

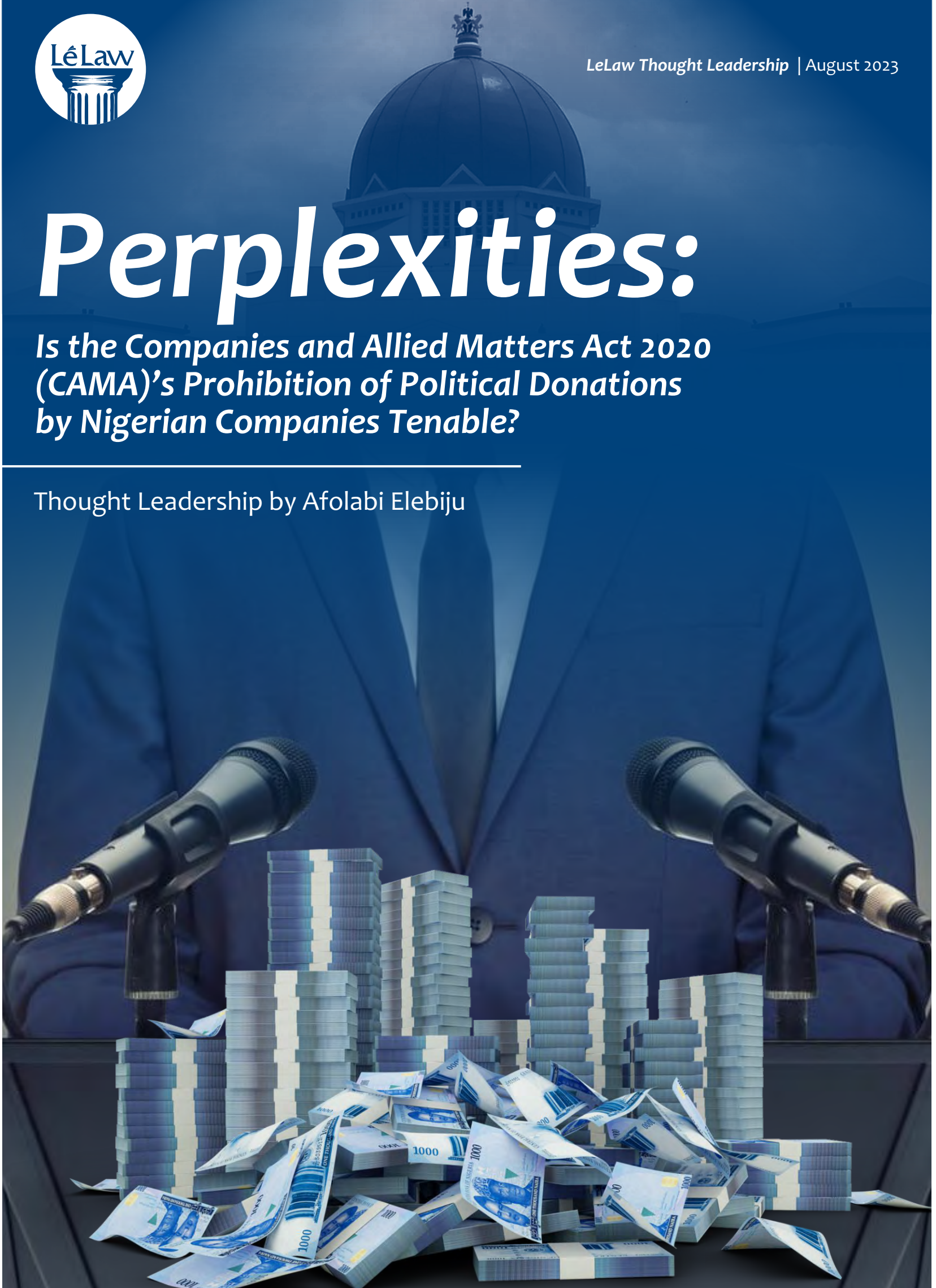


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Perplexities:

Is the Companies and Allied Matters Act 2020 (CAMA)'s Prohibition of Political Donations by Nigerian Companies Tenable?

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Introduction

Section 43(2) CAMA provides that:

“A company shall not have or exercise power either directly or indirectly to make a donation or gift of any of its property or funds to a political party or political association, or for any political purpose, and if any company, in breach of this subsection makes any donation or gift of its property to a political party or political association, or for any political purpose, the officers in default and any member who voted for the breach shall be jointly and severally liable to refund to the company the sum or value of the donation or gift and in addition, every such officer or member commits an offence and is liable to a fine equal to the amount or value of the donation or gift.”¹

Coming across this provision again (during research for an unrelated publication), this author made a mental note to re-examine the underpinnings of the prohibition; and this article is the culmination of the author’s several soul searching on the issue. It is apposite to confess at the outset the author’s bias against the prohibition, and his resultant struggle to understand the rationale for it. This has inexorably led to more and more questions, which this article seeks to consider potential answers for.

Why do we need to ban corporate political donations? Should the government be crying more than the bereaved - if a company in due exercise of its governance process, decides it wants to make a donation from its own resources, and not third party assets? To the extent that donations would not be injurious to the company’s capital, nor make it unable

¹Emphases supplied. The phrase “for any political purpose”, is apparently intended to be all embracing, otherwise companies would have been able to make political donations to candidates, and not be in breach to the extent that they did not donate to “a political party or political association”. This provision is not new, and has attracted some discussion before now. For example, the abstract of a 1990 article stated (in respect of in *pari materia* predecessor **section 38(2) CAMA 1990**): “Moreover, besides the technical matters that could frustrate criminal prosecutions of a company, directors and shareholders discussed in this article, it remains to be seen whether the ban on corporate political gifts in Nigeria will be vigorously enforced by federal prosecutors”. Emphasis supplied. See KD Barnes, ‘The Ban on Corporate Political Donations in Nigerian Law and the Prospects of Enforcement’, *Review of African Political Affairs*, 1990, Vol. 4, Issue 1-2, pp.42-52: <https://www.africabib.org/rec.php?RID=11328439X>. See also, Mokutima Ekpo and Eni Alobo, ‘Nigerian Companies and the Prohibition on Political Donations: A Paradigmatic Shift as a Panacea for Compliance’, *IJAEMS*, Vol-4, Issue-12, Dec-2018, pp. 781-792: <https://www.neliti.com/publications/268277/nigerian-companies-and-the-prohibition-on-political-donations-a-paradigmatic-shift>. Incidentally, the UK whose companies’ legislation influenced Nigeria’s, has long allowed corporate political donations. See for example, **UK Parliament Hansard** excerpts (Volume 775, Wednesday, 11.12.1968), at [https://hansard.parliament.uk/Commons/1968-12-11/debates/d7661d9a-d44a-4670-bcc9-aefb695b1612/Companies\(PoliticalContributions\)](https://hansard.parliament.uk/Commons/1968-12-11/debates/d7661d9a-d44a-4670-bcc9-aefb695b1612/Companies(PoliticalContributions)): “Mrs. Ewing asked the President of the Board of Trade what is the total amount of political contributions made by companies since the Companies Act, 1967, required disclosure of this information. Mr. Dell: The requirement to disclose information about political contributions in the directors’ report applies to financial years of companies ending after 26th January, 1968. Not all companies have yet sent to the Registrar of Companies a directors’ report for a financial year ending after that date. An analysis of the reports sent to the Registrar by companies with net assets exceeding £500,000 or profits exceeding £50,000 shows political contributions totalling £135,000. An analysis of the reports sent by other companies would involve an undue expense of time and effort.” Emphases supplied, (all weblinks accessed 12.08.2023).

to pay its debts as they fall due,² why should the legislature be substituting its judgment for those of the company; in other words, to be second guessing the company? What exactly is the injury or potential injury to the public or the electoral process, warranting the ban on corporate donations? Is there not greater injury otherwise – that is, in banning corporate political donations?

