



Political Donations by Corporates in Nigeria



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Introduction

In this article, we examine the current position of the Nigerian law on the subject of political donations by corporates. We will attempt a comparative analysis with other jurisdictions such as the United States, the United Kingdom, and India and make some recommendations on how political donations can be regulated in Nigeria.

With the 2023 Nigerian general elections drawing close, aspirants and political parties are looking to sell their ideologies and manifestoes to Nigerians. Political campaigns and elections are very capital intensive in Nigeria, but this is not peculiar to Nigeria. It is estimated that the 2020 United States election campaigns smashed all records - with presidential and congressional candidates spending a total of almost US\$14,000,000,000 (Fourteen Billion United States Dollars).¹

In Nigeria comparatively, such figures are not available due to an absence of publicly available figures and records of donations for political campaigns and the sources of such donations. Section 88 of the Electoral Act, 2020 gives us an idea of the financial implications of Nigerian political campaigns – for instance, the maximum election expenses to be incurred by a candidate for presidential election is N5,000,000,000 (Five Billion Naira), while for a candidate for governorship election is N1,000,000,000 (One Billion Naira). It is widely acknowledged that the actual spending is materially in excess of the statutory limits.

There is no culture of membership funding of political parties thus, in order to fund elections campaigns and political activity, political parties and aspirants in Nigeria look to fund their campaigns through the sale of nomination forms and donations from high networth party members, corporates, political office holders among others. Political funding by corporates is the focus of this article and it is on this ground that we examine the relevant provisions of the Companies and Allied Matters Act, 2020 (“CAMA”) vis-à-vis the globally acceptable standards.

Nigerian Law on Political Donations by Corporates

Section 43(2) of CAMA 2020 (like its predecessor²) provides as follows:

“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...”

The ban is all encompassing as it prohibits political donations by a company and/or on behalf of the company. The prohibited donations may be to a political party or political association. It also bans general donations made for political purposes. The ban would also extend to political advertisements sponsored by companies for or against a political party or candidate. Where a company makes any donation or gift of its property or funds to a political party or political association, or for any political purpose, the officers in default and any member who voted in support of the resolution approving the donation shall be jointly and severally liable to refund the sum or value of the donation or gift to the company. In addition, every such officer or member is guilty of an offence and liable to a fine equal to the amount or value of the donation or gift.³

¹ <https://www.bbc.com/news/av/election-us-2020-54696386>

² Section 38(2) of the repealed Companies and Allied Matters Act, Cap C20, Laws of the Federation of Nigeria, 2004.

³ Section 43(2) of the Companies and Allied Matters Act 2020

Also, section 221 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) prohibits associations other than political parties from canvassing for votes and contributing to the funds of any political party or election expenses of a candidate. The Supreme Court of Nigeria in **Obasanjo v. Yusuf**⁴ reiterated this position of law on the prohibition on corporates from making donations to political parties or association for political purposes. Political parties are required by the 1999 Constitution (as amended)⁵ to submit detailed annual statements and analyses of their sources of funds and other assets to the Independent National Electoral Commission (INEC) and statements of their expenditure to the INEC as it may require.

A combined read of the foregoing posits that Nigerian registered companies cannot contribute funds or property directly or indirectly to political activity in Nigeria. In a practical sense, these donations could be money, vehicles, branded souvenirs, payment for media coverage, advertisements, sponsoring the payment of allowances and hotel bills of campaign staff, sponsoring campaign rallies, etc.

We must note however, nothing in CAMA bars directors and shareholders from being affiliated to any political party or association and donating funds to political parties for political purposes in their personal capacities. This implies that while corporates (as separate legal persons) cannot make political donations, directors and shareholders can in their private capacities make such donations.

Practice in Some Other Jurisdictions

In India, by virtue of the Companies Act, 2013, private companies can contribute funds (subject to mandated limits) to political parties and candidates save for companies owned by the government and companies which have not existed for up to 3 (three) years. Such donations must be authorized by the company's board of directors via a board resolution and must be disclosed in annual profit and loss accounts.

The United States also used to prohibit corporate funding of political activity. But in a landmark decision of the United States Supreme Court in 2010⁶, the US Supreme Court held that such prohibitions violate the First Amendment's protection of free speech.

In the United Kingdom, by the Companies' Act 2006, shareholders may by resolution authorise a company to make political donations to political parties, to other political organisations and to independent election candidates.

Effectiveness of the Nigerian Prohibition of Political Donations

Despite the fact that the Nigerian Constitution and the CAMA expressly prohibit political and campaigns funding by non-political associations; the practice is endemic. It is to be noted that, however laudable the legal prohibition of political donations by corporates is, there is an obvious lack of political willpower to enforce the same. To ensure the effectiveness of the extant laws, there must be proper enforcement without fear or favour and due process. This has not been the case in the Nigerian context despite flagrant breaches of the relevant laws.

⁴ (2004) 9 NWLR (Pt. 877) 144.

⁵ Section 225(2), 1999 Constitution of the Federal Republic of Nigeria.

⁶ Citizens United v. Federal Election Commission 558 U.S. 310.

Recommendations and Conclusion

The most obvious reason for a ban against political donations is political corruption or interference in governance by way of state capture which is a real risk in Africa. Corporate donors may seek to recoup returns on their "investment" after elections from successful candidates. However, an alternative view can be canvassed which is that the prohibition of corporate political funding may result in shutting out worthy candidates lacking funds to participate in the outrageously expensive Nigerian political process; such candidates would stand no chance.

We recommend that there is value in allowing corporate funding of political campaigns and activity subject to appropriate legal safeguards to protect the political process. The capacity to monitor and enforce infractions or breaches of applicable laws will be crucial.

The Indian model maybe useful in this regard. Government owned or controlled corporations and publicly quoted companies may still be prohibited from funding political activities, but we do not see why private or unlisted public companies cannot make support political activity via donations or other support. It is recommended that any corporate political donations could for instance be subject to requisite resolutions of the board or members in general meeting approving the donation. There could be mandatory limits on corporate funding i.e. no more than a specified percentage of the net profits of a company in the preceding financial year. Companies could also be required to make public disclosures or reports of their political funding in their annual corporate filings at the CAC.

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