or the transferee to participate in the management or conduct of the activities of the LLP or access information concerning the transactions of the LLP.²¹⁰

The Indian LLP Act, 2008 is silent regarding taxation of LLPs. The reason for this is, as the taxation concerns of other entities such as a company or a partnership instead of being dealt with by the Companies Act, 1956 or Indian Partnership Act, 1932 are rather dealt with by Income Tax Act, 1961. Therefore, it was inevitable that LLP Act would be silent on the issue of tax implications for an LLP. So far as the tax treatment is concerned, LLP is treated as a general partnership. Section 10(23) of the Indian Income Tax Act states that ‘firm’ shall include LLP, ‘partner’ shall include partner of LLP and ‘partnership’ shall include LLP. Hence, all the

²⁰⁴ *Id.*, Section 27/2.

²⁰⁵ *Id.*, Section 30/1.

²⁰⁶ *Id.*, Section 34/1.

²⁰⁷ *Id.*, Section 32/2.

²⁰⁸ *Id.*, Section 32/4.

²⁰⁹ *Id.*, Section 42.

²¹⁰ *Id.*, Section 42/3.

provisions concerning taxation of general partnership firms would apply *mutatis mutandis* to LLPs. This means that income tax would be levied on the profits of the LLP and such profits would be taxable in the hands of the LLP itself. Profits flowing from the LLP to the individual partners would not be includible in computing the total income of the partners liable for tax in terms of the provisions of Section 10 of the Income Tax act, 1961.²¹¹ The profits from the LLP which the partners obtain will not be computed for their personal income as it will be considered as ‘business income’ which is within the scope of a ‘deduction’ for computing income.²¹²

The winding up of an LLP may be either voluntary or by the National Company Law Tribunal (NCLT) and LLP, so wound up may be dissolved.²¹³ The winding up procedure broadly follows that applicable to a company and there is no concept of dissolution in the sense encountered under partnership law.²¹⁴ Besides, the obvious grounds of financial insolvency, decision of the LLP to be wound up, continuance for more than six months as a single-partner LLP, acting against the sovereignty, integrity or security of India, failure to file Statement of Account and Solvency, the power to wind up on the ground that “it is just and equitable” to do so, has been reserved with the NCLT.²¹⁵

Further, the Central Government has been empowered to make further rules thereby ensuring an easier process for winding up as compared to the complex procedures involved in the winding up of a company.²¹⁶ Pursuant to this, the LLP (Winding up and Dissolution) Rules, 2010²¹⁷ have been notified by the Central Government, which deal with the procedure for both voluntary and non-voluntary winding up.

The Rules in addition to voluntary winding up and winding up by the NCLT, provides for winding up by the creditors. An LLP may be wound up by its creditors if it is unable to pay its debts. However, if an LLP ceases to operate, and if it is not wound up as prescribed under the

²¹¹ Sachdeva Amit et. al. *Supra note* 18, at 8.

²¹² *Id.*

²¹³ Dr. Ashok Sharma, *Company Law and Secretarial Practice, V.K. (India) Enterprise* (2011), 289.

²¹⁴ Section 63 of Indian LLP Act.

²¹⁵ Utsar and Ravi, *Supra note* 14, at 312.

²¹⁶ Section 64 of Indian LLP Act.

²¹⁷ *Id.*, Section 65.

rules, then its name can also be struck off the Register of LLPs. This method is called striking off and it is an alternative to the process of winding up of the LLP.²¹⁸

3.2.4. Singapore

In Singapore, the emergence of LLP is traced back to the 1997-1998 Asian financial crises which prompted the Singapore Government to embark on a systematic overhaul of the nation's economic infrastructure.²¹⁹ In December 1999, the Company Legislation and Regulatory Framework Committee (CLRFC) was appointed by the Ministry of Finance, Attorney-General's Chambers and Monetary Authority of Singapore to undertake a comprehensive and coherent review of company law and regulatory framework and recommend a modern company law and regulatory framework for Singapore which accords with global standards and promote a competitive economy.²²⁰ One of the major proposals put forward by the CLRFC in October 2002 was to introduce new business structures in order to offer market players more options in deciding how they want to structure their businesses.²²¹ The Study Team set up to formulate the legal framework for the new business structures thus asserted at the outset that their deliberations were guided by the CLRFC's recommendation to model the Singapore LLP Act. Finally, the Singapore LLP Act 2005 was passed by parliament on 25 January 2005 and came into effect on April 11, 2005.

The new business entity is a body corporate formed by being registered under the Act and is a separate legal entity from its partners.²²² This provision has clearly been extracted from section 1(2) of UK LLP Act where their LLP entity is unambiguously portrayed as a corporate vehicle. It is incorporated by being registered under the Act and has perpetual succession.²²³

Any change in the partners of a LLP shall not affect the existence, rights or liabilities of the LLP.²²⁴ It has full capacity to *inter alia*, own property, enter into contracts, sue and be sued in its own name, and perform such other acts and things as bodies corporate may lawfully do.²²⁵ Furthermore, many of the provisions incorporated into Singapore LLP Act have been derived

²¹⁸ Utsar and Ravi, *Supra note 14*, at 313.

²¹⁹ YEO Hwee Ying, *Nature and Liability Shield of Limited Liability Partnerships in Singapore* (National University Singapore, 2007), 409.

²²⁰ *Consultation Paper prepared by CLRFC*, October 2001, 1, Available at http://www.saicsa.org.sg/documents/clrfc_consultation_paper231001.PDF (Accessed on June 16, 2017).

²²¹ YEO Hwee Ying, *Supra note 219*, at 410.

²²² Section 4 of the Singapore LLPs Act (2005).

²²³ *Id.*, Section 4(2).

²²⁴ *Id.*, Section 4.

²²⁵ *Id.*, Section 5.

from the Singapore Companies Act. For instance, provisions relating to accounts and audit,²²⁶ restrictions of undercharged bankrupts acting as managers (section 23 of Singapore LLP Act)²²⁷ and disqualification of managers are copied from the Companies Act.²²⁸ Additionally, the Fourth and Fifth Schedules of the Act have made extensive references to the Singapore Companies Act on issues concerning receivership and winding up. Hence, the LLP conceived by statute is apparently more akin to a corporation rather than to a partnership. However for tax purposes it is treated like a general partnership, so that the partners rather than the partnership are subject to tax.

It is evident from this provision that the act has opted for complete shield protection and innocent partners or members of the LLP are accordingly protected for tortuous as well as commercial contractual obligations in the course of business. An obligation of a partnership incurred while the partnership is a LLP, whether arising in contract, tort or otherwise, is solely the obligation of the partnership.²²⁹ A partner is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment or otherwise, for such an obligation solely by reason of being or so acting as a partner. Where a member of a LLP is liable to any person as a result of a wrongful act or omission in the course of the business of the LLP or with its authority, the LLP itself is liable.²³⁰

In Singapore, any individual or body corporate may be a partner in an LLP and it is open to all types of business. It is required at all times to have at least two partners, with the exception that if the LLP is left with only one partner, the remaining sole partner is given a grace period of up to two years to find a new partner.²³¹ If the LLP continues with less than two partners for more than two years, the remaining sole partner assumes unlimited liability and is vulnerable to winding-up by the courts. LLP also gets wound up voluntarily.

The LLP is required to keep such accounting and other records as will sufficiently explain the transactions and financial position of the LLP. The LLP is not required to prepare profit and loss account or balance sheet or to have them audited if they were prepared.²³²

²²⁶ Section 25 of Singapore LLP Act *cf* Section 199 of Singapore Companies Act.