Are Nigerian companies, albeit abstractions elevated to being equivalent to adults of full natural capacity, intrinsically less worthy stakeholders of the electoral process and political governance of their operating environment? In answer to this latter question, we respectfully do not think so.

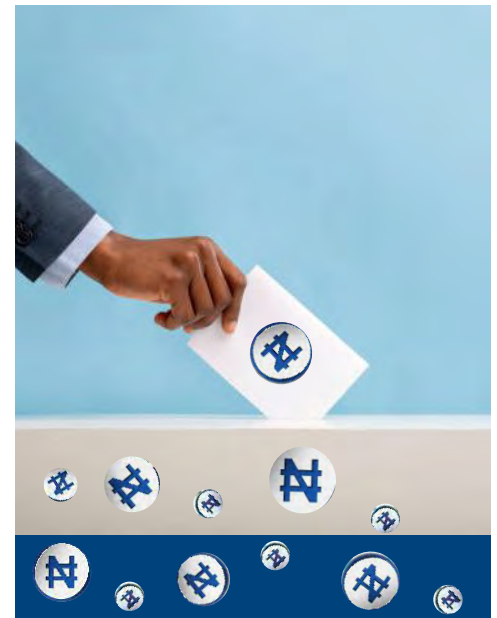
Corporate Political Donations: A Panoply of Issues

We will discuss the diverse issues, mostly related to why in the author's view the ban is absurd, under the hereafter appearing subheadings.

Ineffectiveness: Lack of Enforcement Appetite

Incidentally, the punishment against the prohibition is not lame – there is exposure to a 'fine' or 'penalty' by every participant, equivalent to the amount of the gift (following a criminal process); in addition to joint and several liability to refund the gift amount to the company.³ However, the nil or minimal enforcement in practice, means that there is really no enforcement appetite cum disincentive against corporate political donations.⁴ To underscore the non-enforcement point, the immediate former INEC Chairman (Prof. Attahiru Jega) in 2019 reportedly called for ban on corporate political donations – even though such ban had been statutory at least since 1990, under CAMA's predecessor legislation!⁵

The greatest deterrent against breach of the prohibition would have been robust enforcement; non-existent enforcement is a clear message to would be defaulters



that they run little or no consequential risk; accordingly, they can procure corporate donations without fear of sanctions.⁶ Secondly, would be defaulters may in the case of small of small donations, consider the sanction as not stiff enough to discourage them from effecting corporate donations. Meanwhile, small donations could add up to significant sums, if many companies

²Inability to pay debts as they fall due is a cardinal concern of companies' regulation and is one of the grounds for creditors' or court ordered winding up. Section 571(d) CAMA stipulates that: "A company may be wound up by the court if the company is unable to pay its debts" whilst section 572 prescribes the scenarios when "A company is deemed to be unable to pay its debts if- (a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding ₦200,000, then due, has served on the company, by leaving it at its registered office or head office, a demand under his hand requiring the company to pay the sum due, and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; (b) execution or other process issued on a judgment, act or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or (c) the Court, after taking into account any contingent or prospective liability of the company, is satisfied that the company is unable to pay its debts." Emphases supplied. Cf. with payment of dividends out of capital vide section 433 CAMA provision that: "All directors who knowingly pay, or are party to the payment of dividend out of capital or in contravention of this Part, are personally liable jointly and severally to refund to the company any amount so paid", albeit with right of recovery "from shareholders who receive it with knowledge that the company had no power to pay it". Emphasis supplied.

³Fine or penalty (at the conclusion of requisite legal process) would be payable to the government, whilst the refund is to the company. Since the fine is payable by everyone involved, whilst there is only joint and several liability for them in respect of the refund, the State is likely to make more money (multiples of the donation), from enforcement actions against such infractions, than the company that was the victim of such infraction (that will only get at most a refund). This may however be defended on the basis that the enforcement actions will consume resources of the State, whereas the company might not have even taken any action to protest its alter egos making the banned corporate political donation. On the other hand, the imposition of fine as a criminal sanction distinct from the refund obligation, arguably evinces the intention to discourage corporate political donations; the sanctions are arguably stiff enough as harsher sanctions (like terms of imprisonment), would be equivalent to squashing a fly with a sledgehammer. In this sense, the fine confirms that section 43(2) CAMA not only prohibits corporate political donations, but actually makes same illegal, since fine would payable upon conviction (conclusion of criminal trial).

⁴If corporate political donations represent a real and present danger to the public, then is the absence of enforcement appetite not whittled down the severity of such danger, effectively allowing free rein to prospective defaulters? Any sanction without enforcement is not worth the ink its provision is written with or the space the provision occupies, in the statute books. Arguably, assuming the legislature frowns severely against political donations, the refund penalty on every participant could have been in multiples (for example, two or three times the amount donated). The heavier penalty will more effectively discourage breach of the prohibition. Cf. the graduated regime of sanctions under Nigerian criminal law, based on severity. See for example, the Criminal Code Act, Cap. C38 LFN 2004 which prescribes murder for capital offences (section 319(1)), but lesser sanctions like terms of imprisonment, fines and forfeiture for less severe crimes. Cf. prior and current provisions on grossing up – a commentator had argued that because no sanction was originally prescribed against grossing up, the provision was not mandatory, but merely advisory. However the recent amendments have provided for stricter treatment by making any tax burden borne on behalf of third parties (including by way of grossing-up), non-deductible. See for example, Afolabi Ebijiu, 'Addendum – Withholding Tax: The A-Z of Grossing-Up', LeLaw Thought Leadership, April 2021: https://lelawlegal.com/add11pdfs/Afolabi_-_Addendum_updated.pdf (accessed 20.08.2023).

⁵See 'Ban Corporate Organizations from Making Donations to Politicians, Parties, Jega, Salami Urge Buhari', Sahara Reporters, 12.06.2019: <https://saharareporters.com/2019/06/12/ban-corporate-organizations-making-donations-politicians-parties-jega-salami-urge-buhari> (accessed 20.08.2023). According to the news report, "In his recommendations, Jega said more attention should be paid to the strengthening of campaign finances and legislation against vote buying. The objective is to impose limits on campaign and general political finance spending and impose stiff penalties for non-compliance," he said. He added that corporate contributions to political parties and candidates should be banned." Emphasis supplied.

⁶Cf. generally, Samson Adenekan, 'Campaign Finance: Nigeria's Electoral Law Contains Loopholes Being Exploited', Premium Times, 13.09.2020: <https://www.premiumtimesng.com/news/headlines/414186-analysis-campaign-finance-nigerias-electoral-law-contains-loopholes-being-exploited.html?tztc=1> (accessed 20.08.2023). See some excerpts: "To check undue monetisation of the election process, the Electoral Act mandates political parties to submit their financial reports to the [INEC] at specified intervals. But lawyers and analysts have observed that the electoral commission has not been 'effective' in enforcing that provision of the Electoral Act." "Johnson Omede, a legal expert, said the laxity of INEC in prosecuting parties over breach of relevant sections of the Electoral Act and the lack of more stringent structure of investigating parties campaign finances have widened the breaches of the law." "Mr. Ojo said incumbent candidates or ruling parties often contravene the electoral campaign laws more than the opposition candidates and parties. He noted that sitting governors often use state resources such as media, security personnel and other assets (which they would otherwise have paid for if not in government) to run their re-election campaigns, without accounting for the cost." Emphases supplied.

donate 'small' sums.⁷ The risk of refund of small donations to the company, and of penalty of same amount by everyone involved is apparently not a fearsome or 'heavy' sanction.

