

LIMITED LIABILITY PARTNERSHIP

A Limited Liability Partnership (LLP) has its form and structure to suit any desired investment option. The LLP, just like a Special Purpose Vehicle (SPV) is a project or structured finance model that will soon witness broad adaptation as the Nigerian investment window widens. In LLP, partners, depending on the jurisdiction, assume clearly defined roles that deliver expectations set out in the design objectives of the partnership. Because the liabilities are limited to the roles and expectation, an LLP therefore tend to exhibit elements of partnership and companies. In an LLP, one partner is not responsible or liable for another partner's misconduct or negligence.

In an LLP, some partners have a form of limited liability similar to that of the shareholders of a company. In some countries, an LLP must also have at least one general partner with unlimited liability. Unlike corporate shareholders, the partners have the right to manage the business directly. In contrast, corporate shareholders have to elect a board of directors; the board then organizes itself and hires corporate officers who then have as corporate individuals the legal responsibility to manage the company in its best interest. An LLP also contains a different level of tax liability from that of a company.

Limited Liability Entities for Real Estate Investment

For real estate purposes, many principles of limited liability partnerships and limited liability companies (LLCs) are the same. Real estate limited liability partnerships usually have a developer or real estate professional as the general partner with the project investors as the limited partners. The general partner exercises control over the construction, development, marketing, operation and sale of the project. The limited partners have no management control over project construction, development, marketing, operation or sale of the project. The liability exposure of these limited partners is restricted to the amount of their investments (assuming the limited partnership is adequately capitalized). Similarly, real estate LLCs typically have a developer/real estate professional as the manager with the project investors being the members. The manager exercises control over all aspects of the project. The members have no management control over day-to-day operations. Liability exposure is limited to the amount of investment by each member. This also assumes that the LLC is adequately capitalized.

The major difference between the limited partnership and the LLC is the liability exposure to the limited partnership's general partner versus the LLC's manager. The limited partnership's general partner is individually liable for the debts and obligations of the limited partnership. Conversely, the LLC's manager, much like an officer or director of a corporation, is not individually liable for the debts and obligations of the LLC. Thus, for the builder/ real estate professional, the

MARKET UPDATE

	15/01/13	15/12/13	23/05/14
Naira/US\$	157.65	159.94	161.45
Brent, US\$/BBL	109.78	107.84	111.8
COCOA, US\$	1487.82	2685.47	2760.56
MPR%	12.00	12.00	12.00
INFLATION RATE %	10.3	7.9	7.8
MORTGAGE RATE %	22.0	23.0	23.0

STOCKS CONSTITUTING GMA INDEX

STOCKS	31/12/13 Price (N)	23/05/14 Price (N)	%Change in Price
OANDO	24.25	20.00	-17.53
GTBANK	27.02	27.68	2.44
OKOMU	44.00	32.30	-26.59
STANBIC	21.35	22.41	4.96
DANGSUGAR	11.70	9.85	-15.81
FIDSON	2.79	2.56	-8.24
TRANSCORP	4.35	3.89	-10.57
CCNN	11.75	9.70	-17.45

	PRICE(N)	NAV (N)
	31/01/14	23/05/14
UHOREIT	50.00	55.58
UPDCREIT	10.00	10.17

Index	31/12/13	23/05/14	% Change
NSE ASI	41,329.19	39,833.95	-3.62
GMA Index	1.50	1.45	-3.44

Source: CBN, SEC and NSE

absence of general liability exposure to the LLC manager makes the LLC entity an extremely popular choice for investment, development and operation.

Lender Mandated Special Purpose Entities

A new source of funding for commercial real estate ventures arose in the US in the 1990s and remains a favorite source of funding today. Wall Street investment banking firms, in conjunction with mortgage lenders, real estate professionals and real estate governing bodies, developed a process which originates loans that are then purchased, packaged and subsequently resold as investment vehicles, much like corporate bonds. The ultimate source of the individual loan funds is not the original lender. This originating lender merely acts as a conduit for the delivery of funds, hence the term "conduit financing."

Conduit financing lenders and, more recently, some institutional lenders are requiring their borrowers to form special purpose vehicles (SPV) in order to obtain real estate financing. The form of SPV used is normally a limited partnership or an LLC, whose sole purpose is owning and managing or developing and selling the real estate project that is the subject of the financing. The formation of an SPV from the lender's perspective compartmentalizes a borrower's economic activity and corresponding liability to the project which is the subject of the loan and limits the exposure of the project to the borrower's other creditors or casualty liabilities from other projects.

Therefore, the borrower is isolated from unrelated activities that may impair the flow of project revenues to the lender.

Beneficial management structure

Depending on specific project situation, a LLC or a LLP may provide the ideal management structure needed. A LLC provides a flexible structure that allows members to manage the entity or to elect a manager or a group of managers. All members of a LLC are provided limited liability.

Limited Liability Partnerships, however, require at least one general partner and one or more limited partner(s). The general partner is personally liable, but that may be handled by forming a corporation or Limited Liability Company (LLC) to serve as general partner, thus encapsulating any liability in a protected entity. When you use a LLC or LLP for real estate investments, you may also benefit from estate planning and gifting opportunities available.

Reduced taxation on appreciated property

Although the structure of a company may be familiar, corporations are undesirable for real estate investments. If you hold real estate in a LLP and later decide to sell the property to some third party, the tax benefits of using an LLP will become apparent.

Unlike a corporation, LLPs allow flow-through tax treatment. Profits are only taxed once, while they are taxed twice in a corporation. Appreciation on the property will result in less tax in an LLP than in a regular company.

In addition, a Limited Partnership will provide benefits if you transfer the property to your personal use or the personal use of one of your LLP partners. Unlike a company, such a transfer to personal use would not result in tax consequences in a LLP. Although other entities may provide limited liability, the tax consequences of using other entities make a Limited Liability Partnership preferable.

Conclusion

With an estimated population of 168 million and a production capacity of USD 504 billion, Nigeria's economic potentials cannot be overlooked. The Limited Liability Partnership is a unique way to create value and drive development to meet the current estimated 16 million housing unit deficit if considered. The option of the LLP as an investment vehicle also transcends the scope of real estate, its structure can be applied in other areas of infrastructure and project development.

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