²²⁷ The LLP manager performs a role similar to the company director; hence, these LLP provisions are borrowed from Singapore Companies Act and applied *mutatis mutandis*.

²²⁸ Section 34-36 of Singapore LLPs Act, *cf* Section 149 and s 154 of Singapore Companies Act.

²²⁹ Section 8 of Singapore LLPs Act.

²³⁰ *Id.*, Section 6(4).

²³¹ *Id.*, Section 22.

²³² *Id.*, Section 25.

In general, the 2005 Singapore LLP Act is an eclectic mixture of provisions, arguably given rise to a business structure that can be considered a novel corporate business vehicle somewhat different from its US predecessor and bearing a stronger resemblance to its UK counterpart.

3.3. The Need for LLPs in the Ethiopian Legal System

The question of establishing a partnership arises when a person who has dealt with a business seeks to make another person liable as a partner in that business. It is about recovery of a debt from a person on the basis of the fact that s/he is a partner. Such a person may be liable as a partner either because of a financial and managerial interest in the business, which makes him/her a true partner, or because, without actually being a partner, s/he has been represented as a partner to the third party.²³³ The second situation is the insider question which arises when one person seeks to enforce a duty or obligation on another on the basis of the fact that they are partners with each other and such duties or obligations will not otherwise apply if there is no partnership.²³⁴

In an increasingly litigious environment, the prospect of being a member of a partnership firm with unlimited personal liability is a very risky affair and hence unattractive.²³⁵ Indeed, this is the prime reason why partnership firms have not grown in size to successfully meet the challenges posed today by international competition. As a result, we need to seek new form of business venture that can achieve the principal benefits of both partnership and company. Primarily, it aims at freeing the mind of members from the fear that his/her personal assets may be attached for the negligent and other wrongful acts of his copartners, over whom he has no control.²³⁶

This can be realized by providing the shield of limited liability by way of a separate legal personality. The other purpose of recognizing the new concept of LLP is to confer the same organizational freedom from compliances as are available to companies. Additionally, an LLP is also conferred the same status as a conventional partnership for tax purposes, by following the flow-through²³⁷ system, so that the tax incidence does not act as a disincentive against this form of organization.

²³³ Geoffrey Morse, *Supra note 31*, at 320.

²³⁴ *Id.*

²³⁵ Shreyas Jhaveri & Vinita Sithapathy, *Limited Liability Partnership: An Insight*, (Mumbai University: June 2006), 6.

²³⁶ Hamilton, *Supra note 102*, at 1066.

²³⁷ Partnership income is taxed at the member level rather than at the entity level. The partnership's income (loss) for the year is attributed to individual partners, who then pay tax on their share of the income or deducts their share of the loss from their income from other sources.

In general, introducing LLP as a new form in to Ethiopia's legal system would be quite useful for both SMEs and businesses in services sector, including professionals and knowledge based enterprises. In other words, it enables professionals and SMEs to combine with financial risk taking capacity in an innovative and efficient manner. The following sets of principles provide reasons for recognition of the new concept in to our Ethiopia's corporate system.

3.3.1. The Theory of Legal Personality

By acquiring separate legal personality, an LLP has a capacity to do several juridical acts such as but not limited to holding property, entering into contracts, suing and being sued. Due to its status, changes in the membership of an LLP (the entry and exit of the partners) do not affect its continued existence.

Therefore, the LLP is a legal entity separate from that of the partners of the LLP, and with its own rights and liabilities distinct from those of the partners. The LLP structured as a legal entity separate from the partners of the LLP effectively shelters the individual partners from personal liability for the acts of another partner carried out in the course of business and for the debts and liabilities of the LLP.

Thus, an LLP being a separate legal entity is liable for an obligation arising in contract or otherwise and the liabilities of the LLP shall be met out of its property. So, legal claims can only be made against the LLP and not the members. Creditors are limited to the assets of the business and cannot pursue the personal assets of the partners except in the cases of wrongful acts or omissions carried out or occur in his/her role as a partner. LLPs set limits on the personal liability that can be placed on any partner, sparing their personal assets from collection attempts. Should a lawsuit be filed against a LLP, the LLP is viewed as a distinct legal entity that is separate from the partners who form it. So, judgments rendered against the LLP do not carry over to the personal assets of the partners.

3.3.2. The Theory of Limited Liability

All partners in an LLP enjoy limited liability from business obligations and wrongdoing by the other partners. This is particularly important for professionals so that one professional in the

partnership is not held responsible for malpractice committed by another partner and is mostly appropriate for a partnership where some partners are not actively involved in the business.²³⁸

The Members of an LLP act as its agents not of other members and only have liability up to the amount they have contributed to the LLP, in particular their capital contribution and undrawn profits.²³⁹ This is a significant advantage over a conventional partnership where the partners generally have unlimited liability. However, there are certain circumstances in which the personal liability of a member may be extended. These include:

If a member is negligent and a third party suffers loss as a result, then the third party could try to take action against that individual member as well as the LLP. However, any such action would undermine the principle of limited liability. In cases of negligence, the innocent members of the LLP will have their liability limited to the extent of their stake in the firm (although the liability of the firm and the negligent partner will be unlimited). Members of the LLP are agents, but the LLP is not responsible for members' actions where the member has no authority to act for the LLP and the third party is aware of this or does not know that the person is in fact a member of the LLP.²⁴⁰

Wrongful and fraudulent trading provision is another circumstance that makes members personally liable.²⁴¹ This happens if the members allowed the LLP to continue trading after they knew or ought to have known that it had no reasonable prospect of avoiding insolvency or allowed it to continue trading with a view to defrauding creditors, they may be personally liable. The degree to which each member was involved and control the business will both be relevant.

In general the limited liability theory states that a partner of a LLP should not by reason only of being a partner of the LLP be held personally liable for the conduct of other partners of the LLP or the transactions of the LLP. In the event that the LLP becomes insolvent, a partner's liability for the transactions and liabilities of the LLP is limited to the amount of his capital contribution to the LLP subsisting at the time.

²³⁸ *Concept Paper on Limited Liability Partnerships*, (Legal Department of Mauritius Financial Services Commission, 2013), at 12.

²³⁹ *LLP Main Characteristics, Key Characteristics of an LLP in the UK* Available at: <https://www.ukincorp.co.uk/limitedliabilitypartnershipstartup/maincharacteristicsoflimitedliabilitypartnerships/>, Accessed on May 23, 2007.

²⁴⁰ Armour Douglas, *Supra note* 12, at 2.

²⁴¹ *Concept Paper on Limited Liability Partnerships*, (Legal Department of Mauritius Financial Services Commission, 2013), 15.

3.3.3. The Theory of Perpetual Succession

This theory indicates the continuation of a corporation's or other organization's existence despite the death, bankruptcy, change in membership or an exit from the business of any owner or member, or any transfer of stock, etc.²⁴² According to this principle:

- a) any change in membership of a business does not affect the status of the business,
- b) death, insolvency, incapacity etc. of any member of a business does not affect the continuity of the business. Thus the life of the business organization does not depend upon the life of its members.
- c) it shall continue forever irrespective of continuity of its members or directors, except in case of winding up or liquidation of a company.

A LLP is a juristic person and its existence does not depend on the partners. The partners of a LLP may keep changing from time to time but it will not affect the LLP's continuity. The objective of this theory is to create in the LLP a business structure which confers limited liability for its investors or partners while allowing them to retain the flexibility of operating the LLP as a partnership firm and which has perpetual succession. This is consistent with the doctrine of separate legal entity that accords LLPs perpetual succession.²⁴³ However, a LLP can be voluntarily dissolved by its partners or by a court order for good cause.