Apart from the company's auditors picking up political donations as a governance infraction (which - if the company is not in a regulated sector - may not attract any additional sanction, such as fine or refusal to approve audited financial statements),⁸ nothing may actually come out of the breach of the prohibition.⁹ Whilst some learned commentators have previously highlighted this defect,¹⁰ arguably a comprehensive review of other

CAMA provisions may however show that the risk exposure for breach, is not unsubstantial.¹¹

If the punishment is 'lame' by reason amongst others of non-enforcement, the prohibition might as well not need to be in existence.¹² In any event, the **section 43(2) CAMA** prohibition provision will only force 'determined corporate donors' to find other ways to make the donation, or to devise various forms of disguised donations; because surely, where there is a will, there will be a way!

For example, dividends can be routed to political parties. Can a 'nominee' shareholder not be

receiving dividends which he or she is to promptly donate in cash or kind to preferred/ designated political parties or candidates, *vide* effectively a trusteeship arrangement, which stratagem is not disclosed or visible to third parties?¹³ Such arrangement is akin to the use of 'fronts' to garner public sector contracts, purchase or concession public assets, etc for ultimate beneficiaries behind the corporate veil.

Notably, the **Nigerian Code of Corporate Governance 2018 (NCCG)** does not have any direct provision on political donations, possibly because it was felt that the **CAMA's** sweeping ban is enough. A 'see no

⁷Note that from a strategic perspective, some political parties (especially non-incumbents), may prefer to target small donations from many donors, rather than large donations from few donors to which they may become beholden when in power. Small donations will obviate that risk. According to an authoritative publication, "Evidence has also shown that there is a risk that some parties and candidates, once in office, will be more responsive to the interests of a particular group of donors rather than to the wider public interest. Donors may expect a form of reciprocity for donations made during an election campaign, for example getting access to overpriced public contracts, receiving favourable conditions in public loans or other forms of illegal benefits from the respective public administration". See 'Regulating Corporate Political Engagement Trends, Challenges and the Role for Investors', OECD/PRI, 2022, p.13: <https://www.oecd.org/gov/ethics/regulating-corporate-political-engagement.pdf> (accessed 20.08.2023). Its **Executive Summary** states in part (at p. 6) that "The present report provides an analysis of regulations and soft law instruments that shape corporate political engagement activities across 17 jurisdictions (the European Union, France, the Netherlands, Germany, Spain, Italy, the United States, Canada, the United Kingdom, Australia, Japan, Brazil, People's Republic of China (hereafter 'China'), India, Hong Kong China, South Korea and South Africa)." It also states at p. 9: "The Political finance regulations are more robust if compared to lobbying activities, though loopholes and grey areas remain. Three countries and the European Union ban anonymous donations to political parties and candidates, and ten countries have bans on these types of donations above certain thresholds. Seven countries (Brazil, Canada, France, Germany, South Korea, Spain and the United States) ban donations from corporate interests to political parties and six (Brazil, Canada, France, Japan, South Korea and the United States) ban them to political candidates." Emphasis supplied.

⁸Notably, the **NCCG 2018** requires auditors to report infractions to the relevant regulator. Its **Para 20.8** stipulates: "Where external auditors discover or acquire information during an audit that leads them to believe that the Company or anyone associated with it has committed an indictable offence under any law, they should report this to the Regulator, whether or not such matter is or will be included in the Management Letter issued to the committee responsible for audit and/or the Board." Emphasis supplied.

⁹Assuming the company is a closely held one with few shareholders, and is not subject to any sectoral regulatory oversight, the probability of corporate political donation going under the radar is high; as the Corporate Affairs Commission (CAC) does not "audit" financial statements. This is moreso as copies of financial statements are no longer required to be filed at the CAC; only significant line items like turnover, etc are required to be input into the Annual Returns form (**Form CAC 19**) to be filed for companies. Cf. however, that the legislator is presumed never to legislate in vain: "... Parliament shuns tautology and does not legislate in vain; the court should therefore endeavour to give significance to every word in an enactment (see *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR 484 at [43])". See **Tan Cheng Bock v AG** [2017] SGCA 50 (Civil Appeal No 124 of 2017): [file:///C:/Users/ASUS/Downloads/\[2017\]%20SGCA%2050.pdf](file:///C:/Users/ASUS/Downloads/[2017]%20SGCA%2050.pdf) (accessed 20.08.2023).

¹⁰See for example, Ekpo and Alobu (*supra*, at p. 787) in the context of prior equivalent stipulation: "Sadly, this provision is observed more in breach by Nigerian companies, especially since the sanctions attached appear to be a cosmetic provision. This is made obvious by the fact that no company has been found culpable under the section in discuss despite the numerous instances of donations to political parties in flagrant breach of the law." See also at pp. 789-790: "Also, a breach of S. 38(2) is a classic case for a derivation action by a shareholder under S300(9) of CAMA [2004]. However, despite the frequency of breach, there is dearth in such reported cases. The question that may be asked here is why this is so? This paper posits that the answer to this may be multi-faceted. First, it may be that those responsible for publicizing the law have failed to do so. Second, the shareholders see nothing wrong in supporting a political cause that may be beneficial to their company in the long-run. Thus, if a law is discountenanced by its custodians and the citizenry, it is time to revisit the law in order to enable it attend its desired objectives as well as enjoy the respect of all."

¹¹See for example, **section 280(1) and (2) CAMA** which inter alia disqualifies "a person is convicted by a High Court of any offence in connection with the promotion, formation or management of a company" from being a company director for ten years from the date of payment of the fine for the offence. Emphases supplied. *Quaere*: could any conviction in this regard also be regarded as a conviction for fraud which imposes further **CAMA** disqualifications on the convicted persons? It is submitted that the answer is in the negative, because conviction for fraud cannot be after the fact and **section 43(2)** merely describes breach as an offence, not fraud. Moreso, it is trite that particulars of fraud must be specifically proved. It is however not impossible that in some instances, the facts of the making of a corporate political donation may disclose fraud. Note also that donations being prohibited activity, may trigger inspection of the company's records/books, further to **sections 865, 734(1), 388(1), 375(1) CAMA**.

¹²Another indication of the prohibition being observed more in breach than compliance is the following: "The main public fundraising event by the PDP was held on Saturday December 20, 2014 at a dinner in the old Banquet Hall of the Presidential Villa, Abuja. During the occasion, ₦21.27 billion was raised via donations from individuals, corporate bodies, key sectors and state governments. For instance, individuals who donated at the dinner included Professor Jerry Gana, ₦5 billion; Chief Tunde Ayeni, ₦1 billion; Sam Egwu, ₦1 million; Halima Jubril, ₦5 million, etc. Some corporate bodies that made donations at the dinner were Cizaly Limited, ₦250 million; Ajuji Best Western Hotel, ₦1 million; Cifex, ₦10 million; Shelter Development Limited, ₦250 million; Emzor, ₦50 million; SIFAX, ₦100 million and so on. Donations also came in from different sectors of Nigeria's economy; they were from the construction sector, ₦310 million; transport sector, ₦1 billion; real estate sector, ₦4 billion; energy sector, ₦500 million; auto sector, ₦450 million; food and agriculture, ₦500 million; oil and gas ₦5 billion, etc." Emphasis supplied. See Moses T. Aluaigba, 'Taming a Lion: Monitoring Campaign Finances of Political Parties Prior to the 2015 Elections in Nigeria', (Paper Presented at a 'Two-Day National Conference on The 2015 General Elections in Nigeria: The Real Issues' Organized by The Electoral Institute, Abuja on July 27 to 28, 2015), pp. 8-9: <https://inecnigeria.org/wp-content/uploads/2019/02/Conference-Paper-Moses-Aluaigba.pdf> (accessed 21.08.2023).

