

LIMITED LIABILITY PARTNERSHIP (AMENDMENT) BILL, 2021

A Bill for

AN ACT of Parliament to amend the Limited Liability Partnership Act, and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

Short title

1. This Act may be cited as the Limited Liability Partnership (Amendment) Act, 2021.

Amendment
of the long
title of the
principal
Act

2. The Limited Liability Partnership Act, 2011 in this Act referred to as “the principal Act” is amended by deleting the long title and substituting therefor the following new long title—

(a) AN ACT of Parliament to provide for the incorporation, administration and dissolution of Limited Liability Partnerships and for connected purposes.

Amendment
of section 2
of the
principal
Act

3. Section 2 of the principal Act is amended by—

(a) deleting the definition of the term "address" and substituting therefore the following new definition—

“address” includes—

- (i) a fax number, email address or other electronic address used for the purposes of sending or receiving documents or information by electronic means; or
- (ii) a postal and physical address;

(b) deleting the definition of the term “liquidator” and substituting therefore the following new definition—

“liquidator” has the meaning assigned to it under the Insolvency Act, 2015;

(c) deleting the definition of the term “manager” and substituting therefore the following new definition—

“manager” in relation to a limited liability partnership means a person who whether or not that person is a partner of the partnership, is concerned in, or takes part in, the management of the partnership whether or not the particulars or consent of that partner to act as such are lodged with the registrar as required under section 27 (2);

(d) inserting the following new definitions in their proper alphabetical order—

“Attorney General” means the Attorney-General appointed under Article 156 of the Constitution;

“beneficial owner” means the natural person who ultimately owns or controls

a legal person or arrangements or the natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person or arrangement;

“Board” means the Board of Directors established under section 5 of Business Registration and Insolvency Service Act, 2015;

“business” means an activity or series of activities done in the form of a profession, trade, employment or vocation as registered under the Registration of Business Names Act; and

“identity document” means—

- (i) in the case of a Kenyan, the national identity card or a valid passport; or
- (ii) in the case of a foreigner, the persons alien identification card, or a valid passport.

Amendment of section 3 of the principal Act.

4. Section 3 of the principal Act is amended by deleting subsection (3) and substituting therefore the following new subsection—

(3) The Deputy Registrar and Assistant Registrars of Companies shall be the Deputy Registrar and Assistant Registrars of Limited Liability Partnerships, respectively.

Amendment of section 5 of the principal Act.

5. Section 5 of the principal Act is amended by inserting the following new subsection immediately after subsection (3)—

(4) The Registrar may, by electronic means, issue a document which is to be issued by the registrar under this Act.

Amendment of section 6 of the principal Act.

6. Section 6 of the principal Act is amended by—

- (a) deleting subsection (1) and substituting therefor the following new subsection—

(1) A limited liability partnership is an entity with a separate legal personality formed and registered under this Act by two or more individuals or bodies corporate or a combination of both for carrying on any lawful business with a view to making profit.

- (b) deleting subsection (2).

Amendment of section 8 of the principal Act.

7. Section 8 of the principal Act is deleted.

Amendment of section 9 of the principal Act.

8. Section 9 of the principal Act is amended by deleting subsection (2).

Amendment of section 15 of the principal Act.

9. Section 15 of the Principal Act is amended in subsection 15(3) by deleting the current subsection and substituting thereof with the following new subsection—
(3) An assignment under subsection (2) shall not by itself—
(a) terminate the partner’s partnership in the partnership, or
(b) entitle the assignee to participate in the management of the limited liability partnership.

Amendment of section 16 of the principal Act.

10. Section 16 of the principal Act is deleted.

Amendment of Section 17 of the Principal Act

11. Section 17 of the principal Act is amended in subsection 7(2)(g) by inserting the following words “a copy of the register of beneficial owners and ” before the word such.

Insertion of new sections.

12. The principal Act is amended by inserting the following new sections immediately after section 17—

Name reservation

17A. (1) The Registrar may, on an application in the prescribed manner and subject to payment of the requisite fees by the applicant, reserve a name pending registration of a Limited Liability Partnership or change of name by a Limited Liability Partnership.

(2) The reservation of a name under subsection (1) shall remain in force for a period of thirty days from the date of the approval of the name or such extended period, not exceeding thirty days, as the Registrar may determine.