3.3.4. Organizational Flexibility

An LLP has the organizational flexibility of a partnership and the provisions dealing with the day to day running of the LLP will normally be contained in a written LLP agreement. In most countries and jurisdictions analyzed in the previous chapter, an LLP have at least two designated members that have particular responsibilities and functions within the LLP which closely reflect those duties that would normally be carried out by a director or secretary of a company. Beyond this, the LLP management structure provides a lot of flexibility to the partners with respect to complying with statutory norms.²⁴⁴ For instance, since LLPs are governed by the partnership agreement, it is possible for the LLPs to provide suitable clauses in such agreement to fix the time limits for the duration of the LLP in the agreement. In such cases, after realization of the

²⁴² [https://en.wikipedia.org/wiki/Perpetual succession](https://en.wikipedia.org/wiki/Perpetual_succession)

²⁴³ Mohammad Rizal Salim, *Supra note 48*, at 5.

²⁴⁴ *Id.*, at 7.

objectives of the venture, the LLP could either be wound up, or the provisions for striking-off of the name of the LLPs can be used, instead of the winding up provisions.²⁴⁵

Another most beneficial aspect of the LLP structure in different jurisdictions is that mandatory auditing of the LLP is not required, assessment is based on the amount of turnover of the LLP in a given financial year or contribution. However, even where mandatory audit of the accounts of the LLP is not required, the partners can optionally choose to get the accounts of the LLP audited.²⁴⁶

Partners can enter and leave the LLP easily without collapsing the structure. Moreover, there is usually no legal requirement to have board meetings, or make decisions by committee as the internal workings of the LLP are left to the discretion of its Partners. This facilitates informal and flexible decision making.

3.3.5. Taxation Aspects of LLP's

In relation to tax, a LLP is similar to a conventional partnership; namely, it is tax transparent, that is to say it pays no corporation tax or capital gains tax. Thus, LLP is liable for payment of income tax and share of its partners in LLP is not liable to tax. Thus no dividend distribution tax is payable. Provision of 'deemed dividend' under income tax law, is not applicable to LLP. Instead, LLP income and/or gains are distributed gross to partners as self employed persons, rather than as Pay As You Earn (PAYE) employees.²⁴⁷ Partners receiving income and/or gains from an LLP are liable for their own taxation. Members of an LLP are usually treated as being self-employed for tax purposes in the same way as sole traders or partners in conventional partnership, and so do not receive a salary from which tax is deducted through PAYE. Instead they pay tax under the tax self-assessment system.

In many jurisdictions, LLPs enjoy a pass through²⁴⁸ status for the purposes of taxation. The profits or losses of the LLP pass through the business and are reported on each partner's personal returns. This study also recommends the same pass through status for LLPs to be introduced to

²⁴⁵ Utsar Gandhi and Ravi Thankur, *Supra note 14, at 306.*

²⁴⁶ *Id.*

²⁴⁷ Employees' tax refers to the tax required to be deducted by an employer from an employee's remuneration paid or payable. The process of deducting or withholding tax from remuneration as it is earned by an employee is commonly referred to as PAYE.

²⁴⁸ Pass-through has similar meaning with flow-through system in which partners of a business pay taxes on income derived from that business on their personal income tax returns.

our legal system. Accordingly, a LLP should be tax transparent and the partners should be taxed on their share of the income or gains of the LLP according to their personal income tax rates.

There are two popular models for taxation of LLPs which are used in various foreign jurisdiction namely, the French Model and the other being UK and Singapore LLP Model. In the French Model, the LLP is treated as a fiscally transparent entity and merely the income of the partners are taxed and not the transparent entity.²⁴⁹ Whereas in the UK, India and Singapore LLP models, the practice is to accorded similar treatment to an LLP as a Partnership, i.e., to treat an LLP at par with a conventional partnership, so far as the tax treatment is concerned. Hence, all the provisions concerning taxation of a conventional partnership firms would apply *mutatis mutandis* to LLPs. This means that income-tax is levied on the profits of the LLP and such profits would be taxable in the hands of the LLP itself. Profits flowing from the LLP to the individual; partners are not includible in computing the total income of the partners liable to tax. The profits from the LLP which the partners obtain will not be computed for their personal income as it will be considered as ‘business income’ which is within the scope of a ‘deduction’ for computing income. The remuneration paid to the partners will not be allowed as deductions on their personal income. Further, any contribution of capital assets by a partner to his/her LLP or distribution of such assets by the LLP to any partner, will be considered to be income of the partner and LLP respectively, and will be subject to income tax.²⁵⁰

As any other business entity, a LLP and each individual member must be registered for tax self-assessment with related custom and revenue authority. As in other jurisdictions that recognize the new concept, LLPs would be responsible for keeping the business records and managing the partnership's tax returns and all members have to prepare their self-assessment tax returns accurately and on time.

The partners can retain and share any profits that remain after payment of tax. However, even though it is a separate legal entity, the partnership does not have a separate tax liability in addition to the partners' personal tax liability. There are certain circumstances in which some members of LLPs are taxed as employees rather than as self-employed individuals. This relates

²⁴⁹ Sen Nivedita et. al. (2011), “*Decoding the Business Vehicle of India: The Limited Liability Partnership*” *NUJS Law Review*, Vol. 4 (Oct-Dec), 683.

²⁵⁰ Savla Paras (2009), “*LLP and Partnership*”, *Income Tax Review*, Vol 4 No. 35, at 38 and 39.

to 'disguised salaries' where an individual member's terms and conditions are effectively that of an employee and they do not contribute to the management of the LLP.²⁵¹

In Ethiopia partnerships is not explicitly regulated by the income tax laws. Since partnerships are treated as entities, they are subject to the flat tax rates just like companies under Ethiopian Income Tax Laws.²⁵² But the profits distributed by partnerships are not subject to dividend withholding tax.

In general, LLP is taxed similar to a business formed under the conventional partnership and sole proprietorship organizational structures by a process called pass-through taxation. The profits of the LLP are not taxed at the level of the LLP 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 levels.

²⁵¹ An introduction to limited liability partnerships | Formations Factory <https://www.formationsfactory.co.uk/resources/guides/limitedliabilitypartnership>, Accessed on June 26, 2017.

²⁵² Taddese Lencho, *The Ethiopian Income Tax System : Policy, Design and Practice*, (Phd Dissertation, University of Alabama: 2014, Unpublished), 369.

CHAPTER FOUR

4. INTRODUCING LIMITED LIABILITY PARTNERSHIPS (LLPs) INTO THE ETHIOPIAN LEGAL SYSTEM

4.1. Introduction

As we have seen in the previous chapters, LLP is a relatively recent legal institution. It has been widely received in most countries of the world. The sudden emergence of new limited liability vehicles suggests a revolution in the law of limited liability. However, when placed in historical perspective the developments in the field can be seen as more evolutionary than revolutionary.²⁵³ In the sense that limited liability has existed as long as commerce has existed although it did not have legal recognition *per se*. People associated in business activities have always sought to eliminate, minimize and shift their losses and liabilities. Often those efforts have been reflected in the development of associational relationships, grounded in contract or law that bear a striking resemblance to modern forms of business associations.

