'Anomalies': The Illogics of *Section 283(c) and 20(1)(d) Companies and Allied Matters Act 2020* Directors' Removal/Disqualification Overkill

Thought Leadership by Afolabi Elebiju and Sam Ngwu[1] March 2022

Introduction

For over thirty years, Nigeria's companies' legislation, the ***Companies and Allied Matters Act***[2] ***(CAMA 2004)*** did not attract any major legislative attention, despite changes in the business landscape during the period. Whilst England's ***Companies Act 1985 (CA)*** which it was modelled after was succeeded by the ***CA 2006***, Nigeria did not prioritise amending or repealing ***CAMA 2004***. Unsurprisingly, the lethargic situation attracted the criticisms of many commentators - that ***CAMA 2004*** was outdated and no longer 'fit for purpose' in Nigeria's corporate and commercial environment - especially given her *"ease of doing business"* improvement *cum* reform ambitions.[3]

Happily, in August 2020, the new ***Companies and Allied Matters Act 2020***[4] ***(CAMA*** or ***CAMA 2020)*** which repealed ***CAMA 2004,*** was signed into law by President Buhari***. CAMA 2020's*** many innovative provisions has also attracted commentary and commendation.[5]

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[1] The authors worked together on the first draft of this article whilst Sam was an Associate at *LeLaw Barristers & Solicitors*. Given that the article was substantially revised/restructured, and finalised between February and March 2022 (after Sam's exit from the Firm in August 2021), the lead author takes responsibility for all the errors herein. He also acknowledges the research support of LeLaw Graduate Intern, Chinazam Ejim in finalising the article.

[2] ***Cap. C20, Laws of the Federation of Nigeria (LFN) 2004.*** Originally enacted as the ***Companies and Allied Matters Decree No. 1 of 1990 (CAMD)*** by General Babangida's military administration, it was codified into the ***1990 LFN*** as ***Cap. 59 (CAMA 1990)***, before further codification into ***LFN 2004*** as ***Cap. C20***.

[3] See for example, Folashade Alli, ***'Nigeria: The Companies and Allied Matters Act (Repeal and Re-enactment Bill) 2018: A Catalyst for Business in Nigeria'***, *IFLR, 11.12.2018:* https://www.iflr.com/article/b1lmx8zp9fnm5y/nigeria-the-companies-and-allied-matters-act-repeal-and-reenactment-bill-2018-a-catalyst-for-business-in-nigeria (accessed 04.03.2022). According to Ms. Alli (at *para 1*): "*The Companies and Allied Matters Act (CAMA) remains at the core of the regulation of business formations through which local and foreign direct investments (FDI) flow into the Nigerian economy. Despite its importance, CAMA has proven inadequate, as it is only a re-enactment of the 1968 Companies Act with further insignificant amendments in 1990 and 2004. These amendments did not reflect the ever dynamic and innovative global business environment CAMA sought to regulate, justifying the need for a complete overhaul of the Act in the face of Nigeria's current commercial realities."*

[4] ***Companies and Allied Matters Act No. 3 of 2020.*** Unless otherwise indicated, any simple reference to ***'CAMA'*** in this article means ***CAMA 2020***.

[5] For some LeLaw contributions to ***CAMA 2020*** related discourse, see Afolabi Elebiju and Ejiro Eferakeya**, *'What's in a Name?: Issues in Conflict of Corporate Names in Nigeria'***, *LeLaw Thought Leadership Reflections, June 2021*: https://lelawlegal. com/add111pdfs/AEEjiro_-_Corporate_Name_Conflict_Article_Rev.pdf; Afolabi Elebiju, ***'Synchronisations: Size Categorisations under Nigerian Companies and Tax Legislation'***, *LeLaw Thought Leadership Reflections, August 2021*: https://lelawlegal.com/add111pdfs/AE_-_Synchronisations_Companies_Size_3.pdf; and ***'Relationships and Scrutinisations: The Companies and Allied Matters Act 2020 and Transfer Pricing in Nigeria'***, *LeLaw Thought Leadership, April 2021:* https://lelawlegal.com/add111pdfs/Relationships_and_Scrutinisations_Afolabi_corrected.pdf (all accessed 21.12.2021). Other notable commentaries include Udoma & Belo-Osagie's 12 part ***CAMA 2020*** series. See for example, ***'The Companies And Allied Matters Act 2020: What You Need To Know - Part 12 – Directors Under The CAMA 2020':*** https://www.mondaq.com/nigeria/shareholders/1024130/the-companies-and-allied-matters-act-2020-what-you-need-to-know--part-12-directors-under-the-cama-2020 (accessed 03.03.2022).

Disquiet: ***CAMA 2020's*** *New Provisions on Removal Based Disqualification of Directors*
Regarding disqualification of directors, and as our analysis shows subsequently, ***CAMA*** mostly reproduced or updated erstwhile provisions of ***CAMA 1990/2004***. However, one new provision, ***section 283(c)*** - that handicaps a suspended or removed director (for whatever cause under ***section 288***) – is disquieting, based on its extreme unfairness.[6] ***Section 283(c)*** with its rigour heightened by ***section 20(1)(d) CAMA*** has *collectively made the fact of director removal a strict liability event.* Thus, it is irrelevant whether there was any *mea culpa* or removal was improperly orchestrated, rather than on valid grounds in the interests of the business.

The disquiet is more poignant because ***section 20(1)(d) CAMA*** is harsher than its predecessor, ***section 20(1)(c) CAMA 1990/2004***, which: (a) imposed incapacity to join in forming a company pursuant to judicial/quasi-judicial outcomes; and (b) for a limited timeframe (not more than 10 years); *rather than indefinitely on just the fact of a previous removal as director*.[7] It appears this new ***section 283(c) and 20(1)(d)*** regime was an unintended outcome due to legislative error, given the apparent absurdity of the provisions.

Accordingly, we argue that the instant collegial provisions are *prima facie unreasonable, and excessive, vis a vis the targeted mischief of egregious director conduct.* In more or less sentencing affected directors to 'economic gulag', they approximate to a form of 'expropriation' without paying due regard to some relevant circumstances; and thereby may also be, arguably unconstitutional.

This article comprehensively considers the resultant implications from different perspectives, predicting likely future judicial treatment ahead of potential caselaw on these ***CAMA*** provisions, whilst making suggestions to cure the obvious anomalies. We preface the discourse with the status and duties of the Board under ***CAMA*** and use subheadings for an easier discourse.

'Responsibilities': The Key Role and Status of the Board and Individual Directors
It is trite that the Board constitutes the 'heart' of the company, directly responsible for over-sighting its management, as the latter implements the business strategy set by the Board. ***Section 269(1) CAMA's*** primary definition of 'directors' is that *"A Director of a company registered under this Act is a person duly appointed by the company to direct and*

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[6] On their own director removal provisions are necessary because of the counterweight they provide to directors' powers. An authoritative commentator has stated that: "*The effect of this provision [section 262(1) CAMA 2004] is that even a person appointed a director a director for life or as a permanent director by the articles or by agreement may nevertheless be removed by the general meeting, subject of course to his right to compensation, if any. This provision has been described as a key provision of modern company law is that it is designed to check the balance of power which is normally with the directors who manage the company by enabling 'shareholders to assert themselves against the directors, if need be and make it clear that the ultimate control is in the hands of the proprietors of the company if they are not the directors.' "* See Hon. Dr. Olakunle Orojo, ***'Company Law and Practice in Nigeria'***, (5th ed., LexisNexis), p. 254.

[7] The general logic of ***section 20(1) CAMA*** is understandable: anyone disqualified from being a director of an existing company should be precluded from being a prospective director of a new company. The CAC will have notice of such removal vide, the filing of ***CAC Form7A (Notice of Vacation of Office/Removal/Resignation of Directors***) at the CAC. See subsequent discussion herein under ***'Managing the Removal/Disqualification Challenge: Is Side Stepping Possible?'***

manage the business of the company."[8] It has been stated that: "*directors are generally not servants of the company but its alter ego*".[9] Glimpses of the Board's powers can be seen, for example, from the provisions of ***section 87 CAMA***.[10] There is also an abundance of settled Nigerian and foreign case law on these points.[11]

Unsurprisingly, since the Board is made up of directors, ***sections 305 and 306 CAMA*** stipulate the duties of directors and prescriptions for managing directors' conflicts of interest.[12] Indeed, ***section 305(9)*** stipulates that "*Any duty imposed on a director under this*

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[8] ***Section 269 (244 1990/2004 CAMA)*** is captioned ***'Meaning of directors"*** Note that the primary definition is supplemented by other ***CAMA*** provisions such as ***section 868*** (***560 CAMA 1990/567 CAMA 2004***) stipulation that " *'director' includes any person occupying the position of director by whatever name called; and includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act*"; and ***section 270 (245 CAMA 1990/2004)*** which regards shadow directors as directors. From an evolutionary standpoint, see the views of a learned commentator: "*In section 395 of the Companies Act, 1968, a functional approach was adopted in the definition of the word 'director'. That provision defined a director as any person occupying the position of director by whatever name called. This definition appears unsatisfactory and absurd. The intention of adopting this kind of distinction was perhaps to ensure that a person does not escape liability by pleading that he was not duly appointed. However, it appears absurd to elevate a person to the position of director first before attaching any liability to him."* See E.M. Asomugha, ***'Company Law in Nigeria Under the Companies and Allied Matters Act'***, *(Toma Micro, 1994), p.163.* Another author stated: "*S.650 [CAMA 1990] describes a director as 'including any person occupying the position of a director by whatever name called'. This description under s.650 is based purely on function: a person is a director if he does whatever a director normally does."* See M.O. Sofowora, *'Modern Nigerian Company Law', (Ipha, 1992), p.179.*

[9] Fabian Ajogwu, ***'Corporate Governance in Nigeria: Law & Practice'*** *(CCLD, 2007), p.83 (Chapter 7, Duties of Directors and Their Legal Position).* Continuing further, he stated: "*However, the Managing Director who is saddled with day to day management of the affairs of the company is a servant of the company. [See Yalaju-Amaye v. Associated Registered Engineering Contractors Ltd. [1978 1LRN 146; [1978] All NLR 124; {1978} 11 NSCC 220.] It must be noted that such a director wears two hats – one is statutory … and the other is the hat of an employee, albeit as the Chief Responsibility Officer of the company."* Executive directors also wear dual hats like the MD.