(3) The Registrar may direct a limited liability partnership to change its name, if the Registrar is satisfied that a limited liability partnership has been registered under a name that—

(a) is a name referred to in subsection (1); or

(b) nearly resembles the name of any other limited liability partnership or company or a business name.

(4) The Registrar may issue a direction under subsection (3) whether the name was registered inadvertently or otherwise and whether at the time the partnership was first registered or when it changed its name.

(5) A limited liability partnership shall within fourteen days of being notified by the Registrar, comply with such direction as may be issued by the Registrar under subsection (4).

(6) A person may, in writing, apply to the Registrar to give a direction to a limited liability partnership, to change its name on a ground referred to in subsection (3).

(7) The Registrar shall not consider an application under subsection (6) to give a direction to a limited liability partnership on the ground referred to in subsection (3)(b) unless the Registrar receives the application within twelve months after the date of the registration of the partnership under that name.

(8) The Registrar may extend the period in subsection (7) as the Registrar may specify in writing in a particular case.

(9) If the limited liability partnership does not comply with the direction for change of name issued under this section within fourteen days, the Registrar shall publish a notice in the *Gazette* to strike the name of the limited liability partnership off the Register.

(10) As soon as practicable after striking the name of the limited liability partnership off the Register, the Registrar shall publish in the *Gazette* a notice indicating that the name of the limited liability partnership company has been struck off the register.

(11) Upon publication of the notice under subsection (10), the limited liability partnership shall be deemed to have been dissolved.

(12) Despite subsection (11)—

(a) the liability, if any, of every manager and

partner of the limited liability partnership shall continue and may be enforced as if the limited liability partnership had not been dissolved; and

- (b) nothing in this section shall affect the power of the Court to liquidate a limited liability partnership the name of which has been struck off the Register.

Foreign limited liability partnerships.

17B. (1) A foreign limited liability partnership shall not carry-on business in Kenya unless it is registered as a foreign limited liability partnership under this Act.

(2) A person who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand shillings or to imprisonment for a term not exceeding three years or to both.

Registration of foreign limited liability partnerships.

17C. (1) A person who wishes to register a foreign limited liability partnership, shall in addition to the requirements under section 19 of this Act, lodge with the Registrar an application in the prescribed form accompanied by a certified copy of—

- (a) the certificate of registration or any other similar document in its place of incorporation, establishment or origin;
- (b) its charter or instrument defining its constitution, if any; and
- (c) A list of beneficial owners of the limited liability partnership.

(2) The name of such a limited liability partnership can be—

- (a) the name of the limited liability partnership under the law of the country or territory in which it is incorporated; or
- (b) an alternative name specified in accordance with this Act.

(3) The Registrar shall on being satisfied with the

Appointment of a local representative by a foreign Limited liability partnership .

application and on payment of a prescribed fee—

- (a) register the foreign limited liability partnership and allocate a registration number for the foreign limited liability partnership; and
- (b) issue a notice of registration in such form as the Registrar may determine.

17D. (1) A foreign limited liability partnership shall for purposes of operating in Kenya, appoint, at least one local representative who shall be—

- (a) a permanent resident in Kenya; or
- (b) a Kenyan Citizen who ordinarily resides in Kenya.

(2) A foreign limited liability partnership shall lodge with the Registrar, the particulars of every person who acts as local representative of the foreign limited liability partnership and the consent of the local representative to act as such

(3) The local representative shall issue and lodge with the Registrar, a written notice of his intention to vacate the office to the foreign limited liability partnership.

(4) Where the local representative has lodged a notice under subsection (3), the shall cease to be the local representative of the foreign limited liability partnership on the expiry of thirty days from the date of the lodgment of the notice.

(5) A foreign limited liability partnership and every partner of the foreign limited liability partnership who fails to comply with subsection (1) commits an offence under this Act.

(6) A foreign limited liability partnership shall have a registered office in Kenya to which all communications and notices may be addressed.

(7) A foreign limited liability partnership shall lodge with the Registrar an annual declaration of solvency within thirty days of the anniversary of its registration under the Act or any other period

as the Registrar may upon application allow.

(8) A foreign limited liability partnership which fails to comply with subsection (7) commits an offence and shall on conviction, be liable to a fine of not less than five million.

Cessation of
business in Kenya.

17E. (1) A foreign limited liability partnership that ceases to operate in Kenya, shall lodge with the Registrar a notice of the cessation within seven days of such cessation.