The legal structure of a business is one of the most important decisions to make in the startup process. Each type of business entities has its own pros and cons. A choice of a business structure can greatly affect the way to run a business, impacting everything from liability and taxes, to control over the business. The key is to figure out which type of entity gives the most advantages when it comes to helping to achieve organizational and personal financial goals. The privilege of limited liability for business debts is one of the important criteria for choosing a form of business organization. In connection to this, doing business in the form of a company is becoming common since the liability will not extend to the private property of the shareholders. Accordingly, SCs and PLCs have limited liability as per the Ethiopian Commercial Code.²⁵⁴ Partnership form of business structure on the other hand makes a partner liable for the poor economic decisions or unethical behavior of another partner. Only limited partner in a limited partnership enjoy the privilege of limited liability so long as they do not participate in the control and management of the partnership.²⁵⁵

²⁵³ Robert W. Hillman, *Limited Liability in Historical Perspective*, Washington and Lee Law Review, Volume 54/Issue.2, article date 3-1-199, 615.

²⁵⁴ Art. 510 (1) and 304 (1) of Ethiopian Commercial Code.

²⁵⁵ William F. Griffin, Jr. Davis, Malm & D'Agostine, *Supra note* 88, at 4.

Recently, Ethiopia has also included the new concept of LLP as one form of business organization by omitting ordinary partnership.²⁵⁶ Under explanatory note²⁵⁷ of the new draft, Ordinary Partnerships are left to be regulated by special law namely charities and Societies proclamation No. 621/2009. The justification for incorporating this new business entity is to enable various professionals in the service industry to organize themselves under an independent and separate business structure. As per the new draft of the Commercial Code every professional person who holds a license from authorized organ can organize in the form of LLP.²⁵⁸ Thus, the profit to be shared between partners is not based on the capital contribution but service to be rendered by the partnership. As indicated on the explanatory note, the main justification provided for introducing the new concept of LLP under the new draft is the benefit of limited liability and perpetual succession.²⁵⁹ In case of professional fault on the part of a partner, the liability is limited to the partner at fault.²⁶⁰ This typical partnership form will not be dissolved due to death, incapacity and bankruptcy of a partner.²⁶¹

From among the regions in Ethiopia, the Regional State of Oromia also enacted a new law allowing advocates to organize themselves as LLOP. It's formulated for advocates and paralegals practicing in the Region. The detail about the Oromia proclamation will be discussed below under separate section.

4.2. Background and Nature of Ethiopian Corporate Law

Business in organized form has its beginning in Ethiopia during Emperor Menilik's reign.²⁶² For instance, the Ethio – Djibouti Railway Company is established in 1894. However, small and few firms were in the hands of foreigners who were residing in the Empire. In 1905, the Bank of Abyssinia, which was established at Addis Ababa as a branch of the National Bank of Egypt,

²⁵⁶ The former Ethiopian Justice Ministry (currently known as the Ethiopian Federal Attorney General) has come with the new draft of the commercial code. Accordingly, ordinary partnership is omitted from the list of business organization due to non-commercial nature of the business venture and the new concept of LLP is added under Book II Title IV.

²⁵⁷ The *explanatory note* is prepared by group of experts setup by the Former Ministry of Justice on each books of the draft of the Commercial Code.

²⁵⁸ See generally Book II Title IV of the Draft Commercial Code.

²⁵⁹ See *Explanatory note* prepared by group of experts setup by the Former Ministry of Justice on each books of the draft Commercial Code.

²⁶⁰ See generally Book II Title IV of the Draft Commercial Code.

²⁶¹ *Id.*

²⁶² Tsegaw, E. (2016), *The Legal Status of State-Owned Share Companies in Ethiopia*. *Beijing Law Review*, 7, 12-22. Available at: <http://dx.doi.org/10.4236/blr.2016.71002>. Accessed on June 23, 2007.

was in turn an English company. In 1909, however, a private share company was established under the name of Agricultural and Commercial Development Company of Ethiopia. It was incorporated by a proclamation by Emperor Menelik II.²⁶³

The principles of the company were incorporated in the Law of Companies of 1933 and later in the Commercial Code of 1960. That was actually the beginning of Ethiopian company law.²⁶⁴

Towards the end of and after the reign of Menelik II, some more number of foreign companies authorized to do business in Ethiopia were granted concessions.²⁶⁵ Thus, the Law of Companies of 1933 was promulgated to regulate these companies. After 1933, what has progressed a little was soon interrupted by the Italian invasion and occupation of Ethiopia.²⁶⁶

In Ethiopia, the power to enact a commercial code belongs to the Federal Government.²⁶⁷ The existing code governing the commercial life of the society has not been touched for over half a century. Though, several attempts have been made by different organs to amend the code since 2008, but other than partial amendments that affected only some businesses, nothing substantial had ever been passed. This research paper is necessitated to bridge the wide gap and limitations that prevail between the existing law and the government's policy, strategy and societal commercial reality.

The enactment of the 1960 Ethiopian Commercial Code marked the development of Ethiopian commercial law. As stated in the prefatory note, it was motivated by the necessity of addressing the complex methods of transacting business due to the then expansion of commercial life and the increasing number of Ethiopian and foreign companies.²⁶⁸ Despite its limited practical applicability, the code marked the beginning of Ethiopia's modern corporate law that helps businesses in the private sector to play their roles in the national economy.²⁶⁹ During the period when Ethiopia was Socialist (1975-1991) running a private business was almost prohibited and those established before the period were nationalized and controlled by the State. After the fall of the Derg regime, the then Transitional Government of Ethiopia issued a liberalized market-

²⁶³ Abera Jembere, *Introduction to the Legal History of Ethiopia: 1434- 1974* (African Studies Center, Laiden, 2000) 111.

²⁶⁴ Tsegaw, *Supra note 262*, at 13.

²⁶⁵ *Id.*,

²⁶⁶ Selamu Bekele, *Private Commercial Companies under Ethiopian Law*. (Addis Ababa, H.S.I. University, 1966), 1.

²⁶⁷ Constitution of the Federal Democratic Republic of Ethiopia, 1995, Federal Negarit Gazette, 1st Year, No.1, Art. 55/4. Herein after referred as "the FDRE constitution".

²⁶⁸ See the prefatory note of the Commercial Code of Ethiopia (1960).

²⁶⁹ Jetu Edosa, *Introducing Single Member Companies in Ethiopia Major Theoretical and Legal Considerations*, (Unpublished Master's Thesis, College of Law and Good Governance Studies AAU, 2014), 83.

oriented economic policy which was basically aimed at gearing the economy towards revival and sustained growth.²⁷⁰

In Ethiopia, businesses may be set up in the form of sole proprietorships, partnerships, companies, public enterprises and cooperative societies.²⁷¹ There are four types of partnerships recognized under Ethiopian law.²⁷² These are ordinary partnership, general partnership, limited partnership and joint venture. Partnerships should be formed by a partnership agreement and registration is a prerequisite for a partnership to obtain legal personality. However, these requirements do not apply to joint ventures which have no legal personality.²⁷³ Partners are liable jointly and severally for the activities of a partnership except for limited partners in a limited partnership. Only limited liability companies could take the form of a SC or a PLC.

The main objective of law of business organization is to provide an alternative business structure and the end goal is to enable the business community to select and use the most convenient one based on their interest, capital strength and relationship between partners.²⁷⁴ The current commercial law needs to be updated to satisfy these goals.

4.3. Background and Nature of Partnerships Law in Ethiopia

A partnership is a business relation which exists between two or more persons who need to work together. In so far as intimate personal collaboration is expected of each partner, only persons who know each other very closely may enter into a partnership agreement giving rise to a partnership firm. Their main purpose is to create a convenient condition to work together for families, friends with special relationship not only to gain profit but also to support each other.²⁷⁵ Consequently, partnerships are suitable for small businesses involving a relationship of mutual trust and confidence and invitation for membership is made depending on the identity of special relationship that exists in between them.