[10] *Per* ***section 87(3)***: "*Except as otherwise provided in the company's articles,* ***the business of the company shall be managed by the board of directors*** *who may exercise all such powers of the company as are not by this Act or the articles required to be exercised by the members in general meeting."* ***Section 87(4)*** stipulates that: "*Unless the articles otherwise provide,* ***the board of directors, when acting within the powers conferred upon them by this Act or the articles, is not bound to obey the directions or instructions of the members in general meeting*** *provided that the directors acted in good faith and with due diligence."* Emphases supplied. *Cf. in pari materia* provisions of ***section 63(3) and (4) CAMA 1990/2004***. According to Ukeje, CJ, ***'Nigerian Judicial Lexicon'***, *(Ecowatch, 2006), p. 87*: "'*A director is simply a person appointed as one of a Board, with power to bind the company when acting as a Board, but having otherwise no power to bind them.' : Iwuchukwu v. Nwizu & Anor. [1994] 7 NWLR (Pt. 357), 379 at 396 citing Mellish LJ in Re Marseilles Extension Railway, 7 Ch.161*"

[11] See for example, ***Olufosoye v. Fakorede [1993] 1 NWLR (Pt. 272) 747; Marine Management Association Inc & Anor v. National Maritime Authority (2012) LPELR - 20618 (SC)***. See also relevant chapters of authoritative Nigerian company law texts cited in this article for detailed discussions.

[12] ***Section 305(1)-(8) CAMA (279(1)-(8) 2004 CAMA)*** provides as follows: "*(1)* ***A director of a company stands in a fiduciary relationship towards the company and shall observe utmost good faith towards the company*** *in any transaction with it or on its behalf. (2) A director owes fiduciary relationship with the company where - (a) a director is acting as agent of a particular shareholder; or (b) though, he is not an agent of any shareholder, such a shareholder or other person is dealing with the company's securities. (3)* ***A director shall act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinarily skilful director would act in the circumstances*** *and, in doing so, shall have regard to the impact of the company's operations on the environment in the community where it carries on business operations. (4) The matters to which a director of a company is to have regard in the performance of his functions include the interests of the company's employees in general, as well as the interests of its members. (5)* ***A director shall***

section is enforceable against a director by the company". Also, because of the authority exercised by directors on its behalf, and the fiduciary position of directors to the company, ***CAMA*** sanctions unauthorised individuals purporting to be directors; or even the company itself, where it permits such misrepresentation.[13] Furthermore, acts of directors are deemed valid, irrespective of any defects that may be subsequently discovered in their appointment: ***section 286 CAMA.***

Several other provisions especially on personal liability are to incentivise directors' paying due attention to their responsibilities, and to contribute their respective quota towards ensuring the company's consistent optimal regulatory compliance status, or its general good corporate behaviour.[14] This is moreso that the company itself is a legal abstraction, and therefore can only act through individuals.[15] Even Nigerian tax legislation avows a

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exercise his powers for the purpose for which he is specified and shall not do so for a collateral purpose*, and the power, if exercised for the right purpose, does not constitute a breach of duty, if it, incidentally, affects a member adversely. (6)* ***A director shall not fetter his discretion to vote in a particular way****. (7) Where a director is allowed to delegate his powers under any provision of this Act, such a director shall not delegate the power in such a way and manner as may amount to an abdication of duty. (8)* ***No provision, whether contained in the articles, resolutions of a company, or any contract, shall relieve any director from the duty to act in accordance with this section or relieve him from any liability incurred as a result of any breach of the duties conferred upon him under this section.****"* Emphases supplied.

[13] See ***section 269(3) and (4) CAMA****: "Where a person not duly appointed acts or holds himself out as a director, he commits an offence and is liable on conviction to imprisonment for a term of two years or a fine as the Court deems fit for each day he so acts or holds out himself as a director or both and shall be restrained by the company." "If it is the company that holds him out as a director, it is liable to a fine in such amount as the Commission shall specify in its regulations for each day it holds him out, and he and the company may be restrained by any member from so acting until he is duly appointed."* This is against the background of ***section 269(1) CAMA*** provision that: *"A Director of a company registered under this Act is a person duly appointed by the company to direct and manage the business of the company."* See predecessor provisions in ***section 244(1), (3) and (4) CAMA 1990/2004***. For a detailed discussion of directors' status and responsibilities under the English regime, see ***Part II (The Office of Director)*** in Simon Mortimore, QC (ed.), ***'Company Directors, Duties, Liabilities and Remedies'*** *(2nd ed., OUP, 2013), pp. 53-218.*

[14] See for example, ***sections 315 and 316 CAMA***. ***Section 315*** allows a limited company if so authorised by its articles, to by special resolution, alter its memorandum so as to render the liability of its directors or managers unlimited; whilst ***section 316*** provides for personal liability of directors where loans, contract advances or other assets received for specific purposes by the company are misappropriated, albeit notwithstanding the liability of the company itself. By ***section 334(2),*** *"Where, in proceedings brought under this section [personal and representative action], the Court finds the directors or any of them liable for any wrongdoing, the erring director is personally liable in damages to the aggrieved member."* ***Section 433(1)*** provides 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."* ***Section 729(3)*** imposes personal liability for misuse of company's seal or other purported acts regarding the company's stationery, etc. in the circumstances therein stated, unless the company pays or discharges the resulting liability. *Per* ***section 862(1),*** persons (including directors) who wilfully make false statements in any statutory corporate returns or submission commits an offence and risks imprisonment for a term of two years upon conviction. ***Section 862(3)*** provides that *"Nothing in this section shall affect the provisions of any enactment imposing penalties in respect of perjury in force in Nigeria*.

[15] For a discussion, see Yewande Obayomi, ***'Some Thoughts on Corporate Criminal Responsibility in Nigeria',*** *LeLaw Thought Leadership, September 2017:* https://lelawlegal.com/add111pdfs/Corporate_Criminal_Responsibility.pdf (accessed 03.03.2022). Since the company has legal personality by virtue of ***sections 42 CAMA (Effect of registration)***, and by ***section 43(1)*** it generally, *"for the furtherance of its business or objects, have all the powers of a natural person of full capacity"*, it is clear that directors' liability does not relieve the company itself of its rights and obligations. *Cf.* predecessor provisions of ***sections 37*** and ***38(1) 1990/2004 CAMA***. See for example, ***sections 304 (criminal prosecution)*** and ***305 (offences by companies and market***

similar policy.[16] Another specific example is the ***section 2*** prohibition of unlicensed banking business by the ***Banks and Other Financial Institutions Act 2020***[17] ***(BOFIA)***, breach of which could expose directors to personal liability.[18] Indeed, ***section 48 BOFIA*** in a departure from the established rule on presumption of innocence, deems directors (amongst others), to be guilty of any offence under ***BOFIA*** that their company commits, shifting the burden of proof (of their non-involvement, etc) on the directors.[19]

participants) ISA – these provisions could impact directors, depending on the applicable factual context**.** See also generally, Godwin Luke Umoru, ***'Corporate Citizenship in Law: Nigerian and Other Comparative Perspectives'***, *(Malthouse, 2017).* For some comparative discussion under the ***CA 2006***, see ***Part III (The General Duties of Directors)*** in Simon Mortimore, QC (ed.) ***(supra),*** *pp. 221–416.* See also, Adewale Olawoyin, SAN ***'Directors' Personal Liability In Nigerian Corporate Law'***, *(2016) 7 GRBPL No. 4, pp.30-48;* Prof. Konyinsola Ajayi, SAN, ***'The Bank Director: Duties and Imperative of Corporate Governance'***, *(2015) 6 GRBPL No.2, pp. 1-21*; and Aluju and Onele, ***'An Appraisal of the Duties of Directors of a Public Company in Nigeria'***, *8 (2017) 8 GRBPL No. 1, pp.52-65.*

[16] Some provisions of Nigerian tax legislation hold directors and officers personally liable for certain breaches by the company. See for example, ***sections 94 Companies Income Tax Act, Cap. C21, LFN 2004*** (which sanctions *"any person other than a company"****; sections 41-43 Federal Inland Revenue Service (Establishment) Act, Cap. F36, LFN 2004 (FIRSEA)*** provides for fines and/or terms of imprisonment persons who commits and are convicted of the specified offences**.** ***Section 49(2)(a) FIRSEA*** on its own part stipulates *inter alia* that where a body corporate commits an offence under the Act, then ***"every director, manager, secretary or other similar officer of the body corporate, commits an offence and shall be liable to be proceeded against and punished for the offence in like manner as if he had had himself committed the offence; unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance."*** Emphasis supplied***; sections 96 Personal Income Tax Act, Cap. P8, LFN 2004 (PITA)*** (which is *in pari materia* with ***section 94 CITA***), etc.