¹³The Indian experience (being a democracy with diverse populace like Nigeria), is instructive. "In 1969, the Indira Gandhi government imposed a complete ban on corporate funding (via deletion of the **Section 293A of the Companies Act**) to break the nexus between politics and businesses and also to check the popularity of the centre-right Swatantra Party by drying it off finances [sic]. However, this proved counterproductive. To beat the ban, political parties started raising funds by publishing souvenirs, in which advertisements were placed by the business houses. ... This period also saw the rise of 'briefcase politics' through which vast amounts of black money was transferred into the Congress Party account. In the era of license permit raj, this arrangement also suited the businesses. However, a forward-looking Rajiv Gandhi government, intending to end the culture of license permit raj, took a crucial decision of lifting the ban in 1985. ... The post-liberalisation period has witnessed a steady rise in the corporate funding of elections through both the traditional route of contributing directly to political parties and through other institutional innovations like electoral trusts. A major change affecting corporate donations was brought in 2013 by amending the Companies Act. This legislation raised the earlier 5 per cent limit to 7.5 per cent, allowing corporates to donate up to 7.5 percent of the net average profits earned in the preceding three years. While this was done to allow more funding space for political parties, the 2017 Finance Act, brought by the current National Democratic Alliance (NDA), removed the earlier limit (by amending the Section 182 of Companies Act 2013). In addition, changes were made in the Foreign Contribution Regulation Act (FCRA), 2010 via the 2018 Finance Bill to allow foreign companies registered in India to make political donations. Two other recent important developments with direct links to corporate funding are the legal basis for Electoral Trusts and Electoral Bonds. While the electoral trusts scheme was floated as early as 1996 by the Tata Group, this innovative form of corporate donations received legal sanctity in 2013 by bringing these entities under the Section 25 of the Companies Act, 1956. The electoral bonds scheme was introduced through the Finance Act 2017. It allows anyone, including corporates, to donate to political parties via electoral bonds. To sum up, laws and institutional forms related to corporate donations have gone through massive transformations since 2013." Emphases supplied. See Niranjana Sahoo and Niranjana Tiwari, 'Financing Elections in India: A Scrutiny of Corporate Donation', Observer Research Foundation, Indian Matters, 09.04.2019: <https://www.orfonline.org/expert-speak/financing-elections-india-scrutiny-corporate-donation-49750/> (accessed 22.08.2023).



evil, hear no evil' approach may be taken or management may deliberately mis-characterise donations, and thereby attempt to cover their tracks.¹⁴

The only impediment that corporate donations may have is if some shareholders are opposed to it: even if overruled, they can bring derivative action in the name, and on behalf of, the company under **section 346**, to in effect, enforce the sanction of **section 43(2)** (refund/recovery of the donation, to the company). Alternatively, they (in personal and/or representative capacity as the case may be), can seek injunctive and or declarative relief under **sections 343 and 344 CAMA**.¹⁵ However, where there is no internal opposition or dissent to the corporate donation, these provisions do not come into play.¹⁶

In the event that the CAC seeks to enforce the prohibition, it will be in pursuance of its **section 8(1)(d) CAMA 2020** functions, to "... ensure compliance by companies, business names and incorporated trustees

with the provisions of this Act and such other regulations as may be made by the Commission"; and "undertake such other activities as are necessary or expedient to give full effect to the provisions of this Act." CAC litigation data (vide law reports) does not disclose any appreciable enforcement action in this regard, potentially because there is little CAC visibility for corporate donations, or that the CAC does not consider enforcement action in that regard, a priority.

Similarly, INEC has not been known for prosecuting political donations related infractions of the law. Also, most if not all, of election litigation instituted by politicians has been to challenge election results or eligibility of aspirants (for party primaries) or candidates (in the elections proper).¹⁷ Thus, paucity of political donations case law means that this is not a high visibility or sufficient regulatory scrutiny issue.

Section 43 is Paternalistic and Arguably Self-Contradictory
Section 43 CAMA is patently

paternalistic – it unreservedly assumes that the Board or shareholders cannot make a reasoned decision or business judgment that a political donation would be in the interests of the company? Meanwhile, the days of paternalistic regulatory thinking have been long gone so there is no basis for the regulator seeking to protect the company (like a child), from self-harm or from donee political parties, candidates or causes.¹⁸ The owners (and managers) of the business should be presumed to know what is best for the business, and no reasonable individuals involved with a company will support donation that will subsequently put the company's existence or profitable operations at risk.¹⁹

Proponents of corporate donations intent on ensuring that **CAMA** does not 'rain on their parade' can, if they feel so strongly, use a limited liability partnership (LLP) as their donor vehicle without any fear of sanction, since there is no equivalent provision of **section 43(2) CAMA** for LLPs.²⁰ Since the tax deductibility of such donation is not worse off than if made by a company, then using LLPs does not present any additional hazard, but may arguably be even more favourable since there is no direct prohibition against political donations by LLPs.

¹⁴Albeit such might not be an easy task, given the detailed reporting requirements of the **International Financial Reporting Standards (IFRS)** regarding financial statements.

¹⁵**Section 343** provides in part: "... the Court, on the application of any member, may by injunction or declaration restrain the company or its officers from - (a) entering into any transaction which is illegal or ultra vires; (b) purporting to do by ordinary resolution any act which by its articles or this Act required to be done by special resolution; (c) any act or omission affecting the applicant's individual rights as a member; (d) committing fraud on either the company or the minority shareholders where the directors fail to take appropriate action to redress the wrong done; (e) where a company meeting cannot be called in time to be of practical use in redressing a wrong done to the company or to minority shareholders; (f) where the directors are likely to derive a profit or benefit, or have profited or benefited from their negligence or from their breach of duty; and (g) any other act or omission, where the interest of justice so demands." Per **section 344**: where shareholder(s) institutes personal or representative action to enforce related rights, they are entitled to damages for the breach of that right; or declaration or injunction to restrain the company or the directors from doing a particular act; the erring directors could be found personally liable in damages to the aggrieved member; and the Court may award costs to the plaintiff shareholder, whether or not his action succeeds, albeit the Court may also order security for costs at the outset.

¹⁶In the absence of an internal dissenter, the chances of the CAC picking up on the infraction and independently undertaking enforcement action is remote.

¹⁷This author's scan of law reports for political/election related litigation from the onset of the Fourth Republic till date did not reveal corporate or even private individuals' related political donations.