The partners are at liberty to decide on the terms of their own relationship and may choose almost any conditions they wish as long as they are agreed on by all of the partners. Thus, in a partnership firm, of paramount importance is personality of the individual partner. This is so, because incapacity, insolvency, death, or serious disagreement between partners may result in

²⁷⁰ Ethiopian Investment Authority (1992). *A profile on Private Investment in Ethiopia*, Review. 11,12.

²⁷¹ Investment Proclamation No. 769/2012, *Federal Negarit Gazeta*, 17th year, No. 63, Art. 10.

²⁷² Commercial Code of Ethiopia, Art. 212 (1a-d).

²⁷³ *Id.*, Art. 210 (2).

²⁷⁴ ፌዴራል ኢንቨስትመንት ግ/መስቀል፣ የኢትዮጵያ የኩባንያ ስርዓት (2ኛ ዕቅድ፣ 2008 ዓ.ም)፣36.

²⁷⁵ *Id.*, at 42.

dissolution of the partnership firm.²⁷⁶ This is similarly applicable to all four types of partnerships as per article 260 (1), 278 (1h), 295 and 303 of Ethiopia Commercial Code. Hence, the length of existence of the partnership firm is generally considered as contingent.

In partnership forms of business, each partner has unlimited liability (except limited partners in Limited Partnership) for the debts incurred by the business. Limited Partnerships consists of one or more members known as 'general partners', who are liable for all the debts and obligations of the partnership, and one or more members who are called 'limited partners' and as such are not 'active' in the day to day business of the partnership. The 'limited partners', who contribute a fixed sum to the partnership as capital when they become partners, are not liable for the debts of the partnership beyond that amount as long as they did not participate in management.²⁷⁷

In addition, a partner cannot transfer or assign his interest in the firm to an outsider or a third party and make the transferee or assignee a partner without the consent of all the other partners.²⁷⁸ In other words, a partner can transfer his share in the firm, but the assignee does not thereby become a partner and is merely entitled to the assigning partner's share of the profits.

4.4 Nature of LLPs

The main objective of this study is to introduce business structure which confers limited liability on its investors or partners while allowing them to retain the flexibility of operating the business as a partnership firm and with some characteristics of company form. Therefore, the LLP is an appropriate legal venture that can offer both the benefits of a partnership and a company. It provides separate legal entity, limited liability and perpetual succession. The LLP which is structured as a legal entity separate from its partners, effectively shelters the individual partners from personal liability for the acts of another partner carried out in the course of business and for the debts and liabilities of the LLP.²⁷⁹

4.4.1 Nature and Extent of Liability of a Partner in an LLP

The extent of limited liability given to partners in an LLP varies from one jurisdiction to another jurisdiction depending on a particular country's legislation. In terms of liability jurisdictions with

²⁷⁶ Commercial Code of Ethiopia, Art.218 (2).

²⁷⁷ *Id.*, Art.296.

²⁷⁸ Article 250, 274 (2), 282 (1) and 303 of the commercial code provides in the same manner for all four types of partnership. However, Shares of a Company are freely transferable and can be sold or purchased in the share market. This is one of the reasons why people prefer to form companies than partnerships.

²⁷⁹ Denise Fletcher (Prof) *et al*, *Understanding Limited Liability Partnerships in Small and Medium-Sized Business Sector* (ICAE, 2013), 8.

LLPs fall into two categories: Full shield or Partial shield.²⁸⁰ *In full shield jurisdictions*, the liability protection afforded to partners extends to all claims against the partnership, whether based on malpractice, breach of contract or general tort liability.

In partial shield jurisdictions on the other hand, the liability protection afforded to partners extends only to malpractice liabilities incurred in normal course of business operations of the partnership, leaving the partners exposed to contractual claims against the partnership. It protects the partner from liability of the partnership arising from other employees of the partnership in the provision of professional services. The specific acts that are covered by a partial shield are negligence, wrongful acts or omissions. This protects the partners from contractual and all other claims against the partnership. Moreover, partners may be held liable for inadequate control over their subordinate employees if they cause the firm to suffer a liability.

The new draft of the Ethiopian Commercial Code opts for the partial shield protection.²⁸¹ As a result, members of the partnership or employees are jointly and severally liable for damage caused due to professional fault or negligence by themselves or employees under their control. In other cases, the partnership is held responsible for liabilities arising from contract or in all other cases.

4.5. The legal structure for LLP

Not all businesses will benefit from trading via LLP and it is very much dependant on the individual circumstances of the business. Some jurisdictions restrict the adoption of LLPs to licensed professionals, whilst some have LLPs available to all types of businesses. The new draft of the Commercial Code chooses the first option as it restrict the formation of LLPs for professionals in the service sector.²⁸²

As certain professional firms were not allowed to operate other than as partnerships and these partnership formats failed to protect the personal assets of partners, this issue was of great concern. It is commonly perceived that the new form of the LLP is distinctive in that it affords a measure of protection akin to that provided to shareholders of a companies.

It should be noted here that economic activities are not only those that are listed under Article 5 of the Commercial Code. Article 5 provides exhaustive and restrictive lists of commercial

²⁸⁰ Alison Oxtoby, *Understanding and Working with Limited Liability Partnerships*,(2006), 3.

²⁸¹ *See generally* Book II Title IV of the Draft Commercial Code.

²⁸² A Policy document, *Supra note* 13, at 15.

activities. However, the concept of commercial activities is narrower than economic or business activities. As per article 10 of the Commercial Code, the nature of business organization depends on object (as indicated in Memorandum of association or factual activity) and form of business structure.²⁸³ Therefore, a business dichotomy of LLPs should be considered based on the activities to be undertaken by such partnerships.

The LLP form of business organization would enable entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operations, the LLP is also a suitable vehicle for small enterprises and for investment by venture capital.²⁸⁴ It also provides with the financial protection of a firm and the tax efficiency and flexible nature of a traditional unincorporated partnership. This is particularly beneficial for service rendering professionals such as advocates, accountant, architects, doctors and etc.

In Conventional Partnerships, the unlimited liability of the partners is an increasing cause of concern in light of general increase in the incidence of litigation for professional negligence; and the size of claims and the risk to a partner's personal asset when a claim exceeds the sum of the assets of the partnership. The unlimited liability of the partners has been the chief reason why partnership firms have not grown in size to meet the challenges posed by international competition.²⁸⁵

Their inherent flexibility means that LLPs are likely to prove a popular choice in a number of different commercial scenarios. Professional service firms that have historically structured themselves as partnerships will be attracted by the limited liability and flexible management arrangements afforded to members of an LLP.²⁸⁶ Similarly LLPs are likely to prove popular for real estate joint ventures and other investment ventures where participants will be attracted by the ability to take an active part in the management of the LLP and its investments without giving up their limited liability. Indeed, the ability to tailor the economics of LLPs will also make them attractive as simple asset holding vehicles, even in the absence of any active investment management. It is this flexibility that makes LLPs such an exciting new business structure in Ethiopia's legal landscape. For this reason, the recent draft of the commercial code

²⁸³ Commercial Code of Ethiopia, Art. 10(1,2) cum. 213(1).

²⁸⁴ CA. Rajkumar S. Adukia, *Limited Liability Partnership (LLP) Forms of Business Organization* 2009, 2.

²⁸⁵ *Id.*

²⁸⁶ Carey Olsen, *Introduction of Limited Liability Partnerships in Guernsey*, (2012), 5.

deleted the provision of commercial code concerning Ordinary partnership²⁸⁷ and came up with LLPs.

4.5.1. LLP for Professionals

Entrepreneurs who wish to do business had to register themselves as sole proprietors to render professional services. Introducing an alternative business vehicle which offers a hybrid characteristic of both a traditional partnership firm and a company is advantageous both for professionals and clients. Formation of such business firm is typically considered by professional groups, such as lawyers, architects, doctors, accountants, financial advisers and etc.