[17] ***Act No. 5 of 2020***.

[18] ***Section 2(2) and (3) BOFIA*** provides: "*(2) Any person who carries on banking business in Nigeria without a valid licence under this Act, commits an offence and is liable on conviction to – (a) imprisonment for a term of not less than five years; (b) a fine of not less than ₦50, 000,000; (c) two times the cumulative deposits or other amount collected; or (d) both imprisonment and fine. (3)* ***For the purpose of subsection (2), "any person" includes****: a body corporate, its promoters,* ***directors****, managers, or officers that are in any way connected with superintending, directing or managing the affairs of the company."* Emphasis supplied. See also, the *in pari materia provisions* of ***section 58(5) BOFIA***.

[19] *Cf.* with ***section 49(2)(a) FIRSEA*** referred to subsequently in this article. See also ***section 49 BOFIA***: "***Any person, being a director***, manager or officer of a bank, ***who fails to*** - (a) ***take all reasonable steps to secure compliance by the bank with the requirements of this Act***; or (b) take all reasonable steps to secure the correctness of any statement submitted under the provisions of this Act, ***commits an offence and is liable on conviction to*** – (i) ***a fine of not less than ₦2, 000,000 or imprisonment for a term of not less than 3 years or to both such fine and imprisonment and, in addition, the Governor may suspend or remove from office or blacklist any such officer, manager or director***." Emphases supplied. *Cf.* also, ***section 27 Nigerian Council of Registered Insurance Brokers Act, Cap. N148, 2004 LFN.***

On its own part, the ***Nigerian Code of Corporate Governance 2018 (NCCG)***,[20] also emphasise the role of the Board;[21] and it is trite that in applicable cases, corporate governance failures could expose the subject company and/or directors to removal and other sanctions, [22] including by sector regulators.[23] Meanwhile, ***section 41 Financial Reporting Council of***

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[20] For a discussion, see Afolabi Elebiju and Gabriel Omoniyi, ***'Nigeria: Corporate Governance Comparative Guide'***, *Mondaq, 09.02.2022:* https://www.mondaq.com/nigeria/corporatecommercial-law/1131674/corporate-governance-comparative-guide; and Afolabi Elebiju and Gabriel Fatokunbo, '***Overviews: NAICOM's Corporate Governance Guidelines For Insurance And Reinsurance Companies 2021 (CGGIRC)'***, *LeLaw Thought Leadership, April 2021:* https://lelawlegal.com/add111pdfs/OVERVIEWS_-_NAICOM%E2%80%99S_CORPORATE_GOVERNANCE.pdf (both accessed 04.03.2022). In the latter article, the authors commented (at p.1): *"The CGGIRC 2021 replaced the Code of Good Corporate Governance for the Insurance Industry in Nigeria 2009 (CGCGII) vide Guideline 1.0(v) CGGIRC 2021. Prior to the issuance of CGGIRC 2021, the Financial Reporting Council of Nigeria (FRCN) pursuant to sections 11(c) and 51(c) FRCN Act 2011 essentially harmonised all sectoral codes into the Nigerian Code of Corporate Governance 2018 (NCCG). April 2021 Therefore, the NCCG 2018 displaced prior sectoral codes: (a) Code of Corporate Governance for the Telecommunication Industry 2016, issued by the Nigerian Communications Commission (NCC); (b) Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014 issued by the Central Bank of Nigeria (CBN); (c) Code of Corporate Governance for Public Companies in Nigeria 2011 issued by the Securities and Exchange Commission (SEC); (d) Code of Good Corporate Governance for Insurance Industry in Nigeria 2009 issued by the National Insurance Commission (NAICOM); and (e) Code of Corporate Governance for Licensed Pension Fund Operators 2008 issued by the National Pension Commission (PenCom)"*

[21] See ***Part A NCCG (Board of Directors and Officers of the Board),*** covering ***Principles 1-16.*** The ***NCCG*** is available at: https://nambnigeria.org/Nig_Code_of_Corp._Governance_2018.pdf (accessed 06.03.2022).

[22] See ***sections 64 (Sanctions for noncompliance)*** and ***65 (Sanctions on public interest entities) FRCN Act*** and ***section 33(1)(e) FRCN Act*** **that** *"fines and penalties imposed by the Council"* also comprise part of the FRCN's Fund. ***Para 28.2(n) NCCG*** requires that subject company's CG Report should include *"a list of all the fines and penalties (including date, amount, and subject matter) imposed on the Company by regulators at the end of the reporting period."* See for example, ***section 59(5) BOFIA***: *"Failure to comply with the guidelines or other directives of the Bank or refusal to supply returns in the prescribed form* ***may be a ground for the revocation of a licence granted under this Act****."* Emphasis supplied. In its ***Introduction, Para D (Monitoring the Implementation of the Code),*** the ***NCCG*** state in part: *"The implementation of this Code will be monitored by the FRC through the sectoral regulators and registered exchanges who are empowered to impose appropriate sanctions based on the specific deviation noted and the company in question. Additionally, the FRC may conduct reviews on the implementation of the Code where deviations from the Code recur. Other monitoring mechanisms adopted by the FRC will be based on its review of the level of implementation of the Code."* Note that the ***NCCG*** is mandatory for public interest entities (PIEs) as defined therein, albeit small unregulated companies can view the provisions as best practice guides for their own governance. See also SEC, ***'Suspension and Penalties: Companies Facing Enforcement Action'*** (*As at March 2015, April 2016 and March 2011* respectively): https://sec.gov.ng/suspensions-and-penalties/ (accessed 08.03.2022); Victor Ejechi, ***'SEC: We'll Continue to Monitor and Sanction Erring Capital Market Operators'***, *The Cable, 01.11. 2021:* https://www.thecable.ng/sec-well-continue-to-monitor-and-sanction-erring-capital-market-operators (accessed 08.03.2022). SEC's powers is pursuant to the ***Investment and Securities Act, Cap. I24 LFN 2004 (as amended) (ISA)***. The ***ISA*** vests the Securities and Exchange Commission (SEC) with enforcement powers to impose several sanctions on erring capital market operators.

[23] Sanctions could come in various forms, not just removal. For an example of a non-director removal sectoral sanction, see ***section 80 BOFIA***: *"A bank, specialised bank or other financial institution that is in default of payment of the levy imposed under this Act or any part thereof shall be prohibited from paying dividends or other like distribution to its shareholders, and from paying any bonuses however to its directors or employees, while such payment default continues."*

Nigeria Act[24] (***FRCN Act)*** mandates that directors of public interest entities (PIEs)[25] be registered with the FRCN, which also oversights the ***NCCG***.

It is immaterial what the impact or subject matter of breach is, for example the Federal Competition and Consumer Protection Council (FCCPC) or the National Information Technology Development Agency (NITDA) can impose fines for antitrust behaviour/consumer protection infractions or data privacy breaches respectively.[26]

And it is incontestable that pre and post ***CAMA 2020***, there were/are other avenues for director disqualification/removal in Nigeria, especially *vide* the instrumentality of sector regulators in the exercise of their statutory powers.[27] ***CAMA's*** other provisions on disqualification pursuant to judicial intervention, automatic factual consequence, or status *cum* circumstances[28] are also relevant, albeit not our primary focus herein.

Possibly to reinforce these objectives (of incentivising 'good corporate behaviour'), the more stringent director removal and disqualification provisions of ***CAMA 2020*** came to play. However, our view is that the new ***CAMA*** provisions are an overkill, symbolic of using a sledgehammer to kill an ant.

The Provisions: CAMA 2020 'Disqualification' of Directors

Section 20 (Capacity of individual to form company) provides in ***20(1)(d)*** that: "*Subject to subsection (2),* ***an individual shall not join in the formation of a company under this Act if he is … disqualified under sections 281 [(sic, 280)] and 283 of this Act from being a director of a company.***"[29] This was *in pari materia* with, albeit an enlargement of, ***section 20(1)(d)***

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[24] ***Act No. 6 of 2011***. By ***section 41(6),*** contravention is an offence attracting a fine of up to ₦0.5 million and/ or imprisonment of up to 6 months. The registration has a 2 year validity and must be renewed: ***section 42 FRCN Act.***

[25] For a discussion of PIEs, see Afolabi Elebiju, *et al,* ***'Definitions And Developments: Corporate Governance Implications of Judicial Interpretation of "Public Interest Entities" in Eko Hotels Limited v. FRCN FHC/L/CS/ 1430/2012',*** *LeLaw Thought Leadership Insights, July 2019*: https://lelawlegal.com/add111pdfs/PIE-ARTICLE.pdf (accessed 08.03.2022).