¹⁸Cf. with the days of strict foreign exchange (forex) control regulation in Nigeria (vide the **Exchange Control Act 1962**), vis a vis liberalised forex regime introduced by the **FEMMP** and **NIPCA** in the mid-1990s, which still largely underpin Nigeria's forex regime today. Another paternalistic legislation is the **Industrial Training Fund Act** which requires employers having 25 employees and more to contribute 1% of their payroll cost to the ITF and would only get a refund if they are able to prove that they trained their staff. Why would any reasonable employer intent on growth and profitability need any external motivation to train its staff? For a critique, see Afolabi Elebiju, 'Vestiges: Do We Still Need the Industrial Training Fund (ITF)?' *Nigerian Tax Journal*, February 2020 (KPMG), pp.40-42; LeLaw Thought Leadership, April 2020, p.1: <https://lelawlegal.com/add11pdfs/Afolabi-Vestiges-Do-We-Still-Need-the-ITF.pdf>. Although **section 41 Business Facilitation (Miscellaneous Provisions) Act No. 5 of 2022 (BFA)** has amended **section 6 ITF Act** by raising the threshold (from "at least 5 employees or a minimum turnover of ₦50 million") to 25 employees, it is submitted that the **BFA** has not gone far enough; the entire **ITF Act** should have been repealed or at the very least amended to exclude private sector employers from its coverage. Yet another example is the requirement for foreign owned enterprises to register with, and obtain Business Permits (BP) from the Ministry of the Interior; such is an anomaly given the arguments by this author in '**Musings II: Is Business Permit Under the Immigration Act Still Tenable in Nigeria?**' December 2020: https://lelawlegal.com/add11pdfs/AE_-_Business_Permit_in_Nigeria.pdf (both accessed 20.08.2023).

¹⁹This view may be less tenable for companies that also ban political donations in the Articles, as that would be reflective of a well-considered position, which when considered together with the **CAMA** prohibition makes such donation doubly ultra vires and illegal. See **section 44 (Effect of ultra vires acts)** and **section 46 CAMA (Effect of memorandum and articles)**.

²⁰See **Chapter 2 (sections 753 – 760) CAMA 2020**. Quare: was making the prohibition inapplicable to LLPs, an oversight? This author believes that it was probably deliberate.

Although **section 43(1)** starts with an exemption: “Except to the extent that the company’s memorandum or any enactment otherwise provides”, the remainder “every company shall, for the furtherance of its business or objects, have all the powers of a natural person of full capacity” is a direct contradiction to **section 43(2)** because individuals are always free to contribute to political parties in line with the provisions of the **Electoral Act 2022**²¹ (**EA**). Note however, that one of the targets of **section 88(11) EA** is corporate political donations.²²



CAMA 2020 Enactment Process Should Have Jettisoned the Prohibition

The author appreciates that the provision had always been in our statutes,²³ but the recent wholesale **CAMA** enactment effort ought to have also used the opportunity to jettison the provision, since it is really not serving any useful purpose. Political donation may actually be part of the company’s CSR strategy, in helping to ensure the success of political party(ies) or candidates that the shareholders believe can bring about positive change.²⁴ Albeit, one concedes that there is no one size fits all: for example, Canada has evolved in the opposite direction.²⁵

Why should renewable energy companies not be able to support candidates or parties that have a

green agenda, have prioritised clean energy and efforts to arrest climate change? Can an argument not be made that corporate political donation in such case would be covered by the omnibus clause of the company’s Memorandum of Association?²⁶ Not-for-profits should particularly be free from inhibitions, once the support is in line with their objects or charitable causes, especially as political parties are also not profit making entities.²⁷

Mischief Rule

What is the mischief that the **CAMA** prohibition is seeking to prevent or check? It is respectfully submitted that there appears to be none that is worthy of the provision. Firstly, the legislator should not be paternalistic about to what causes, companies make their donations. Thus, why is the **CAMA** not banning

charitable or corporate social responsibility donations? If the concern is that the *alter egos* of a company can donate almost all its assets away to political parties, thereby giving the short end of the stick to counterparties like employees, vendors, creditors and shareholders; mismanagement or fraud can also produce such result.

The ‘If’ Scenarios

Banning corporate political donations would only make sense in the Nigerian environment if the government were to be directly funding political parties through budgetary allocations, which is not the case. The 2023 elections, particularly the mass mobilisation of funding by Labour Party (which apparently was the only party that had no incumbent government at Federal, State or Local Government

²¹Act No. 13 of 2022. Its long title *inter alia* include: “to regulate the conduct of Federal, State and Area Councils in the Federal Capital Territory elections and for related matters.” Visit: <https://placng.org/l/wp-content/uploads/2022/07/Electoral-Act-2022.pdf>. In fact, INEC’s Form EC 16D (Political Party Campaign Finance Reporting Form) available at: <https://www.inecnigeria.org/wp-content/uploads/2019/01/FORM-EC-16D.pdf> presumes that only individuals will donate to political parties, (by providing for “Name, Address Occupation”). Both weblinks accessed 20.08.2023.

²²It provides that “An accountant who falsifies, or conspires or aids a candidate to forge or falsify a document relating to his expenditure at an election or receipt or donation for the election or in any way aids and abets the contravention of the provisions of this section commits an offence and is liable on conviction to a fine of ₦3,000,000 or imprisonment for a term of three years or both.” Emphasis supplied.

²³See section 38(2) Companies and Allied Matters Act, Cap. C20 Laws of the Federation of Nigeria (LFN) (CAMA 2004), which is *in pari materia* with section 55(2) CAMA.

²⁴Speaking of the UK regime under the Companies Act 2006, Ekpo and Aloba (*supra*, at p. 790) stated: “By Ss. 367 and 368, an ordinary resolution of members is all that is required to authorize the directors to make such donations. Also, S. 368 expects the authorisation to last for four years unless the articles or the directors determine that it should be for a shorter period. The authorizing resolution must set a monetary limit. A breach of these provisions renders the directors jointly and severally liable to refund the amount in issue with interest to the company. In addition, they are bound to compensate the company for any loss or damage incurred as a result of the breach. Interestingly, these provisions may be enforced by a group of members holding not less than 5% of the companies share value or not less than 50 of its members or 5% of members of the company, if the company is not limited by shares. This is of course limited to the conditions contained in S. 371 of the Act.”

²⁵“Limits on contributions adopted in 2003 became effective in January 2004. Further restrictions were imposed as of January 1, 2007; consequently, corporations and trade unions are no longer allowed to make political contributions.” See ‘The Electoral System of Canada, Political Financing’, Elections Canada: <https://www.elections.ca/content.aspx?section=res&dir=ces&document=part6&lang=e> Cf. INEC’s 5 page schematic, ‘Finances and Election Expenses of Parties, Candidates and Aspirants’: <https://www.inecnigeria.org/wp-content/uploads/2023/02/FINANCES-AND-ELECTION-EXPENSES-OF-PARTIES-A4.pdf> (both accessed 20.08.2023).

²⁶A typical omnibus clause typically permit the Company to: “Do all such other things as may be considered to be incidental or conducive to the attainment of the above objects or any of them.”

²⁷For a pre-CAMA 2020 discussion of the not for profit sector in Nigeria, see Afolabi Elebiju et al, ‘Charitable Objects’: Legal and Regulatory Issues in Nigeria’s Not for Profit Sector, LeLaw Thought Leadership Insights, February 2020, <https://lelawlegal.com/add111pdfs/NFP.PDF> (accessed 20.08.2023).

levels), has shown that creative funding is critical to the effectiveness of political campaigns, by the opposition that lacks access to incumbency finance advantages.

Corporate ‘Non-Partisanship’ and Constitutional Protections

Disclosure in the companies’ financial statements will suffice; also there is no risk that a company by reason of being a political donor is partisan, because companies being abstractions and not individuals, cannot vote. Also, the fact of political donation cannot expose the company to maltreatment from opposing political parties, since it will always have access to court if its rights are infringed; and the Courts will not be loath to uphold such rights against actual or threatened violations.²⁸

Permit Corporate Political Donations but Impose Thresholds?