Unlimited personal liability for all one's partners causes many professionals to fear a risk which they cannot easily measure or control under the legal structures of existing partnership law. This risk is significantly greater, the larger the number of partners, of places or countries where the firm practices and of disciplines which the partners represent. So, the trend towards multi partner, multinational, multidisciplinary partnerships offering professional services feeds this anxiety.

The concept of limited liability is widely recognized in the world of commerce. However, it has always been a subject of debate whether it should be extended to professional practices in that the principle of joint and several liability has been regarded as one way to make professionals more accountable to clients. Nevertheless, more and more places have adopted or are considering the enactment of statutes enabling the formation of LLP for professionals.²⁸⁸

In Ethiopia's context, two or more advocates can apply for the establishment of a non-business law firm with unlimited liability.²⁸⁹ Article 213 of the Commercial Code provides that any of the six business organizational forms listed in Article 212 may be commercial except for an ordinary partnership. An ordinary partnership may not be a commercial business organization, and, as such, may not engage in any of the activities listed in Article 5. As described above the objective of the dichotomization is differential treatment of the law depending on the nature of the business. Hence, the type of the firm that is to be established under the Federal Courts Advocates' Licensing and Registration Proclamation is not clearly stipulated. The directive to be issued to provide for particulars as for the law firms and related matters is also not yet enacted.

²⁸⁷ A Team of National Expert, *Supra note 8*, at 18.

²⁸⁸ Kitty LAM, *Supra note 78*, at 49.

²⁸⁹ Federal Courts Advocates' Licensing and Registration Proclamation No. 199/2000, Federal Negarit Gazeta 6th year, No.27, 9th March, 2000, Art. 18 (1, 2).

To date in Ethiopia, persons with different profession cannot organize themselves in the form of partnership due to absence of law that allows the same. The situation encumber professionals not to get benefit from forming partnership, not to promote their profession by forming a suitable organization, for this reason it makes the professionals and the whole society not to receive utmost satisfaction from the sector.²⁹⁰ It becomes necessary for different professionals to form LLP for Lawyers/Advocated, accountants, Auditors, Architects, management Councilors and other related professionals.²⁹¹ The partners must be licensed members of an approved profession before they can set up their business as an LLP.

As stated above, most professional business activities are run by one person and operate for his/her benefit. Such person bears unlimited liability for all obligations incurred by the business. Thus, the concept of LLPs was developed with a view to provide a suitable business vehicle for professionals.²⁹² Because of this, many firms/enterprises engaged in legal, medical, accountancy, information technology, and other knowledge-based sectors find traditional partnerships unsuitable. Existing partnership forms are also considered unsuitable for multi-disciplinary combinations comprising a large number of partners, seeking a flexible working environment but with limited liability. LLP structure would promote growth and enable such firms/enterprises expand their trade/business or services across the country.

In limited partnerships, partners with limited liability cannot help manage the business. To keep their liability shields, their involvement with the business must be as passive investors. The LLP business structure, in comparison, gives all partners limited liability while allowing them all to manage the business in the same way as if the LLP were a conventional partnership. Thus, the structure is appropriate for professionals as they offer the opportunity for all partners to help manage the business as it enables partners to directly involve in the activities of the LLP.

Many legal business structures cannot be used by groups of professionals, due to the nature of the work that they do. LLPs do allow professionals to create them, and in some countries may only be created by professionals. It does not serve the public interest to expose professionals to

²⁹⁰ A Policy document, *Supra note* 13, at 15.

²⁹¹ *Id.*

²⁹² Henning, J.J. (2004), “*Partnership Law Review: The Joint Consultation Papers and the Limited Liability Partnership Act in Brief Historical and Comparative Perspective*”, *Comp. Law.*, 25(6), p. 163-170.

liability for the malfeasance of their partners or employees.²⁹³ They deserve appropriate protection.

4.5.2. LLPs for Small and Medium Enterprises (SMEs)

If one gives a thorough look at the main characteristics of LLPs, it becomes evident that they are certainly also profitable for business purposes. An LLP eliminates risks and encourages people to enter into partnerships and take part in new business ventures; hence it is no surprise that this new concept has rapidly become popular in most parts of the world. As mentioned earlier the concept of limited liability has always existed in trade and commerce, an LLP is nothing but the evolved form of the concept of limited liability laws that existed long time ago.

The study of LLPs in relation to SMEs is important because the new draft of the Ethiopian Commercial Code allows the business structure only for professionals rendering services. This is not to criticize the drafters but to test the compatibility of the new concept with the current economic development of the country from the perspective of SMEs. Allowing formation of LLP for SMEs businesses provides partners limited liability protection, to side step their responsibilities for negligent activities and thus protect the personal assets of partners from liability arising out of negligence claims. In different jurisdictions that recognize LLPs it has become a legal vehicle that is accessible and appealing beyond professional firms. The LLP form has become attractive to the small and medium-sized business sector in that it provides more protection than a standard partnership and avoids some of the reporting requirements of incorporation, but by no means all.²⁹⁴ Until now, however, no systematic research has been undertaken to evaluate the wide scale adoption of the LLP and the effectiveness of this form for meeting the needs of small and medium sized businesses. Although there is extensive empirical work on the management or business development of SMEs, the legal form of business adopted has never been a main focus. The enactment of the Federal Micro and Small Enterprises Development Agency Establishment Council of Ministers Regulation No.201/2011 as an autonomous government organ with its own legal personality can be observed as a bench mark for the development of the sector, there is no empirical work on the impact of the LLP form with special regard to the organization, function and growth of these enterprises.

²⁹³ *Concept Paper on Limited Liability Partnerships*, (Legal Department of Mauritius Financial Services Commission, 2013), 12.

²⁹⁴ Denise Fletcher (Prof) *et al*, *Supra note 279*, at 1.

This research provides insights into the introduction of the LLP form and how a legal form designed to address potential liabilities arising from negligence claims has been widely utilized in small business and new venture creation. Although there is an extensive body of academic literature on the setting up and development of micro and small sized enterprises in Ethiopia, studies do not typically address the legal form that these enterprises adopt. The importance of legal form as a ‘set-up’ mechanism and a means of structural growth of SMEs has, therefore, largely been overlooked in Ethiopia academic literature and in the majority of studies reference is made to ‘business ownership’ as if all business types are the same. Very little distinction is made on the basis of legal form adopted by SMEs and where studies do exist on the LLPs as a vehicle for growth, there is conflicting evidence about the meaning and relevance of the LLP form small business sector.

According to the new draft Commercial Code, LLPs are mostly suited partnership vehicle among professionals such as accountants, lawyers, architects, engineers, doctors, etc. Part of the Code dealing with LLPs should also provide adequate breathing space to SMEs, which to date have not been able to avail themselves of the benefits of a corporate structure. Up to now, the SME sector largely worked through the regular partnership or proprietorship structures, wherein the partners and sole proprietor, as the case may be, were personally liable for all liabilities of the business vehicle.²⁹⁵ There should be a room for SMEs to convert their business vehicles to a LLP, whereby the liability of business vehicle could not be tagged and made personal liability of partners constituting it.

However, by forming an LLP, it might become easier for SMEs to get loans as security creation will get easier. This is because a LLP would be a separate entity to that of the personality of the partners who constitute it. Banks and financial institutions will be able to enforce the securities created while granting the loans specifically as the LLP can be sued being a separate legal entity. As SMEs have limited capital, their main focus is to keep the running cost at the bare minimum. The major chunk of these costs relate to accounting and compliance requirements which are very less when it comes to LLPs.