(2) The cessation of business shall take effect upon the lodgment of the notice under subsection (1).

(3) The obligation of a foreign limited liability partnership to lodge any document with the Registrar, except those documents that ought to have been lodged before such date, shall cease on lodging the notice under subsection (1).

(4) The registrar shall publish in the gazette a notice issued under subsection (1) indicating that at the end of the period of ninety days after the date of the notice the name of the limited liability partnership referred to in it will, unless cause is shown to the contrary, be struck of the register and the limited liability partnership be dissolved.

(5) The Registrar shall on the expiry of ninety days from the date of the notice issued under subsection (1), remove from the register and publish in the gazette a notice to the effect that the name of the limited liability partnership has been struck of the register.

Liquidation or
dissolution of
foreign limited
liability
partnerships in
place of
incorporation,
establishment or
origin.
No. 18 of 2015

17F. (1) A foreign limited liability partnership that is liquidated or is dissolved shall, within thirty days after the liquidation or the dissolution, lodge or cause to be lodged with the Registrar a notice of such liquidation or dissolution in accordance to the provisions of the Insolvency Act, 2015.

(2) The Registrar shall on receipt of the notice under subsection (1) publish the notice in the gazette.

(3) The Registrar shall on the expiry of ninety days from the date of the notice under subsection (1),

remove from the register and publish in the gazette, the name of such foreign limited liability partnership.

Amendment of section 21 of the principal Act.

13. Section 21 of the principal Act is deleted.

Amendment of section 31 of the principal Act.

14. Section 31 of the principal Act is amended by inserting the following new subsection immediately after subsection (3)—

(4) A document served on the Limited Liability Partnership shall be deemed to have been properly served, if the document is served within thirty days from the date of notification of change of address of a limited liability partnership.

Insertion of new sections.

15. The principal Act is amended by inserting the following new sections immediately after section 31—
Registers and documents to be kept.

31A. (1) A limited liability partnership shall keep at its registered office—

- (a) a notice of registration issued under this Act;
- (b) a register of the name and address of each partner, manager and legal representative where applicable;
- (c) a copy of the most recent annual declaration of solvency or insolvency;
- (d) a copy of any statement lodged with the Registrar under this Act;
- (e) a copy of any certificate, if any, issued by the Registrar under this Act;
- (f) a copy of the limited liability partnership agreement and any amendment thereto; and
- (g) any other documents that the Registrar may, from time to time, require to be kept.

(2) The documents kept under subsection (1) shall be available for inspection or copying during ordinary business hours at the request of a partner.

(3) A limited liability partnership that fails to comply with this section commits an offence and shall, on conviction, be liable to a fine not exceeding Five Hundred thousand shillings and, in the case of a continuing offence, to a further fine not exceeding fifty thousand shillings for each day that the offence continues.

(4) This Section applies to foreign limited liability partnerships.

Beneficial owners.

31B. (1) A limited liability partnership registered under this Act shall keep and maintain a register of its beneficial owners

(2) A limited liability Partnership shall enter in its register of beneficial owners any information relating to its Beneficial Ownership as prescribed in the Regulations.

(3) A limited liability partnership shall, at the point of registration, file with the Registrar a copy of the register of initial beneficial owners.

(4) An existing limited liability partnership shall lodge with the registrar a copy of its register of beneficial owners within such time as may be specified by the Registrar to be the compliance period.

(5) A limited liability partnership shall on amending the register of its beneficial owners, lodge with the Registrar a copy of amendment of the register of its beneficial owners within fourteen days after making the amendments.

(6) A limited liability partnership that fails to comply with a requirement of this section, commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand shillings.

. Administrative Strike off
by the Registrar

31C. Power of Registrar to strike off a limited liability not carrying on business or in operation.

(1) If the Registrar reasonable believes that a limited liability partnership is not carrying on business or is not in operation, the Registrar may send to the company by post or by other electronic means as Regulations may prescribe, a communication inquiring whether the limited liability partnership is carrying on business or is in operation.

(2) If the Registrar does not within one month

after sending the communication receive any answer to it, the Registrar shall, within fourteen days after the end of that month, send to the limited liability partnership a communication referring to the first communication, and stating—

(a) that no answer to it has been received to it; and

(b) that, if no answer is received to the second communication within one month after its date, a notice will be published in the Gazette with a view to striking the name of the limited liability partnership off the Register.