[26] See for example, stringent provisions of ***sections 36, 69, 74, and 154 Federal Competition and Consumer Protection Act No. 1 of 2019 (FCCPA); section 18 NITDA Act, Cap. N156, LFN 2004, and Reg. 2.10 Nigeria Data Protection Regulation 2019 (NDPR).*** Both the ***FCCPA and NITDA Act*** deems directors as committing any offence that their related company commits, unless proven to the contrary. ***Section 24(g) Pension Reform Act 2014 (PRA)*** empowers the National Pension Commission (PenCom) to "*impose administrative or civil sanctions or fines on erring employers or Pension Fund Administrators or Pension Fund Custodians*"

[27] For example sectoral regulators such as the: *Central Bank of Nigeria (CBN), Securities and Exchange Commission (SEC), National Insurance Commission (NAICOM), PenCom,* etc pursuant to their relevant enabling PIA example? Sometimes disqualification is loosely used interchangeably with removal, especially as removal will be the incidence of any currently serving director being disqualified – such director can no longer continue in office and removal would be inescapable. Since the enabling law often require prior approval of sectoral regulator for appointment of individuals as directors of regulated entities (see for example, ***section 47(1) BOFIA***), regulatory removal is not as objectionable, once there is compliance with due process.

[28] By ***section 280 CAMA*** (previously ***section 254 CAMA 1990/2004***), disqualification by order of the FHC include all the instances under ***sections 668-670*** (***section 506 CAMA 1990/2004***) for a period not exceeding 10 years. Automatic disqualification include disqualification by reason of: insolvency; not meeting any prescribed share qualifications in the Articles; being of unsound mind; minors (under 18 years). See ***sections 277, 279 and 283.***

[29] Emphasis supplied.

CAMA 1990/2004 respectively.[30] ***Section 41(1)(c)*** reinforces ***section 20(1)(d)*** requirement by empowering the Corporate Affairs Commission (CAC) to refuse registration of the proposed company, where *"any of the subscribers to the memorandum is incompetent or disqualified in accordance with section 20 of this Act".*[31]

On its part, ***section 280(1) CAMA*** provides thus:

> *"(1) Where –*
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> *(a) a person is convicted by a High Court of* ***any offence in connection with the promotion, formation or management of a company****, or*
>
> *(b) in the course of winding-up a company, it appears that a person –*
>
> *(i) has been guilty of any offence for which he is liable (whether he has been convicted or not) under sections 668-670 of this Act [offences antecedent to, or in the course of winding up], or*
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> *(ii) has been guilty of any offence involving fraud, the court shall make an order that* ***that person shall not be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for a specified period not exceeding 10 years"***[32] Emphases supplied.

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[30] Whilst ***CAMA*** referred to persons disqualified under ***sections 280 and 283*** (as an aside, we believe that ***section 20(1)(d) CAMA*** not only incorrectly referred to ***section 281*** (it should have referred to ***section 280***), but such reference is actually superfluous, since ***section 288*** removal (imported by ***section 283(c)***), affects a ***section 281*** director (life director but who is removable). *Cf.* ***CAMA 1990/2004*** which referred to persons disqualified under ***section 254 (Restraint of Fraudulent Persons).*** Whilst ***section 280 CAMA*** is largely a rehash of ***section 254 CAMA 1990/2004*** and the latter's ***254(1)*** is more or less *in pari materia* with ***280(1); section 280(2)*** is a new provision that stipulates: *"The period of disqualification referred to in subsection (1)* ***shall commence after the sentence for the offence has been served or on the date the fine for the offence is paid***." Emphasis supplied. Closer review has shown that ***section 20(1)(d) CAMA 1990/2004*** can also be read to include ***section 283 CAMA 2020*** equivalent, because ***section 257(1)(c) CAMA 1990/2004*** also disqualifies from being director *"a person disqualified under sections 253, 254 and 258 of this Act"* (relating to insolvents, fraudulent persons and persons that must vacate office of director under the enumerated circumstances of ***section 284***).

[31] The provision is *in pari materia* with ***section 36(1)(c) CAMA 1990/2004***. Notably, ***section 40 CAMA 2020*** provides for the statement of compliance (a statement by the applicant or his agent) to be delivered to the CAC *"that the requirements of this Act as to registration have been complied with", which the CAC "may accept …as sufficient evidence of compliance". Cf.* with equivalent ***section 35(3) CAMA 1990/2004's*** statutory declaration of compliance in the prescribed form by a legal practitioner which the CAC may also accept as sufficient evidence of compliance. These essentially represents attestations amongst others that no disqualified person is joining in promoting companies. For added effect, ***section 41(3) CAMA 2020*** (*in pari materia* with ***36(3) CAMA 1990/2004***) provides that the CAC *"may, in order to satisfy itself as provided in subsection (1)(c), by instrument in writing, require a person subscribing to the memorandum to make and lodge with the Commission, a statutory declaration to the effect that he is not disqualified under section 20 of this Act from joining in forming a company."*

[32] As noted elsewhere in this article, ***section 254 CAMA 1990/2004*** was the predecessor to ***section 280 CAMA 2020***. *Cf.* ***section 47(4) BOFIA***: *"Any person whose appointment with a bank has been terminated or who has been dismissed for reasons of fraud, dishonesty or convicted for an offence involving dishonesty or fraud shall not be employed by any bank in Nigeria."* Given the ethical and other risks/consequences of fraud, there is little sympathy for barred professionals, and such would not be regarded as deprivation of their livelihood.

Section 283 (disqualification for directorship) provides *inter alia* that: *"The following persons shall be disqualified from being director - (a) …; (b) … (c)* ***a person suspended or removed*** *under section 288 of this Act; (d) a person disqualified under sections 279, 280, 284 of this Act …"*[33]

By ***section 284(1)(c)***, *"The office of director* ***shall be vacated*** *if the director becomes prohibited from being a director by reason of any order made under sections 280-281 of this Act"*[34]

Section 288 (Removal of Directors) is essentially *in pari materia* with ***section 262 CAMA 1990 /2004***: a director may be removed by ordinary resolution before the expiration of his tenure, irrespective of any provision of the Articles or of any subsisting contract, albeit special notice is required of any resolution to remove the director. The director may make representations, but ultimately the provisions are tilted in favour of 'easy' removal by the company.[35]

However, ***section 288(6)*** (similar to ***262(6) CAMA 1990/2004***) provide that *"nothing in this section is taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as a director or of any appointment terminating with that as director, or as derogating from any power to remove a director which may exist apart from this section."*[36]

Section 292(1) is reflective that there are consequences for director disqualifications: *"Every director is entitled to receive notice of the directors' meetings*, ***unless he is disqualified by any reason under the Act from continuing with the office of director***." Emphasis supplied.

By ***section 312(3)(c)***, any director that engages in substantial property transaction in breach of ***section 310*** prescriptions where such approximates to an offence and the director is

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[33] Emphasis supplied. Its predecessor provision was ***section 257 CAMA 1990/2004***; which however did not have ***section 283(c) CAMA 2020*** equivalent – disqualifying a person removed, from being a director elsewhere. The thesis of this article is that ***section 283(c) CAMA 2020*** is a problematic provision. It has been opined that: *"the CAMA [2004] in section[s] 257 and 258 draws a distinction between disqualification and vacation of the office of a director. A disqualifying incident is one which renders a person ineligible to join the board, while an incident of vacation erodes the right of one who is already on the board from continuing to remain therein."* See Professor Joseph Abugu, ***'Principles of Corporate Law in Nigeria'***, *(MIJ, 2014) p. 488.*

[34] See equivalent (predecessor) provision in ***section 258(1)(c) CAMA 1990/2004***.

[35] ***Section 288(4)*** and ***(5)*** gives credence to the *fait accompli* stance of the provisions: by providing that related vacancy is a casual vacancy that may be filled by the Board, and that a succeeding director for purpose of tenure, would be deemed to have been appointed on the day his predecessor was last appointed as a director. Undoubtedly, ***CAMA*** regards *removal as effective from the time the resolution is passed*: since ***section 288(1)*** states that *"A company may by ordinary resolution remove a director before the expiration of his period of office…"*

[36] This could provide a basis for mitigating some of the harshness resulting from the removal: *ubi jus, ibi remedium.* See also, ***section 36 1999 Constitution*** which guarantees fundamental human right to fair hearing and of access to courts in the determination of individuals' civil rights and obligations.

"found guilty and convicted of an offence …, [is] disqualified to serve as a director of the company".[37]

Analysis: Issues, Downsides and Ramifications

Section 288 *does not state circumstances for removal that could trigger disqualification;* this is a worrisome oversight. Thus, *once a company complies with the procedure stated in the section, it can remove any director for whatever reason, even for no just cause*.[38] Unlike other forms of disqualification that has specified grounds or bases, disqualification by removal can simply be the result of board politics/factionalisation, whims or preferences of the controlling persons (*alter egos*) of the company.[39] This is not good enough, given the long

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[37] Owing to its clear meaning in everyday English language usage, the ***CAMA*** did not deem it necessary to define "disqualification" of directors: see ***section 868 CAMA (Interpretation)***. However, according to ***Black's Law Dictionary***, Brian Garner (ed), (9*th ed. (2009), West), p.540,* disqualification is *"something that makes one ineligible; esp., a bias or conflict of interest that prevents a judge or juror from impartially hearing a case, or that prevents a lawyer from representing a party". Cf.* B.P. Ishaku, ***'Judicial Law Dictionary'****, 2017 (Ritpank), p. 124* which defines disqualification in part as *"The act of making ineligible that fact or condition of being ineligible. Section 34(2) of the Electoral Act 2006 (Cap. E6, Laws of the Federation of Nigeria. Ugwu and anor. Vs. Ararume and Anor. (2007) 6SC (Pt. 1) 88 at 174."* Therefore, in the directors' context, *disqualification makes a person ineligible to hold or remain in the position of a director in a company*.