4.6. LLP in the form of LLOP

The 1995 FDRE Constitution established federal form of state structure. FDRE comprises of the federal government and member states. Both levels of governments share the legislative,

²⁹⁵ Utsar Gandhi and Ravi Thankur, *Supra note 14*, at 314.

executive and judicial powers between themselves.²⁹⁶ It is natural for every federation that political powers commonly related to legislature, executive and judiciary and financial functions are divided between the federal governments and states.²⁹⁷ In such cases both level of governments are autonomous with respect to powers granted to them by the constitution.

Oromia National Regional State is one of those nine members of the federation. Recently, the Regional State ratified a Proclamation concerning ‘Licensing and Administration of Advocates and Paralegals of Oromia National Regional State²⁹⁸’ (here in after “the Proclamation”). The Proclamation introduced a new form of partnership in to the legal system. As discernable from the preamble of the proclamation, the aim of the law is to provide a system through which legal profession and law firms are guided by to ensure rule of law and to meet objectives of justice system. The term ‘law firm’ is defined under article 2(5) of the proclamation as;

“A firm established by partnership agreements of two or more advocates who are granted with principal license to render advocacy service.”

As any form of business organization, the law firm is established by partnership agreement; a contract made between two or more advocates. Although the new draft Commercial Code omitted ordinary partnership, the Proclamation refers to relevant provision of the Commercial Code relating to Ordinary Partnership to be applicable to law firms.²⁹⁹ Partners (advocates) should have an advocacy license to render advocacy service under the firm.³⁰⁰ Therefore a person should get advocacy license from relevant government bureau to form and become a member of a law firm.

The purpose of law firm is only in order to render advocacy service.³⁰¹ Non observance of this provision may entail the revocation of a license³⁰². A Law firm established according to the Proclamation cannot carry out commercial activities with the meaning of article 10 and 213 of the Commercial Code. It is obvious that advocacy service is not commercial activity in

²⁹⁶FDRE Constitution, Art. 50 (1,2).

²⁹⁷Assefa Fiseha, *Federalism and Accommodation of Diversity in Ethiopia: A Comparative Study*, 2006, 102.

²⁹⁸ Oromia national regional state Licensing and Administration of Advocates and Paralegals Proclamation, proclamation No. 182/2013, Megeleta Oromia year 21, no. 7

²⁹⁹ *Id.*, Art. 25.

³⁰⁰ *Id.*, Art. 2(2).

³⁰¹ *Id.*, Art. 17(3).

³⁰² *Id.*, Art. 27(1)(b).

Ethiopia³⁰³ though, still there are an arguments concerning non-commerciality of advocacy service.³⁰⁴

A professional law firm which is established in accordance with Sub- Article 1 of this Article shall be a LLOP and shall bear the phrase “limited liability ordinary partnership” next to its name³⁰⁵. The newly introduced partnership concept in the form of LLP in to the region is restricted to Ordinary partnership. Ordinary Partnership under the Commercial Code may not be commercial business organization.³⁰⁶ It can be formed for a purpose of other business activities for example, as indicated under the Code itself, in order to administer property owned jointly³⁰⁷. Since the relevant article of the commercial code governing ordinary partnership is applicable to a law firms to be established under the Proclamation, LLOP is also non-commercial business organization. Therefore what is adopted in the Proclamation is a professional partnership which needs personal participation, and contribution to become partners in this type of partnership. Professionals such as lawyers, doctors, accountants can establish this type of partnership in other jurisdiction³⁰⁸.

The main benefit of legal personality is the partition of the asset, property, and liability of the firm from that of the members of that particular firm³⁰⁹. In Ethiopia

, all partnership agreements except joint venture, have legal personality even though, their liability is unlimited. Under article 19(5) of the Proclamation a law firm shall have a legal personality as of the day from issuance of license. Here LLOP would have rights and duties separated from its partners. So far as liability is concerned, except for matters provided under article 26 (2)³¹⁰, there is no other provision which clearly provide as to the status of the partners with regard to liability. However, as inferred from the name of the partnership, the liability of the partners is limited to their contribution.

Although some distinguishing features of LLP including but not limited to contribution, management, liability of partners, taxation issue are not sufficiently provided for, it can be

³⁰³ Fikadu Petros, *Supra note 274*, at 54.

³⁰⁴ *Id.*

³⁰⁵ Oromia national regional state Licensing and Administration of Advocates and Paralegals Proclamation, proclamation No. 182/2013, Art. 17(2).

³⁰⁶ Commercial code of Ethiopia, Art. 213(1).

³⁰⁷ *Id.*, Art. 228(2).

³⁰⁸ Eric P. Polten, *German and Canadian Company Law – An Overview*, (Toronto, Ontario, February 2011), 9.

³⁰⁹ Fekadu Petros, *Supra note 274*, at 37.

³¹⁰ Accordingly, any law firm which render advocacy service shall be liable to correct any injury sustained by its client in accordance with civil law. This shows that the liability of the firm as a legal entity is unlimited.

concluded that the concept of LLP is introduced in Oromia Regional State legal system for professionals practicing in legal environment.

4.7. Piercing the Corporate Veil of LLPs

As stated above, the liability protection accorded to LLP members is not always as extensive. In jurisdictions under consideration some restrict the protection to limiting partners' personal liability for the liabilities of co-partners, without affecting liability for obligations of the partnership. Others protect partners only against liability for tort debt, but not contract debt. Still others adopted laws that limit liability for all types of activities and for all partnership obligations.

In this new age of corporate scrutiny, the partners of limited liability entities should not expect protection simply because the words "limited liability" appears in their titles. The prevalence of corporate scandals involving in different professional firms and other business structures with LLP laws has raised suspicion as to whether corporate veil piercing theories is applicable to compensate injured parties.³¹¹ Certainly, partners of such organizations may face criminal and/or civil liability for their own actions. However, their business partners who look the other way to further the interest of the partnership also have reason for concern.

Limited liability can be eroded by different business necessities. In some cases, neglect of business recordkeeping or procedures, severe undercapitalization, or fraudulent conduct can result in loss of limited liability, a phenomenon called "piercing the corporate veil."³¹² A partner is personally liable to the partnership and co-partners for any breach of duty, and a creditor or other claimant can also pierce the limited liability shield of a partner in the same way a claimant may pierce the corporate veil of a corporation and personally sue an individual member of the corporation.³¹³ Corporate veil can be pierced in situations in which members misrepresents the assets of the business, engages in self-dealing transactions, or takes assets from the business under circumstances that render the business insolvent and gave rise to a tangible injury.³¹⁴

³¹¹ Anne B. Rappold, JD, *Piercing the Limited Liability Veil: The Application of the Corporate Veil Piercing Rules to Limited Liability Entities*(University of Wisconsin – Madison,2008),6.

³¹² The application of corporate veil piercing theories signifies that no partner or member is protected from liability solely because of the limited liability nature of the business entity. Limited liability forms of LLPs are ignored when the corporate veil piercing theories are applicable

³¹³ *Concept Paper on Limited Liability Partnerships*, (Legal Department of Mauritius Financial Services Commission, 2013), 13.

³¹⁴ John H. Matheson and Raymond B. Eby,*The Doctrine of Piercing the Veil in an Era of Multiple Limited Liability Entities: An Opportunity to Codify the Test for Waiving Owners' Limited Liability Protection*, 75Wash. L. Rev. 147 (2000), available at http://scholarship.law.umn.edu/faculty_articles/397.