(3) If the Registrar—

(a) receives an answer to the effect that the limited liability partnership is not carrying on business or is not in operation; or

(b) does not within one month after sending the second communication receive an answer to it, the Registrar may publish in the Gazette, and send to the limited liability partnership by post, or any other electronic means as may be prescribed by Regulations, a notice that, at the end of the period of three months from the date of the notice, the name of the limited liability partnership referred to in it will, unless cause is shown to the contrary, be struck off the Register and the limited liability partnership will be dissolved.

(4) At the end of the period specified in the notice sent under subsection (3), the Registrar may, unless cause to the contrary is previously shown by the partnership, strike the name of the limited liability partnership off the register.

- (5) As soon as practicable after striking the name of the limited liability partnership off the Register, the Registrar shall publish in the *Gazette* a notice to the effect that the name of the limited liability partnership has been struck off the register.
- (6) On publication of the notice in the *Gazette*, the limited liability partnership is dissolved.
- (7) Despite subsection (6)—
 - (a) the liability (if any) of the manager and partners of the limited liability partnership continues and may be enforced as if the limited liability partnership had not been dissolved; and
 - (b) nothing in this section affects the power of the Court to liquidate a limited liability partnership the name of which has been struck off the Register.

Duty of the Registrar to act Where the limited liability partnership Has been liquidated

31D. Duty of Registrar to act in case of limited liability partnership that has been liquidated or no liquidator is acting

- (1) If, in the case of a limited liability partnership that is in liquidation—
 - (a) the Registrar reasonably believes—
 - (i) that the affairs of the limited liability partnership are fully wound up; or
 - (ii) that no liquidator is acting; and
 - (a) the returns required to be made by the liquidator in respect of the limited liability partnership have not been made for six

consecutive months, the Registrar shall publish in the Gazette, and send to the limited liability partnership or the liquidator (if any), a notice that at the end of three months from the date of the notice the name of the limited liability partnership will, unless cause is shown to the contrary, be struck off the Register and the partnership will be dissolved.

- (2) At the end of the period specified in the notice, the Registrar may, unless cause to the contrary is shown by the limited liability partnership, strike the limited liability partnership partnership's name off the Register.
- (3) As soon as practicable after striking the name of the limited liability partnership off the Register under subsection (2), the Registrar shall publish in the Gazette a notice to the effect that the name of the limited liability partnership has been struck off the Register.
- (4) On publication of the notice in accordance with subsection (3), the limited liability partnership is dissolved.
- (5) Despite subsection (4)—
 - (a) the liability (if any) of every manager and partner of the limited liability partnership continues and may be enforced as if the company had not been dissolved; and
 - (b) nothing in this section affects the power of the Court to liquidate a limited liability partnership the name of which has been struck off the Register.

Strike off on application

31E. Striking off limited liability partnership on partnership's application

- (1) On application by a limited liability partnership, the Registrar may strike the name of the limited liability partnership off the Register.
- (2) Such an application is effective only if it—
 - (a) is made on behalf of the limited

liability partnership by its manager or by a majority of the partners; and

(b) contains such information (if any) as is prescribed by the regulations.

(3) The Registrar may not strike the name of a limited liability partnership off the register under this section until after three months from the date of the publication by the Registrar in the Gazette of a notice—

(a) stating that the Registrar may exercise the power under this section in relation to the limited liability partnership; and

(b) inviting any person to show cause why the name of the limited liability partnership should not be struck off.

(4) As soon as practicable after striking the name of the limited liability partnership off the Register, the Registrar shall publish in the Gazette a notice that the limited liability partnership 's name has been struck off the Register and the date of the striking off.

(5) On publication of the notice, the limited liability partnership is dissolved.

(6) Despite subsection (5)—

(a) the liability (if any) of each, manager and partner of the limited liability partnership continues and may be enforced as if the limited liability partnership had not been dissolved; and

(b) nothing in this section affects the power of the Court to liquidate a limited liability partnership the name of which has been struck off the Register.