[38] See ***Longe v. First Bank of Nigeria Plc [2006] 3 NWLR (Pt. 976), 228*** where the Supreme Court (SC) held that the removal of an MD/CEO was null and void, underscores the importance of compliance with procedural requirements, especially for executive directors. See also ***Iwuchukwu v. Nwizu [1994] 7 NWLR (Pt. 257), 379***. In the more recent case of ***UOO Nigeria Plc v. Okafor [2020] 11 NWLR (Pt. 1736) 409***, the SC held that the shareholders' meeting had appropriately removed the Respondent; and at ***453E*** *per Peter-Odili JSC*, that in any event his designation as *"Life Chairman of the Board of Directors or Managing Director for Life"* are void, *"because the powers to elect a Chairman or MD and fix/determine the period for which he is to hold office are by statute, conferred on the directors or by members at an annual general meeting . See section 263 of CAMA [2004]."* See also ***Hakair Limited & Anor v. Sterling Bank Plc (2019) LPELR-47638(CA)*** where the director's removal was invalidated for non-compliance with prescribed procedure. *Per Oabseki-Adejumo, JCA at* ***40D-E:*** *"The insistence of the Respondent on the applicability of its board policy has been laid to rest having been held inapplicable earlier on in this judgment, it is then my opinion, that the procedure to remove a director in any public company is as permitted in its Articles premised on the statutes, CAMA especially and BOFIA based on the nature of business of the Respondent, being a bank."*

[39] For example, there is no specified standard of the quality of consideration (by the shareholders' meeting) of the representations made by the director slated for removal. The focus is just on 'technical' procedure (going through the motions of giving notice, receiving and considering representations), and not substantive compliance. Thus, there is no mechanism for gauging whether minds already made up or already under instructions to vote in favour of removal, will be swayed in any way by the director's representations. *Cf.* with director removal by sectoral regulator (SEC, in) ***section 308 ISA*** which provides: *"(1) The Commission may by notice require a capital market operator to terminate the appointment of a director or officer of that capital market operator,* ***if the director or officer is no longer a fit and proper person to hold the office in question****. (2) When the Commission intends to act as in subsection (1) of this section,* ***the Commission shall give notice*** *to the capital market operator, and; unless it is impracticable to do so, the director or officer concerned,* ***of the Commission's intention and the reasons therefore, and the director or officer shall thereupon cease to perform the functions of the office in question pending the final outcome of any appeal (if any) to the Tribunal under the provisions of this Act****."* See also ***section 34(1)(f) BOFIA***, empowering amongst CBN's actions on a failing bank, as part of rescue tools, to: *"(f)* ***notwithstanding anything in any written law or any limitations contained in the memorandum and articles of association of the bank****, and in particular,* ***notwithstanding any limitation therein as to the minimum or maximum number of directors****, for reasons to be recorded in writing- (i)* ***remove from office, with effect from such date as may be set out in the order, any director of the bank****; or (ii) appoint any person or persons as a director or directors of the bank and provide in the order, for the person or persons so appointed to be paid by the bank such remuneration as may be set out in the order."* Emphases supplied.

term consequences enshrined in ***sections 20(1)(d) and 283(c) CAMA***. *It is quite anomalous that such long term consequences actually have no ounce of mitigating mechanism – for example, that the bar against subsequent directorship is only in the subject company, and not in all other companies. Or that it is only removal for cause – such as fraudulent or unethical behaviour, that should be a bar to ability to join in forming new companies.*[40]

Sections 20(1)(d) and 283(c) CAMA may have wanton effects on other companies where the disqualified director was also on their board, and the continued involvement of the disqualified director is critical to the long-term success of the companies, potentially also impacting its other stakeholders – investors, employees, vendors, etc. A statute enacted to sustain corporate existence should not be seen to be aiding its failure.

It is therefore important that the utility of these provisions be examined again for possible amendment, to weed out the prospect of avoidable hardship. *For example, the restrictions could be made to only affect directors removed for fraud, dereliction of duty/gross negligence, or other ethical breaches like misuse of confidential corporate information, conflict of interest, etc.*[41] Even then, like its ***section 280*** counterpart, there could be a timeframe for such restriction. Or the disqualified director could be required to show cause why the restriction of joining to form new companies could be lifted in his own case, possibly pursuant to willingness to give undertakings in that regard.

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[40] The foregoing is better appreciated when it is considered that ***whilst some other forms of disqualification can be cured*** (for example, a minor becoming an adult, an insolvent/person of unsound mind exiting that status, or after the expiration of 10 years for court ordered disqualification (irrespective of the offence), and an aspiring director subsequently meeting share qualification requirements); ***disqualification by removal may never be cured.*** Once removed, reinstatement is not even possible (unless by judicial intervention), since a removed director (whose removal is not overturned by the court), is eternally disqualified from being a director or joining to form new companies.

[41] *Cf.* the '*more reasonable, transparent and empirical*' provisions of ***section 47(2) and (3) BOFIA***: "*(2)* ***No bank, shall employ or continue the employment of any person as a director****, manager, secretary or an officer who - (a) is* ***of unsound mind*** *or as a result of ill health is incapable of carrying out his duties; or (b) is dismissed* ***from the service*** *of the Federal, State or Local Government or any of the agencies of such government; or (c) is* ***declared bankrupt*** *or suspends payments or compounds with his creditors including his bankers; (d) is* ***convicted*** *of any offence involving dishonesty or fraud; or (e) is* ***guilty of serious misconduct*** *in relation to his duties; or (f) in the case of a person who possesses a professional qualification****, is disqualified or suspended otherwise than of his own request****) from practicing his profession by the order of any competent authority made in respect of him personally. (3)* ***No person who has been a director of or directly concerned in the management of a bank which has been wound up by the [FHC]*** *shall, without the express authority of the Governor,* ***act or continue to act as a director of****, or be directly concerned in the management of any other bank."* Emphases supplied. The question of which provision on director removal/disqualification prevails as between ***CAMA*** and ***BOFIA*** may also arise, given that ***BOFIA*** (a sectoral legislation) was later in time to ***CAMA*** (applicable to all companies). Can a removed director (disqualified by ***CAMA***), intending to be promoter/director of a banking start-up, not argue that since he is 'clean', *per* ***section 47 BOFIA*** benchmarks, he cannot be disqualified from joining to form such banking start-up company? This could lead to a stalemate because, the CAC (responsible for incorporating companies) is likely to insist on the ***CAMA*** position, especially given the reinforcement of ***section 41 CAMA***. Conflicts like this is likely to be a breeding ground for potential litigation on these issues in the future. In our view, such promoter should be able to successfully seek declaratory and other reliefs, such as mandatory injunction. Again, the CAC may appeal; hence the need to nip these avoidable difficulties in the bud by amending the ***CAMA*** removal/disqualification regime. On benchmarks for sectoral regulator removal, see also ***section 24(j) PRA*** which empower PenCom to "*appoint Management Committee in the resolution of failing pension operators*". Such will necessary entail removal of current management who are presumably responsible for the poor state of such operator (or have been unable to turn its fortunes around) – this is a clear performance basis for removal.

Negative Impact on Directors' Independence

We believe that the wide and harsh provisions of ***section 283(d) and 20(1)(d)*** will negatively impact the independence of directors, who will now be looking over their shoulders because of the risk of being removed for the wrong reasons, but with long term consequences. Will the court of equity allow such regime to visit hardship on innocent directors? We think, with proper advocacy, there is a likelihood of the court invalidating or restricting it avoid the ludicrous effect that a literary interpretation will yield.

Waste of Resources in Fighting Avoidable Fires

Removed directors will likely devote a lot of time and resources to challenging their removal, in appropriate cases. If the resulting litigation lasts a long time, invariably the removed director would be 'incapacitated' in the interim, unless he is able to get an injunctive order reversing the removal, pending the final determination of his action challenging same. Legislative amendment will obviate this avoidable expenditure of resources – time, money and efforts. Fear of removal may also discourage directors from acting according to their conscience and beliefs, where such could lead to differences with alter egos of the company, that may then orchestrate their removal.

Deprivation of Means of Livelihood

The oppressive and 'expropriatory'[42] nature of the provisions can be seen from its effect of depriving, or severely prejudicing, removed directors (especially those removed other than for performance or ethical reasons), means of livelihood. Even where performance is the issue, one would expect the director sought to be removed to be given the opportunity to resign, since removal will (not may), have long term implications.[43] Again, one cannot but wonder how unfair disqualification rules will work with professional directors – people who sit on boards for a living; contributing their wealth of experience to corporate growth. Such career directors may unwittingly become endangered species.