And maybe what should be done in that regard is to specify that companies cannot donate beyond a certain threshold of their turnover or profit (say 15% - 20%)? Also, the law may refuse to allow the tax deductibility of political donations;²⁹ that in itself is enough deterrence akin to the way recent **Finance Act** amendments have disallowed tax gross-ups generally, or excess interest in related party foreign loan transactions.³⁰ If a company believes so strongly in a

political cause that it is willing to give up the tax deductibility of related donations thereto, should the loss of deductibility not be enough ‘punishment’?³¹

The Electoral Act Angle

What are the provisions of the **Electoral Act**³² (EA) on this matter? It appears that the EA also (like CAMA) leans against corporate political donations, as exemplified by its **Part VII (Electoral Offences)** provisions. For example, **section 87** provides that:

“(1) The Commission shall have power to place limitation on **the amount of money or other assets which an individual can contribute to a political party or candidate** and to demand such information on the amount donated and source of the funds.

(2) **Any individual, candidate or political party who exceeds the limit placed by the Commission** in subsection (1), commits an offence and is liable on conviction to - (a) in case of a political party, a fine not more than ₦10,000,000 and forfeiture of the amount donated; and (b) in case of an individual, a fine of five times the amount donated in excess of the limit placed by the Commission.”³³

Is the Ban Really Necessary?

Respectfully, there is no need for the EA’s prohibiting the corporate political donations given the combined effect of **sections 86(1) and (3) and 90 EA** which provide as follows:

Section 86(1): “Every political party shall submit to the Commission a detailed annual statement of assets and liabilities and analysis of its sources of funds and other assets, together with statement of its expenditure including hard and soft copy of its list of members or in such a form as the Commission may require.”

Section 86(3): “A political party shall grant to any officer authorised in writing by the Commission, access to examine the records and audited accounts kept by the political party in accordance with the provisions of this Act and **the political party shall give to the officer all such information as may be requested in relation to all contributions received by or on behalf of the party.**”³⁴

Section 90: “(1) A political party shall not accept or keep in its possession any anonymous monetary or other contribution, gift or

²⁸See **section 36(1) 1999 Constitution**: “In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality”. Emphasis supplied. Cf. also commentary by an American commentator: “At the same time, corporations have faced legislative retaliation for remaining consistent and advocating for their stated commitments. Responding to pressure from stakeholders, the Walt Disney Company opposed legislative efforts in Florida to prohibit education about sexual orientation and gender identity in public schools. In response, Florida’s governor led an effort to strip existing state law benefits from Disney.” See Benjamin Edwards, ‘The Implications of Corporate Political Donations’, ABA Human Rights Magazine, Vol. 48, No. 1: Economics of Voting, 24.10.2022: https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economics-of-voting/the-implications-of-corporate-political-donations/ (accessed 22.08.2023).

²⁹As a matter of fact, the illegality of corporate political donations (exemplified by criminalising the act and making everyone involved thereby liable to a fine equivalent to the donation upon conviction) under **section 43(2) CAMA**, clearly shows that the donations are not tax deductible. It would be incongruous to tax deduct for an item that is prohibited, nay criminalised.

³⁰See for example Afolabi Elebiju, ‘Nigeria’s Finance Act 2020 Tax Amendments - Should the Oil and Gas Sector Be Nervous?’, LeLaw Thought Leadership, March 2020, p.2: <https://lelawlegal.com/add111pdfs/Nigeria-Finance-Act-2020-Oil-Industry-Impact.pdf> (accessed 22.08.2023).

³¹See **section 27 CITA**; arguably the donation was not for the purposes of generating income, therefore should not be deductible. Assuming otherwise, **section 43(2) CAMA** itself is a bar to deductibility, given the intent of **section 27(1)(k) and (l) CITA** (as amended by **section 11 FA1 2020**) disallowing statutory penalties and any third party tax or penalty borne by the company. See also Afolabi Elebiju, ‘Posers and Answers: The Petroleum Industry Act 2021, Production Sharing Contracts and Stabilisation Issues’ LeLaw Tax Monograph Series No.4, April 2023 at pp. 15-16: “Sections 264(c) and 104(3) PIA disallows ‘expenditure incurred as a penalty, natural gas flare fees or imposition relating to natural gas flare’ and prescribes that ‘a fine paid [for gas flaring or venting] shall not be eligible for cost recovery or be tax deductible’”. See also the discussion in the related footnote 59 (at p. 16).

³²Act No. 13 of 2022.

³³Emphasis supplied. By the application of the *esjudem generis* rule whereby the express mention of a thing is the exclusion of what is not mentioned, the use of “an individual” in **section 87 EA** arguably means that corporate donations are not allowed.

³⁴**Section 152 (Interpretation)** did not define “contribution”, but arguably it includes donation or contribution from non-members. This is moreso as **section 87(1)** speaks in terms of “an individual” which could therefore be a party member or otherwise. It is submitted that if the intent was to limit contributions to party members, the Act would have provided so expressly.



property, from any source. (2) A political party shall keep an account and asset book into which shall be recorded - (a) all monetary and other forms of contributions received by the party; and (b) the name and address of any person or entity that contributes any money or asset which exceeds ₦1,000,000. (3) A political party shall not accept any monetary or other contribution which is more

than ₦50,000,000 unless it can identify the source of the money or other contribution to the Commission.”³⁵

These disclosure and threshold requirements will ensure that there are no anonymous donations, whether corporate or otherwise.³⁶

Furthermore, the restriction against foreign contributions is well

understood, compared to the prohibition against corporate donations; the former is presumably a safeguard against national elections being subject to external influence, a scenario that is inapplicable to donations by Nigerian corporates.³⁷

The greater focus should be on making sure that our electoral framework is utterly transparent and inspires more than substantial credibility.³⁸ Even prior to the 2023 elections, a top functionary of INEC had posited that INEC was overburdened and should shed some of its functions.³⁹

Notably, by sections 42 and 43(1) CAMA, a company is effectively a person, and the Interpretation Act⁴⁰ generally does not distinguish between persons.⁴¹ The 1999 Constitution also does not view discrimination lightly.⁴²

What we should do is regulate political party donations, since

³⁵Emphasis supplied. Whilst it may be contended that the reference to “any person or entity” in section 90(1)(b) EA is arguably suggestive that CAMA registered companies may be contributors, but obviously such a view is wrong on current state of the law because of section 55 CAMA and other more direct EA provisions like section 87.

³⁶See sections 225 and 226 Constitution of the Federal Republic of Nigeria 1999 (as amended) (1999 Constitution): “225. (1) Every political party shall, at such times and in such manner as the [INEC] and publish a statement of its assets and liabilities. (2) Every political party shall submit to the [INEC] a detailed annual statement and analysis of its sources of funds and other assets together with a similar statement of its expenditure in such form as the Commission may require. (3) No political party shall - (a) hold or possess any funds or other assets outside Nigeria; or (b) be entitled to retain any funds or assets remitted or sent to it from outside Nigeria. (4) Any funds or other assets remitted or sent to a political party from outside Nigeria shall be paid over or transferred to the Commission within twenty-one days of its receipt with such information as the Commission may require. (5) The Commission shall have power to give directions to political parties regarding the books or records of financial transactions which they shall keep and, to examine all such books and records. (6) The powers conferred on the Commission under subsection (4) of this section may be exercised by it through any member of its staff or any person who is an auditor by profession, and who is not a member of a political party. 226. (1) The [INEC] shall in every year prepare and submit to the National Assembly a report on the accounts and balance sheet of every political party. (2) It shall be the duty of the Commission, in preparing its report under this section, to carry out such investigations as will enable it to form an opinion as to whether proper books of accounts and proper records have been kept by any political party, and if the Commission is of the opinion that proper books of accounts have not been kept by a political party, the Commission shall so report. (3) Every member of the Commission or its duly authorised agent shall - (a) have a right of access at all times to the books and accounts and vouchers of all political parties; and (b) be entitled to require from the officers of the political party such information and explanation which to the best of his knowledge and belief are necessary for the purposes of the investigation, the Commission shall state that fact in its report.” Emphases supplied.