When an application for Strike off may not be made

31F. Circumstances in which application not to be made

(1) An application under section 31E may not be made (or, if made, may not be dealt with) if, at any time during the preceding three months, the partnership has—

(a) changed its name;

- (b) carried on business;
 - (c) made a disposal for value of property that, immediately before ceasing to carry on business, it held for the purpose of disposal for gain in the normal course of carrying on business; or
 - (d) engaged in any other activity, except one that is—
 - (i) necessary or expedient for the purpose of making an application under section 31E, or deciding whether to make an application;
 - (ii) necessary or expedient for the purpose of closing down the affairs of the partnership;
 - (iii) necessary or expedient for the purpose of complying with any statutory requirement; or
 - (iv) specified by the Cabinet Secretary by order made under subsection (2).
- (2) An application under section 31E on behalf of a limited liability partnership may not be made or, if made, may not be dealt with at a time when Insolvency processes have been commenced under the Insolvency Act, 2015 for the purposes of dissolving the limited liability partnership.
- (3) The Cabinet Secretary may, by order published in the Gazette—
- (a) specify an activity for the purpose subsection (1)(d)(iv); or
 - (b) amend subsection (1) for the purpose of altering the period in relation to which the doing of an act referred to in (a) to (d) of that subsection is relevant.
- (4) For the purposes of this section, a limited liability partnership is not to be regarded as carrying on business only because it makes a payment in respect of a liability incurred in the course of carrying on business.

(5) A person who makes an application in contravention of subsection (1) commits an offence and on conviction is liable to a fine not exceeding fifty thousand shillings.

(6) In proceedings for such an offence it is a defence for the person charged with the offence to establish on a balance of probabilities that the person did not know, and could not reasonably have known, of the existence of the facts that led to the contravention.

Withdrawal
of an
application

31G. Circumstances in which an application may be withdrawn

(1) The applicant or applicants may, by written notice to the Registrar, withdraw an application to strike a limited liability partnership's name off the register under section 38E at any time before the limited liability partnership's name is struck off the register

(2) Upon receipt of the notice referred to in subsection (1), the Registrar shall —

(a) send to the limited liability partnership by post, or by any other prescribed means, a notice that the application to strike the limited liability partnership's name off the register has been withdrawn; and

(b) publish a notice in the Gazette indicating that the application to strike off has been withdrawn, where a notice to strike off the limited liability partnership had been published.

Objections to
striking off

31H. Objections to striking off

(1) Where a notice is given or published by the Registrar under section 31E of the Registrar's intention to strike the limited liability partnership's name off the register, any person may deliver, not later than the date specified in the notice, an objection to the striking off of the name of the limited liability partnership from the register on the ground that there is reasonable cause why the name of the limited liability

partnership should not be so struck off, including that the limited liability partnership does not satisfy any of the prescribed grounds for striking off.

- (2) An objection to the striking the name of the limited liability partnership off the register referred to in subsection (1) shall be given to the Registrar by notice in the prescribed form and manner.
- (3) Upon receipt of a notice of objection, which is made in the prescribed form and manner, within the time referred to in subsection (1), the Registrar —
 - (a) shall, where applicable, give the applicant or applicants for striking the name of the limited liability partnership off the register notice of the objection; and
 - (b) shall, in deciding whether to allow the objection, take into account such considerations as may be prescribed.

Restoration where
Strike off was by mistake

311. Registrar may restore limited liability partnership deregistered by mistake

- (1) The Registrar may, on his own initiative, restore the name of a limited liability partnership to the register if he is satisfied that the name of the limited liability partnership has been struck off the register and the limited liability partnership is dissolved as a result of a mistake of the Registrar.
- (2) In subsection (1), a reference to a mistake of the Registrar excludes a mistake that is made on the basis of wrong, false or misleading information given by the applicant in connection with the application for striking the name of the limited liability partnership off the register
- (3) The Registrar may restore the name of a limited liability partnership to the register by publishing in the Gazette a notice declaring the restoration,

- and the restoration takes effect on the date of publication of the notice.
- Restoration by Court **31J.** Application to Court for restoration to the Register
- (1) An application may be made to the Court to restore to the Register a limited liability partnership that has been struck off the register under this Act.
 - (2)
 - (3) Such an application may be made by—
 - (a) the Attorney General,
 - (b) a former partner of the firm,
 - (c) Any person who would appear to the court to have an interest in the limited liability partnership, or
 - (d) a former manager
- Effect of Restoration **31K.** Effect of Restoration
- (1) If the name of a limited liability partnership is restored to the register under this Act, the limited liability partnership is to be regarded as having continued in existence as if its name had not been struck off the register.
 - (2) The limited liability partnership is not liable for any liability arising from an obligation to file any document with the registrar during the time within which it was struck off.

MEMORANDUM OF REASONS AND OBJECTS.