Public Policy Considerations/Contracts in Restraint of Trade

Another lens with which to view the oppressiveness of ***sections 20(1)(d) and 283(c)*** is *public policy that leans against unreasonable contracts in restraint of trade (as to scope and duration), which could smack of economic servitude for ex-employees*.[44] The instant ***CAMA***

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[42] *Cf.* the context of ***section 25 Nigerian Investment Promotion Commission Act, Cap. N117, LFN 2004 (NIPC Act)*** where expropriation must be on basis of requisite policy (public interest) grounds, and in line with due process. It guarantees against expropriation of foreign investors' assets without prompt and due compensation, whilst also providing for dispute resolution as necessary in that regard. *In our view, unjust disqualification with attendant excessive consequences essentially amounts to expropriation, and therefore does not make any sense.* See also ***section 44 1999 Constitution*** guaranteeing freedom from compulsory acquisition of property without due process and prompt payment of compensation.

[43] Ordinarily, *resignation is an easier or neater option because unless sectoral regulatory requirements so prescribe, the director or the company does not have to give reasons for the directors' exit from the Board*. And to the extent that same does not constitute a misrepresentation in the circumstances, a 'harmless reason' can be given by the director for the exit – for example that he is resigning because of his other commitments which will not allow him devote sufficient time and attention to his duties as a director of the company he is resigning from.

[44] For a general discussion, see ***'Sagay: Nigerian Law of Contract'***, *(2nd ed., (2007) Spectrum), at pp. 427-456.* Prof. Sagay discusses them as part of "*Contracts Void at Common Law*". At *p. 432,* he stated: "*The modern principles and procedures applied and followed by the courts were very lucidly presented by Alexander, J, in the*

provisions are inconsistent with jurisprudence behind contracts in restraint of trade – we think a fitting analogy can be drawn to underscore the unfairness of the objectionable aspect of the ***CAMA*** director removal/disqualification regime. The law is always loathe to deprive individuals of their means of livelihood, and we believe aggrieved directors can successfully claim declaratory relief that the provisions are oppressive and unnecessary, thereby deserving of review.

'Excessive' or 'Unreasonable' Powers to the Corporate Affairs Commission?
If the literal rule of interpretation is applied (giving the ***CAMA*** provisions their ordinary and plain meaning), then an absurd result will be the outcome, which cannot be the legislative intendment when the ***CAMA*** (or its director removal/disqualifications) are read as a whole.[45] *The mischief rule is also relevant: construction of the provisions should not go on a voyage beyond the targeted mischief of 'unexemplary' director conduct, in order to safeguard the company's interests and those of its stakeholders*. The culmination of these rules is that the judiciary may take an unfavourable view of applying the provisions, literarily.

Otherwise, the courts will be validating unreasonable donation/exercise of powers by the CAC: it is trite that delegated powers must be used reasonably, and discretion exercised judiciously and judicially. This could be seen as a corollary of the *ultra vires* principle and leaning against construction that give the regulator (CAC), more powers than it actually needs to discharge its regulatory duties. In other words, a "purposive", rather than strict constructionist view of the instant ***CAMA*** provisions is to be preferred.

One reason for questioning the generalised ***CAMA's*** *director removal based disqualification approach* is that it may be inapt for sectors that have less operational risk, since those with

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Leontaritis v. Nigerian Textile Mills Ltd. [[1967] NCLR 114] … According to the learned judge, a contract in restraint is valid if: (i) It is reasonably necessary to protect the interests of the person in whose favour it is imposed; (ii)It is not unreasonable as regards the person restrained; and (iii)It is not injurious to the public. If the agreement read as a whole appears on the face of it not to be unreasonable in the interest of either of the parties or the public, a restraining clause will not be deemed unreasonable." See also the discussion in ***'Chitty on Contracts'***, *(Vol. 1), 28th ed., (1999), Sweet & Maxwell at pp.874 -898 (paras 17-075 – 17-113).*

[45] See *per Ige, JCA in* ***Visitor, IMSU & Ors v. Okonkwo & Ors. (2014) LPELR-22458 (CA) at 49-51G-A***: *"It has long been settled that provisions of a Constitution or statute must be construed literally giving the words in such Constitution or statute their ordinary grammatical meanings. In ascertaining the true meaning of the provisions of a statute or the Constitution, the Constitution and the statute being interpreted must be read as a whole and construed so. See 1. ACTION CONGRESS AC & ANOR VS INEC (2007) 12 NWLR (PART 1048) 222 at 259 B-D where KATSINA-ALU JSC later CJN (Rtd) had this to say: 'it is necessary to bear in mind that the Electoral Act 2006 is a subsidiary legislation which operates side by side with the 1999 Constitution. Both the Constitution and the Electoral Act shall be read together in order to give effect and meaning to the rights and obligation of individuals. It is settled principle of interpretation that a provision of the Constitution or a statute should not be interpreted in isolation but rather in the context of the Constitution or a statute as a whole. Therefore, in construing the provisions of a section of a statute the whole of the statute must be read in order to determine, the meaning and effect of the words being interpreted. See Buhari & Anor v. Obasanjo & Ors (2005) 13 NWLR (Pt.941) 1 at 219. But where the words of a statute are plain and unambiguous, no interpretation is required; the words must be given their natural and ordinary meaning.' (2) RT. HON. ROTIMI CHIBUIKE AMAECHI vs. INEC & ORS (2008) 5 NWLR (PART 1080) 227 at 314 H 1080 PER OGUNTADE, J.S.C."*

requisite risk would have been covered by sectoral regulatory oversight such as by the SEC, CBN, PenCom and NAICOM. For example an SME trading enterprise may not have major risks apart from fraud which the criminal law will address, in addition to ***section 280 CAMA*** that justifiably disqualifies a director for fraudulent practices, after judicial process.

Troubling Scenarios

To drive the unfairness of ***sections 283(c) and 20(1)(d***) home, we will illustrate with some scenarios. A dispute arises between co-founders or business partners, predicated on minority shareholder's concerns about how the company is being managed, for example because of non-adherence to corporate policies or the minority's strong advocacy that the company institutionalise to secure its long term future of sustainable profitable its operations.

Many other scenarios are possible where for example, the minority shareholder's values clash with those of the majority who may prefer that the company cut corners.[46] The majority shareholder has more directors on the Board and obviously more votes at shareholder meetings. It uses its leverage to remove the director(s) representing its minority shareholder from the Board. Whilst this may be challenged, the fact remains that *the deed would have been done* and the removed director(s) would be subject to the unfair weight of the ***CAMA*** removal provisions until they get their removal overturned, if at all.

This could take years or even decades, because anecdotally, the wheel of justice turns rather slowly in Nigeria, especially if the parties deem it necessary to exhaust the judicial appeal process. In the interim, the majority shareholder may be running the company as it wished, and presumably to the prejudice of the interests of the minority shareholder. In this instance, are the subject ***CAMA*** provisions not promoting errant, 'might is right' behaviour?

By ***section 212(1)(e) CAMA 2020 (187 CAMA 1990/2004),*** an individual is not eligible for appointment as a trustee of a debenture trust deed if he is *"disqualified under section 283 from being appointed as a director of a company"*. This could present a scenario of extra burden on professionals in the debt capital finance and management space. By the same token, *per* ***section 550(1)(f)***, *"any person convicted of any offence involving fraud, dishonesty, official corruption or moral turpitude or who is disqualified under section 280 of this Act"*, cannot *"be appointed or act as receivers or managers of any property or undertaking of any company."*

Foreign Investment Attractiveness Considerations

It would be interesting to see which, or how many other emerging countries, have these kind of director disqualification sledgehammer provisions, and the rationale for same? A pertinent question though is whether the effect of these provisions, whilst seeking to promote good corporate governance, cannot negatively impact Nigeria's investment attractiveness? This is very important given the continual desire to ramp up Nigeria's foreign direct investment (FDI) figures.

[46] Note however that if it is the other way round and the minority shareholder director is removed, that should raise no unfairness issues that is the *raison detre* of this article.

Could there also be scenarios where these objectionable ***CAMA*** director removal provisions will effectively run contrary to Nigeria's treaty obligations, for example when a foreign investor director is involved? We think not since the provisions are not discriminatory against foreign investors. Nonetheless, it is not impossible for a mischievous Nigerian majority shareholder/partner could use director removal as a leverage/tool against foreign partners in a joint venture (JV) enterprise. Also, can Bilateral Investment Treaty (BIT) issues not arise as a result of these provisions? Again our answer is in the negative, because the dispute is essentially private between the JV parties.[47]

Sectoral Regulatory Powers: The PRA/PenCom Example

The more one reviews the basis and *modus operandi* of sectoral regulators' oversight on management personnel of regulated entities, the more the absurdity of ***CAMA's*** director removal/disqualification regime, manifestly come to the fore. *The emphasis of the former is on track record (performance)/actual objectionable conduct or breach, not just the fact of director removal that could be wholly due to board room politics*. Scattered over this article, we have discussed some regulatory enforcement mechanism *vide* vested powers, for example by the CBN and SEC under the ***BOFIA*** and the ***ISA*** respectively.[48] We now use the provisions of the ***PRA*** to further press home our points.[49]

Section 60(1)(d) PRA provides: *"An application for a licence to operate as a [PFA] shall not be granted unless the applicant has never been a manager or administrator of any fund which was mismanaged or has been in distress due to any fault, either fully or partially of the Pension Fund Administrator or any of its subscribers, directors or officers."* See also, the equivalent ***section 62(e)*** provision for PFCs.