³⁷See section 85 EA: “Any political party that - (a) holds or possesses any fund outside Nigeria in contravention of section 225(3)(a) of the Constitution, commits an offence and shall on conviction forfeit the funds or assets purchased with such funds to the Commission and in addition may be liable to a fine of at least ₦5,000,000; or (b) retains any fund or other asset remitted to it from outside Nigeria in contravention of section 225(3)(a) of the Constitution commits an offence and shall on conviction forfeit the funds or assets to the Commission and in addition may be liable to a fine of at least ₦5,000,000”. Emphases supplied. For detailed discussion on an aspect of foreign funding that sovereigns find objectionable, see the EU Commission for Democracy Through Law (Venice Commission)’s, ‘Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources’: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2006\)014-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2006)014-e) (accessed 22.08.2023). The Opinion was adopted by the Venice Commission at its 66th Plenary Session in Venice 17-18th March 2006.

³⁸See for example Collins Okeke, ‘Post 2023: How to Improve Nigeria’s Electoral Processes and Institutions Using the Uwais Committee Report’, Olisa Agbakoba Legal, 03.05.2023: <https://oal.law/post-2023-how-to-improve-nigerias-electoral-processes-and-institutions-using-the-uwais-committee-report/>; Henry Ojelu & Chinonye Udensi, ‘Sanwo-Olu, Otti, Agbakoba, Falana, Others Task Judges, Lawyers on Post-Electoral Process’, Vanguard, 21.06.2023: <https://www.vanguardngr.com/2023/06/sanwo-olu-otti-agbakoba-falana-others-task-judges-lawyers-on-post-electoral-process/>; Gift Habib, ‘2023 Election: EU Calls for Legal Operational Reforms to Enhance Transparency’, Punch, 27.06.2023: <https://punchng.com/2023-election-eu-calls-for-legal-operational-reforms-to-enhance-transparency/> (all accessed 22.08.2023).

³⁹See Festus Okoye, ‘The Prosecution of Electoral Offenders in Nigeria: Prospects and Possibilities’, Friedrich Ebert Stiftung Discussion Paper No. 5, September, 2013: <https://library.fes.de/pdf-files/bueros/nigeria/10405.pdf> (accessed 22.08.2023). At pp. 32-33, he stated: “The Independent National Electoral Commission has made it clear to the Nigerian people and the National Assembly that they do not have the capacity to prosecute electoral offenders. They insist that they are overburdened with conducting elections, registering political parties and 33 monitoring their activities and their finances, as well as carrying out other activities incidental to the conduct of elections.” Emphasis supplied.

⁴⁰Cap. I23, LFN 2004.

⁴¹See its section 18 definition of “person” that “includes any body of persons, corporate or incorporate”.

⁴²See related commentary in another context: “We argue that the inability of existing companies with nominee shareholders to convert to SSCs [single shareholder companies] is impermissible cum unfair discrimination, and should therefore attract immediate legislative attention. According to the Nigerian Judicial Dictionary, [(2017, Ritpank), p. 122.] citing *Lawal v. FRN*, [(2013) 3 NWLR (Pt. 1342) 451 at 467-468] “discrimination includes differential treatment especially a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured”. See Afolabi Elebiju and Denis Ogunbowale, ‘Going Further Beyond: Corporate Restructuring Reflections on the Companies and Allied Matters Act 2020 Single Shareholder Company Regime’, LeLaw Thought Leadership, July 2023, p.5: https://lelawlegal.com/add11pdfs/Afolabi_Elebiju_Denis_Ogunbowale_-_Restructuring_Reflections_on_CAMA_Single_Shareholder_Regime.pdf. Footnote 26 thereof

donations is likely to reduce the pressure on winners to directly steal from the public fisc in order to repay 'loans' incurred, whilst running for office. The wider the field from which donations can come especially in the context of capping the amount of donations, then the less the likelihood of state capture or incumbents being beholden to a few influential donors. Such regulatory framework will encourage parties to continually justify their value proposition to the electorate; not just to attract votes, but also to garner a diverse and wide pool of donors.

Given such potentialities, it is incongruous to place barriers on the political advocacy of companies. Should we be playing the ostrich? Campaign financing is the elephant in the room that cannot be

ignored.⁴³ For the sake of continued growth of our democracy, it is important to keep encouraging the interest and participation of the citizenry in the electoral process.

Conclusion

The foregoing discussion has shown that there may be a need to review the prohibition against corporate political donations by amending the provisions of both **CAMA** and the **EA** with a view of further broadening/strengthening options for democratic participation and development in Nigeria.

A permissive but regulated approach to corporate political donations can be an effective avenue for non-incumbent political parties to

source funds on the back of their pushing attractive and credible manifesto narratives to the public. Also it helps obviate or minimise the risk of moral burden that would otherwise apply where incumbents condone and enjoy the undue advantage of corporate political donations, with donors being more likely comfortable to breach the requisite rules for incumbents rather than for opposition parties. This creates and/or reinforces an uneven political playing field.

Nigeria's political funding rules reform must definitely benefit from the mistakes made in other peer jurisdictions, such as India.⁴⁴ Working around highlighted shortcomings in advanced democracies like the USA is no less important.⁴⁵ It is trite that learning

stated: "Section 42 1999 Constitution guarantees as a fundamental human right to Nigerian citizens, freedom from discrimination. However, the question may be asked whether multi-shareholder companies are 'citizens' capable of being discriminated against, given the provisions of Chapter III 1999 Constitution (Citizenship) that equates "citizens" to individuals or natural "persons"? This is because of references such as "every person born in Nigeria", "born outside Nigeria", "whose parents", "any of whose grandparents", "person of good character", "his desire", "he has taken", "any woman", "every person of full age and capacity", etc. On its part, section 42(1) talks about "A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person ...", whilst section 42(2) states that "No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth." Emphases supplied. Although **CAMA** regards a company as a "person" in law (with separate legal personality, perpetual succession, etc per section 42), and indeed endows it with "all the powers of a natural person of full capacity" (section 43(1)), our reluctant view is that a strict reading of Chapter III and section 42 1999 Constitution disregards Nigerian companies as citizens for this purpose. However, there may be a window for sympathy if shareholders can cast their narrative that discrimination against their company essentially amounts to discrimination against them, qua shareholder/citizens. Furthermore, that the registration of the company is equivalent to its birth, so it would therefore be a breach of section 42 1999 Constitution to discriminate a company. This is further reinforced by section 18 Interpretation Act, Cap. 123 LFN 2004's definition of "person" that "includes any body of persons, corporate or incorporate". Note however that section 14(a) Cap. 123 on gender refers to only males and females. For a scenario in England, see Jeremy Cook, 'Can a Company be Discriminated Against?', Stephen Scown LLP, 20.11.2015: <https://www.stephens-scown.co.uk/employment/can-a-company-be-discriminated-against/> (both accessed 24.07.2023). The author reviewed **EAD Solicitors LLP & Ors. v. Abrams UKEAT/0054/15/DM** where the Employment Appeal Tribunal held that limited companies can also be discriminated against. According to the author, "In reaching its decision, the EAT rejected the EAD's argument that since only individuals can have the protected characteristics listed in the Act, only individuals can be protected from discrimination. The EAT held that the purpose of the Act is not to protect individuals on the basis of their own protected characteristics but to guard against discrimination caused by, or related to, a protected characteristic. Further, the EAT noted that it is well established that a discriminator can be a corporate body and it did not believe there was any reason why the "person" on the receiving end of the discrimination must necessarily be an individual."