Courts can also pierce the limited partnership veil when LLPs have failed to follow formalities established by the law, malpractice claim against the partnership due to the partnership's failure to comply with registration rules by concerned government organ and suspect fraud or that a sham was created to avoid liability.³¹⁵

³¹⁵ Anne B. Rappold ,JD, *Supra note 311*, at 6.

CHAPTER FIVE

5. CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The concept of limited liability existed right from the time of the Romans and the concept is more evolutionary than revolutionary. LLP provides both the benefits of a company and partnership firm i.e. limited liability and allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. It is a distinct entity from either a partnership or a company and therefore, some disadvantages of formerly recognized business structures as compared to LLP will make it a dire necessity to have a hybrid model.

Under LLP structure, liability of the partner is limited to the agreed contribution. Further, no partner is liable on account of an independent or un-authorized acts of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful acts or misconduct. Every member of the LLP is deemed as an agent of the LLP. Therefore, persons dealing with a partner of a LLP will contract with the LLP rather than with the partner of the LLP. The liability arising from the contract should therefore be the liability of the LLP and not its partners.

A LLP is liable if a partner of the LLP is liable to any person as a result of the wrongful act or omission on his part in the course of the business of the LLP or with its authority. LLPs will have unlimited liability when any activity is carried out with intent to defraud creditors of the LLP or any other person, or for any fraudulent purpose, unless it is proved that such acts were without the knowledge or authority of a LLP.

The other advantage of trading via a LLP is tax benefit. The tax savings compared with trading via a company can be significant. A trade, profession or business carried on by an LLP shall be treated as carried on in partnership by its members and not by the LLP itself. Thus, any asset held by an LLP, or any tax chargeable on gains made shall be treated as held by the partners, or gains made by the partners, and not by a LLP itself. In other words, an LLP enjoys a pass-through status and is not taxable as such; the taxation liability falls on the partners in their

individual capacity. LLPs are governed by a taxation regime that taxes the partners as individuals, rather than taxing the LLP itself, i.e., LLPs are treated in the same manner as the firm under the tax laws. Although treated as a separate legal entity from its Members, the LLP is treated for tax purposes as a partnership and the Members are taxed as partners, each being liable for tax on their share of the income or according to their personal income tax rates.

Introducing LLPs in to Ethiopia's legal system is intended to promote choice for SMEs as well as professionals by providing limited liability without onerous accounting, auditing and disclosure requirements. Flexibility is achieved by borrowing rules from the conventional partnership. So, we can say that LLP is a format that attempts to fill up the vacuum that existed between partnership and company law. It is a marriage of principles of company law and partnership law in order to address the deficiencies in both the areas for SMEs business and professional firms.

LLPs can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name. The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners or between the partners and LLP as the case may be. LLP, however, is not relieved of the liability for its other obligations as a separate entity.

In terms of liability most jurisdictions under comparison an LLP is liable for the wrongful acts and omission of its members to the same extent as the members so acting in the ordinary course of the business of a LLP. Members of an LLP are liable for their own faults, but not for each other's acts or omissions solely by virtue of being a member of that LLP. LLP option is open to all types of business in the UK, India and Singapore whilst, in some states of US like NY and California a LLP structure is limited to only some licensed professionals.

In all jurisdictions under comparative analysis, LLP is taxed similar to a business formed under comprehensive partnership organizational structures by a process called pass-through taxation. The profits of a LLP are not taxed at the level of a LLP 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 levels.

In all selected places under comparison, the death or bankruptcy of a partner will not lead to an automatic dissolution of LLP, to the extent where the number of partners in the partnership does not fall below two. This is consistent with the principle that the LLP is a separate entity from its partners. LLP is wound up voluntarily by partnership agreement when members determine to dissolve voluntarily when they believe that it is solvent and they make a statutory declaration of its solvency. It can also be dissolved by court of law for good cause.

In today's era of globalization, professionals are able to serve worldwide. They cannot serve in form of company because of professional restrictions and moreover they hesitate to form partnerships due to absence of law that allows them. Ethiopia's service sector has shown slight growth and the quality of our professionals is very small as compared with other jurisdictions. It is necessary that entrepreneurship knowledge and risk capital combine to provide a further impetus to our impressive economic growth. Equally the services sector promises an economic opportunity similar to that provided by other enterprises. It is likely that in the years to come Ethiopian professionals would be providing accountancy, legal and various other technical services to a large number of entities across the globe. Such services would require multidisciplinary combinations that would offer a menu of solutions to international clients.

In general, LLPs can be seen as a corporate business vehicle that enables professional expertise and entrepreneurial initiative to combine and operate in flexible, innovative and efficient manner, providing benefits of limited liability while allowing its members the flexibility for organizing their internal structure as a conventional partnership. This set up is useful for both SMEs in general and for the enterprises in service sector. Hence, there is a large scope of LLPs in future given that the issues relating to them are timely and properly addressed to ensure their working the best possible and efficient manner. With its inherent flexible structure, it remains a viable form of business in the long run. As a result, introducing LLPs to the country's legal system will become an additional benefit for entrepreneurs, business owners and investors starting new ventures and overall economic development of our country.

5.2 Recommendations

The initiative to create in the LLP business structure which confers limited liability on its investors or partners while allowing them to retain the flexibility of operating the LLP as a partnership firm with perpetual succession is beneficial for the Ethiopian economy where businessmen are actively encouraged to be creative in seeking new opportunities.

In response to increasing demand for convenient business structures in Ethiopia's service sector, and following the successful adoption of such structures in other businesses, the former Ministry of Justice has prepared draft legislation which introduces the new concept of LLP in to Ethiopia's legal system. Doing business in a form of LLPs has some distinctive advantages which one couldn't get in other forms of business organization. As a result, the following major recommendations are forwarded for policy decision makers and law making organs for successful integration of LLPs in to the Ethiopian Corporate system.

- ☞ Article 212 of the Commercial Code should be amended to include LLP as one form of business organization. Whilst a LLP is similar to other forms of partnerships in certain respects, it should not be subject to the existing legislation and should be the subject of a separate statutory enactment. The law should be amended so as to limit the incidence of liabilities in the case of partnership.
- ☞ This study recommends the setting up an LLP partnership agreement, which will govern the rights and duties of the members. The agreement can be tailored precisely to suit the requirements of the members (subject to statutory requirements). In addition to LLP partnership agreement, a set of default provisions of the law would apply. They may act as a useful prompt as to matters that need to be included in the LLP partnership agreement.
- ☞ The application of the new concept of LLP should be widen and its scope should go beyond professionals to profit making SMEs.
- ☞ Partners and employees of a LLP should have scheme of Insurance coverage for damage caused by professional fault or negligence. LLPs should obtain adequate liability insurance coverage for each of its partners and also to ensure LLP have adequate assets to

satisfy potential claims. In the event of winding up, LLPs must make arrangements with insurance companies to pay a certain sum to the member responsible for winding up of LLP upon its dissolution, for the benefits of its creditors.

- ☞ Provisions that permit the transformation of existing business organizations in to LLPs and vice versa should be included in to the forthcoming commercial code.
- ☞ Particulars under article 218 (2) and 260 of the commercial code should not be grounds for dissolution of LLPs, as this form of partnership will not dissolve due to death, incapacity and bankruptcy of a partner. These provisions should be amended with the objective of achieving such salient feature of the new concept.
- ☞ Article 243 (1) of the commercial code should be amended so as to exonerate innocent partner from liability caused by other partner with regard to LLPs.
- ☞ LLP should be allowed to voluntarily wind up if all the partners agree to do so or in accordance with the partnership agreement. The forthcoming Commercial code should provide the procedure for the voluntary winding up of LLPs. However, in doing so, the partners of the LLP should be required to undertake certain procedures in order to protect the interests of creditors.

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