Section 64(5) displaces ***CAMA [2004]*** to empower the PenCom to, in its revocation order, "*withdraw the powers of the board of the [PFA] or [PFC] over the pension funds and assets administered by the company and* ***may appoint administrators with relevant qualifications*** *who shall superintend the transfer of the assets and funds held or administered by the*

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[47] See for example, ***Article 3 (Protection), Netherlands-Nigeria BIT 1992*** which provide in part as follows: "*(1) Each Contracting Party shall ensure fair and equitable treatment of the investments of nationals of the other Contracting Party and shall not impair by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those nationals. 2) More particularly, each Contracting Party shall accord to* ***such investments full physical security and protection which in any case shall not be less than that accorded either to investments of its own nationals or to investments of nationals of any third State****, whichever is more favourable to the national concerned.* Emphases supplied. The BIT is available at: https://edit.wti.org/document/show/4bbad0e0-968e-4c13-9209-ee25ef11e556 (accessed 08.03.2022).

[48] For reasons of space and because of shared similarity to a large extent with the CBN regime, we did not consider NAICOM and insurance industry relevant legislation such as ***the Insurance Act, Cap I17, LFN 2004, National Insurance Commission Act, Cap N42, LFN 2004*** (or even the ***Nigerian Council of Registered Insurance Brokers Act, Cap. N148, LFN 2004*** and the regulator, NCRIB).

[49] *Cf.* with sectoral regulatory practice in banking and insurance for example. If you are removed as executive director, you may have challenges being employed by another player in the industry. Even resignations have to be notified to NAICOM/CBN, not to talk of prior regulatory approval that is required of appointments before they become effective. Of course anyone with an issue will never get a job in the sector. Cf. CBN's Black Book policy. For reasons of reputational management, executive management

company and exercise the powers of the board where necessary in accordance with this Act."[50]

By ***section 74 PRA****: "(1) Every [PFA] or [PFC] shall notify the Commission of any staff that is dismissed, his appointment terminated or advised to retire or resign on the grounds of fraud, misconduct or dishonesty. (2) The Commission shall maintain a list of persons: (a) who have been dismissed; (b) whose appointments have been terminated; and (c) who are advised to retire or resign, on the grounds of fraud, misconduct or dishonesty, and shall circulate such list to [PFAs] or [PFCs]. (3) The Commission may, if it deems fit in the circumstances, circulate to other regulatory agencies the list of persons maintained under subsection (2) of this section. (4) It shall be the duty of all government appointing or screening and or confirming bodies to make sure that no person indicted in any form of pension fraud or crime be allowed to serve in any pension and or finance administration in Nigeria."*

According to ***section 75****, "A [PFA] or [PFC] shall not employ any person whose name is on the list maintained by the Commission under section 74(2) of this Act, unless with the prior approval of the Commission."*

Section 76 stipulates that*: (1) A Pension Fund Administrator or Pension Fund Custodian who fails to comply with any of the provisions of sections 73, 74 and 75 of this Act shall pay a penalty of ₦1,000,000 to the Commission for every violation. (2) In addition to the penalty specified in subsection (1) of this section,* ***the Commission may impose additional penalties including removal of any top management staff*** *of the [PFA] or [PFC] who had knowledge or ought to have knowledge of the offences."*

According to ***section 101***, *"A [PFC] who contravenes the provisions of section 70 of this Act commits an offence and is* ***liable on conviction to a fine of not less than ₦10,000,000.00 and each of its directors or principal officers is liable to a fine of not less than ₦5,000,000.00 or to a term of not less than 5 years imprisonment or to both such fine and imprisonment****.*

Per ***section 102****, "Notwithstanding the provisions of any other law,* ***the Commission may, in addition to the penalties stipulated under this Act, impose additional sanctions on the board, any director, management****, manager or officer of a [PFA] or [PFC] that violates any provisions of this Act."*

Per ***section 103****, "Where an offence under this Act is committed by a body corporate, the body corporate or every - (a)* ***director****, manager, secretary or other officers of the body corporate; (b) person who was purporting to act in such capacity mentioned in paragraph (a) of this section,* ***who had knowledge or believed to have knowledge of the commission of the offence and who did not exercise due diligence to ensure compliance with this Act shall be deemed to have committed the offence and shall be proceeded against in accordance with this Act****."*

Can Constitutional Provisions Be Called in Aid?

[50] Another issue worthy of consideration is whether directors in companies whose sector regulators are not empowered to pre-approve director nominees (like it appears to be the case with the telecommunications sector, given provisions of the ***Nigerian Communications Act, Cap. N97, LFN 2004*** and the ***Code of Corporate Governance for the Telecommunications Industry 2016***) are not more exposed than their counterparts who also have sectoral regulatory director removal framework, to these extreme ***CAMA*** removal provisions.

As the proverb goes, desperate problems require desperate solutions; so we may also have to resort to constitutional law arguments. *Can constitutional provisions come to the rescue, even if only for 'moral suasion'?* We start on this by highlighting that ***Chapter 2 1999 Constitution of Federal Republic of Nigeria (as amended) (1999 Constitution),*** titled ***Fundamental Objectives and Directive Principles of State Policy),*** has some 'economic' provisions, including:

Section 16(1):

> *"The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution:*
>
> *(a) harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy;*
>
> *(b) control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;*
>
> *(c) without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy;*
>
> *(d) without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.*

By ***section 16(2)(a)****: "The State shall direct its policy towards ensuring the promotion of a planned and balanced economic development".* Furthermore, ***section 17(2)(a)*** *and* ***(3)*** provides in part that: "*In furtherance of the social order- (a) every citizen shall have equality of rights, obligations and opportunities before the law"* and "*The State shall direct its policy towards ensuring that- (a) all citizens, without discrimination on any group whatsoever,* ***have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment".***

One major issue is whether the non-justiciability of ***Chapter II 1999 Constitution*** provisions is not a major stumbling block to citizens' reliance on them? The way out is to invoke Nigerian treaty obligations that also guarantees those rights.[51] For example, ***Article 15***

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[51] In a related context on non-justiciability of ***Chapter II 1999 Constitution***, some commentators have opined: *"However, it is worth referring to the views of the ECOWAS Court of Justice at Paras 36-38 (p.11) of SERAP v FRN, Judgment N° ECW/CCJ/JUD/18/12 (of 14.12.2012): '36. As held by the jurisprudence of this Court, in the Ruling of 27 October 2009, SERAP v. Federal Republic of Nigeria and Universal Basic Education Commission, once the concerned right for which the protection is sought before the Court is enshrined in an international instrument that is binding on a Member State, the domestic legislation of that State cannot prevail on the international treaty or covenant, even if it is its own Constitution. 37. This view is consistent with paragraph 2, Article 5 of the International Covenant on Economic, Social and Cultural Rights which Nigeria is party to by adhesion since 29 July 1993 which provides: 'No restriction upon or derogation from any of the fundamental human rights recognised or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on*

African Charter on Human and Peoples Rights provides that: *"Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work."* It has been held by the African Commission on Human and Peoples Rights that these class of rights are justiciable by virtue of Nigeria's accession to the ***African Charter: SERAC &CESR v. Nigeria***.[52]

Although the ***1999 Constitution*** did not expressly provide for economic rights as part of ***Fundamental Human Rights*** in its ***Chapter IV***, arguably they are a subset of, or inextricably related to the right to life, right to dignity of the human person that are constitutionally guaranteed.[53] Given that caselaw is rife with examples where unreasonable regulatory provisions have been successfully challenged, there is likelihood that persons that is sufficiently aggrieved by ***sections 20(1)(d) and 283(c) CAMA*** may be able to get relief from the Federal High Court (FHC).[54]

Managing the Removal/Disqualification Challenge: Is 'Sidestepping' Possible?
Pending legislative amendment or favourable judicial determination, directors would have to live with these provisions, and will necessarily consider options, as part of their responsive strategy. For example, a question may be asked *whether a removed director*

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the pretext that the present Covenant does not recognise such rights or that it recognises them to a lesser extent'. 38. In these circumstances, invoking lack of justiciability of the concerned right, to justify non accountability before this Court, is completely baseless.' The big issue that then arises is the enforceability of ECOWAS Court decisions [against], or in, Nigeria." See Afolabi Elebiju and Daniel Odupe, ***'Cessations and Destinations: Issues in Gas Flare Commercialisation in Nigeria'***, *LeLaw Thought Leadership Reflections, February 2021, fn 31 at p.6*: https://lelawlegal.com/add111pdfs/TLR-Cessations_and_Destinations_3.pdf (accessed 05. 03.2022).