⁴³According to some authors, "Campaign financing has been a major problem in Nigeria elections since the return to civilian rule in Nigeria in 1999. Significant and unrelated campaign financing often creates an uneven playing field in an election contest. Large sums of money give certain parties and/or candidates an undue advantage over others. Very often, candidates with the most money always win the election or party nominations process. Wide discrepancies in levels of funding between parties and candidates constrain opportunities for political competition and tend to disenfranchise challengers. Most often, the uneven playing field results from the fact that the ruling party or the incumbent candidate control political apparatus and uses it to its advantage and the disadvantages of challengers. The financial requirements of the campaign for political parties and candidates appear to be getting higher and higher since the 1999 General elections, resulting in the political exclusion of those who cannot afford the cost. Another concern has been that elected officials are becoming more accountable to those who finance their campaigns than to their constituents. Large corporate or single donor funding campaigns for parties and candidates dominate political decisions thereby encouraging and promoting corruption and hampering the realization of the dividends of democracy for the constituents." See Augustine C. Osigwe, et al, 'Legal Framework of Political Party Funding and campaign Financing in Nigeria', (undated) pp. 1-2 (198 -199): <https://ir.nilds.gov.ng/bitstream/handle/123456789/409/LEGAL%20FRAMEWORK%20OF%20POLITICAL%20PARTY.pdf?sequence=1&isAllowed=y> (accessed 30.08.2023).

⁴⁴See the concluding remarks by Niranjana Sahoo and Niraj Tiwari (supra): "It is well known in political finance literature that excessive reliance on corporate funding can turn political and democratic processes into a plutocracy in the longer run. The recent changes in laws - particularly the removal of the 7.5 per cent cap in corporate donations, the amendment of the FCRA, 2010 allowing foreign companies registered in India to make political donation and the introduction of electoral bonds without the mandatory donors' identities - are likely to push the country toward a plutocracy. And even more worrisome is the growing asymmetry in corporate donations to major political parties. This will have much more serious implications for the health of democracy in India in the near term. There is sound empirics to suggest that money plays a disproportionate role in determining election outcomes in India and elsewhere. This is the precise reason why many democracies have gone for public funding mechanisms to provide a level playing field to all political parties - big, small, old and new ones. Equity in political finance is a hallmark of a healthy democracy. It is high time Indian policy makers take note of this worrisome development." See also, Aakanksha Singhal and Khushboo Sharma, 'Companies Act, 2013 Procedure: Contribution to Political Party by a Corporate Body', Lawbri Global Compliance Network, 14.09.2021: <https://www.lawbri.com/companies-act-procedures/contribution-to-political-party-by-a-corporate-body/> (accessed 22.08.2023).

⁴⁵See Benjamin Edwards, 'The Implications of Corporate Political Donations' (supra): Corporate political donations now raise a mix of ethical, legal, and business issues. Donations serve to align political candidates with corporate interests yet also entangle corporations in political affairs. At times, these donations sit in tension with stated corporate values and commitments. ... Direct corporate political involvement remains a relatively new phenomenon. Until the U.S. Supreme Court's decision in Citizens United v. Federal Election Commission (2010), corporate money largely sat on the sidelines during political campaigns. Of course, political action committees (PACs) existed, and corporate employees and shareholders could voluntarily contribute to these committees. But corporations themselves were not free to directly expend corporate funds to support political campaigns. Citizens United changed this dynamic. Corporations were suddenly able to expend corporate funds and also found themselves facing donation requests from lawmakers. ... As Dorothy S. Lund and Leo E. Strine have explained, corporate political donations face a significant legitimacy problem. A public corporation's shareholders generally lack any real influence over corporate political spending. Corporate law grants corporate managers the power to allocate corporate assets. ... When a corporation decides to support a particular political candidate or party, it may do so even though most of its shareholders find the action morally repugnant. ... Many of these corporate political contributions occur in the dark. Much corporate political spending may never be disclosed to shareholders, employees, or the public. ... Given these challenges and risks, many stakeholders might prefer to flatly prohibit corporations from making these donations instead of trusting corporate managers to set aside their own interests and act in the true interests of the corporation."



from global models always provide good leverage.⁴⁶

Given the huge awareness that the competitiveness of the 2023 general elections has engendered in the citizenry, it is forcefully submitted allowing corporate political

donations may be one of the structural and institutional reforms to the Nigerian electoral process that will better assure the capacity for delivering increasingly more credible elections for the country; and this will also be a boon to the growth of our democracy.⁴⁷

⁴⁶Unsurprisingly, a lot of research has been conducted on electoral financing and related matters. See for example, Ingrid van Biezen, 'Financing Political Parties and Election Campaigns – Guidelines', Council of Europe Publishing, December 2003: https://eos.cartercenter.org/uploads/document_file/path/309/Financing_Political_Parties_en.pdf. The closing paragraph of the **Foreword** (by Walter Schwimmer, S-General of the Council of Europe) stated: " 'Financing political parties and election campaigns – guidelines', prepared by the Council of Europe's integrated project 'Making democratic institutions work', examines the advantages and disadvantages of different options for applying the Organisation's standards, without prescribing an ideal model. Its unambiguous message is that whatever the rules a country adopts, they should be so designed as to ensure a level playing field for all parties competing in the political arena and guarantee their independence." Emphasis supplied. Another authoritative publication is Magnus Ohman, 'Political Finance Regulations Around the World (An Overview of the International IDEA Database)', International Institute for Democracy and Electoral Assistance (2012): <https://www.idea.int/sites/default/files/publications/political-finance-regulations-around-the-world.pdf> (both accessed 22. 08.2023).

⁴⁷In the context of the 2019 elections post mortem, see excerpts from 'Ban Corporate Organizations From Making Donations To Politicians, Parties, Jega, Salami Urge Buhari', (supra): "Other recommendations Jega made included strengthening the capacity and relative independence of security and anti-corruption agencies as well as INEC. 'This is to monitor political actors and enforce compliance with legal requirements of campaign financing and vote-buying in the Constitution and the Electoral Act without fear, partiality or favour,' he explained. He further noted that electoral integrity was key to Nigeria's democratic and socio-economic development. 'All hands need to be on deck to protect and defend the integrity of elections in the country,' Jega said. Similarly, Salami, who spoke on 'The Use of Public Funds in Election Litigation and the Integrity of the Judiciary', said the administration of President Muhammadu Buhari had shown demonstrable character, commitment and sincerity in the fight against corruption. But he said: 'I reliably gathered that there were about 639 pre-election cases that arose from the various primaries and 736 election petition cases emanating from the just concluded elections. 'This clearly reveals the heated nature of electoral contest in Nigeria. Notwithstanding that our laws provide for resolution of disputes arising from electoral process through courts, the alarming number of election petitions in court leaves much to be desired. This development calls for a review of our electoral process.'" Emphases supplied.



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