[52]***Case No.155/1996 decided at the 30th Ordinary Session held in Banjul, The Gambia from 13.10.2001- 27.10.2001***: https://www.achpr.org/public/Document/file/English/achpr30_155_96_eng.pdf (accessed 05.03.2022). See part of findings at *p. 9*: *"For the above reasons, the [African] Commission, Finds the Federal Republic of Nigeria in violation of Articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter"*. ***Para 41 (at p.4)*** of the ***Decision*** stated in part: *"The [African] Commission takes cognisance of the fact that the Federal Republic of Nigeria has incorporated the African Charter into its domestic law with the result that all the rights contained therein can be invoked in Nigerian courts including those violations alleged by the Complainants…"*

[53] See ***sections 33 and 34 1999 Constitution***. *Cf.* commentary in respect of right of access to medical/health services: *"Nigeria's grundnorm - the Constitution of the Federal Republic of Nigeria 1999 (as amended) made public healthcare provision non-justiciable under Chapter II - Fundamental Objectives and Directive Principles of State Policy. Thus, citizens lack the legal capacity to compel any of the three tiers of Nigeria's government: Federal, State and Local - to live up to constitutional commitments in sections 14(2)(b), and 17(3)(c)(d) 1999 Constitution. These provisions obligates the government to safeguard citizens' security and welfare, and ensure that there are adequate medical and health facilities for al l persons. Due to their aforementioned non-justiciability, any enforcement action must be founded on another constitutional provision, which gives right to remedy, such as breach of fundamental human rights under Chapter IV."* See Afolabi Elebiju and Gabriel Fatokunbo, ***'Transformations: Impact Investment Potentials for Private Equity in Nigeria's Healthcare Industry'***, *LeLaw Thought Leadership Insights, October 2018, p.1*: https://lelawlegal.com/add111pdfs/Repositioning_Nigeria_Healthcare_Industry. pdf. *Per footnote 1*: *"See Archbishop Anthony Olubunmi Okogie & Ors v. Attorney-General of Lagos State [1981] 1 NCLR 105, and Adewole & Ors v. Jakande & Ors [1981]1 NCLR, 262 where the Court of Appeal exercised jurisdiction on the basis that the 'non-implementation' of Chapter II 1999 Constitution inexorably results in the violation of Chapter IV constitutional provisions on fundamental human rights. These decisions practically render Chapter II justiciable in fundamental human rights cases. Similar conclusion was reached in Adamu v. A.G. Borno State [1996] 8 NWLR (Pt.465), 203 CA."*

[54] See ***section 251(1)(e) 1999 Constitution*** which vests the FHC with exclusive jurisdiction to determine *"civil causes and matters arising from the operation of the [CAMA] or any other enactment replacing that Act or regulating the operation of companies incorporated under the [CAMA]"*.

that is subject to subsequent disqualification can skirt the consequences of removal by being a shadow director – defined by ***section 270(1) CAMA*** as *"any person on whose instructions and directions the Directors are accustomed to act"*? Since that provision includes shadow director within the definition of director, the short answer is that a person subject to disqualification cannot be a shadow director – as that is an indirect way of sidestepping the disqualification.[55]

However, it appears that a disqualified director, is not so incapacitated to subsequently join in forming partnerships. He may thus resort to the partnership business vehicle instead, thereby sidestepping the intended reach of ***CAMA*** to presumably still do business that could be harmful to other stakeholders. ***Sections 747 and 796 CAMA*** only incapacitates individuals who are of unsound mind and has been so found by a court in Nigeria or elsewhere, or an undischarged bankrupt from becoming a partner of a limited liability partnership (LLP) or of limited partnerships (LP). Accordingly, nothing prevents a disqualified director from being the general partner or designated partner of an LLP or LP, responsible for managing these respective partnerships. LLP and/or LP can undertake the almost all (if not all) the same business activities that a company can undertake.

In this way, the LLP and LP formation requirements effectively dilute or whittle down the ***CAMA's*** director disqualification provisions. Whilst this may good news for a justifiably removed director (because he still able to engage in managing a business using another vehicle); it may be cold comfort to an unfairly removed director, especially who prefers for relevant reasons, to continue business with the limited liability corporate vehicle.

Another way to avoid the long term consequences of ***sections 283(c) and 20(1)(d) CAMA 2020*** pending legislative amendment is for an "innocent" director to resign once it appears there is an effort to remove him. If such director is a shareholder, he can seek appropriate reliefs, if his rights in such capacity are being infringed. Such pragmatic approach could be losing a battle to win the war.

Conclusion

We struggle with the question: *why have a different treatment for directors removed by sectoral regulators vis a vis those affected by* ***section 283(c) CAMA****?* Ultimately, removal is removal, indeed the company would be expected to formalise corporate actions to effect removal ordered by the regulator, for example, by filing returns (*Form CAC 7A*), to the CAC.

It is inconceivable that erstwhile directors of a leading Nigerian bank that were recently removed from office as a result of dissolution of the Board by the CBN can no longer be founder-directors of their own companies/groups which they have been running from inception? Being directors at the bank was not their "day job", and removal therefrom should not deprive their 'personal' businesses of their continuing attention. There are also sentimental factors involved if a person were to be forcefully separated from closely held

[55] Albeit the particulars of shadow directors are not intended to be filed with the CAC, ***section 270(1)*** has put paid to any potential argument that directorship is dependent on the filing of requisite ***Form CAC7 (Appointment of Director)*** at the CAC. See also ***Section 868 (Interpretation)*** which defines *"director"* to include *"any person occupying the position of director by whatever name called; and includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act".* Furthermore, the phraseology of ***section 280(1)(b)(ii)*** that a *"person shall not be a director of or in any way, whether directly or indirectly be co concerned or take part in the management of a company"* settles the issue that shadow directorship is not allowed where a person has been disqualified as a director.

businesses they have nurtured for decades skills, as a result of removal as a director of say a listed conglomerate.

Assuming that were the case, it would be very difficult to attract and recruit quality people as directors especially as independent non-executive directors (INEDs) - *as such people would be wary of the resulting exposure to their business and professional careers where they exit boards by way of removal (whether for flimsy or valid reasons)*. If removal will put their continuing ability to manage their own businesses at peril, clearly there would be reluctance to join boards, where they would have otherwise contributed their skill sets, in furtherance of the company's business.

This would end up being a zero sum game whereby CG which ***section 283(c) CAMA*** seeks to promote, ends up being the net loser. Thus, the symbiotic arrangement whereby experienced board room players seeking post retirement director careers in order to make their knowledge and experience accessible to companies – may be prejudiced by ***section 283(c) CAMA*** provisions to the detriment of the economy.

We respectfully posit that ***sections 283(c) and 20(1)(d) CAMA*** in current form are not necessary to give teeth to ***CAMA's*** director disqualification regime. The authors are unaware of any research finding or position taken by the CAC that erstwhile provisions (current ***sections 20(1)(c)*** and ***283*** excluding ***283(c)***) did not possess enough bite. It is not prescient to overlay more regulatory powers when the panoply of powers under ***CAMA*** and other legislation have not been fully utilised, or proven to be inadequate.[56]

The draconian ***CAMA*** provisions will only have undesirable anti-entrepreneurial effect. In conclusion ***sections 283(c) and 20(1)(d) CAMA*** should either be repealed or amended *by tying* ***sections 283(c) and 20(1)(d) CAMA*** *disqualification* from other or future directorships or joining in company formation, *to only ethics related (and well defined performance metrics) director removal*. We think nebulous performance grounds is not enough (unless there is gross incompetence or wilful negligence, which we think is not a huge risk as director screening process of the relevant company would have identified competent persons for appointment as directors).

In the event, *the removal and related disqualification provisions amounts to a Sword of Damocles dangling over the heads of conscientious directors who take seriously their*

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[56] The authors have not come across any material by legal scholars, industry groups or other stakeholders advocating such position. The preponderance of opinion is that ***section 283(c) CAMA*** is anomalous. According to two commentators, *"In our view, the interpretation of section 283(c) to mean that a director removed before his term would be disqualified from being a director anywhere else is illogical, particularly as a director may be removed by the company for any reason and such reason might not be as a result of a fault or misdeed by that director. It is likely that the intention of the lawmakers by introducing 283(c) was to limit the disqualification of the director to the particular company removing the director and not all companies. Consequently, if Mr. A is removed by the shareholders from being a director in company X, Mr. A is only disqualified from holding the position of a director in company X. The foregoing ambiguity would need to be clarified to avoid differing interpretations of section 283(c). In the meantime, directors may wish to consider resigning instead of being removed under section 288 to avoid being deemed as a disqualified director under CAMA."* See Timi-Koleolu and Aroh, ***'Nigerian Companies And Allied Matters Act 2020 -Does The Removal Of A Director Result In His Or Her Disqualification As A Director In Other Companies?'***, *Mondaq, 06.04.2021*: https://www.mondaq.com/nigeria/shareholders/1054678/nigerian-companies-and-allied-matters-act-2020-does-the-removal-of-a-director-result-in-his-or-her-disqualification-as-a-director-in-other-companies (accessed 08.03.2022). See also articles referred to at footnote 16 herein.

fiduciary duties to the company, and their independence as directors, envisaged for example by ***section 305 CAMA***.[57] The current provisions may sometimes force directors to choose between removal risk (*immediate or near-term risk*) or breach of their duty to the company, with attendant exposure (*medium or longer term risk*). Such choice should never have to arise at all. It is would be a sad day indeed, when statutory and policy disregard for circumstances of removal put conscientious directors between the devil and a hard place.

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[57] See the provisions of ***section 305(1)-(8)*** reproduced above. Indisputably, board independence (for example as envisaged by ***section 305(3)***, ***(5)*** and ***(6)***) is also a very important element of best in class corporate governance. See ***Chapters 8 (The Fiduciary Duties of Directors), 9 (Making Boards More Effective: The Case For Independence of Directors)*** and ***10 (Real Independence of the Board)*** in Fabian Ajogwu, SAN, ***'Corporate Governance in Nigeria: Law & Practice'***, *(2nd ed., 2020, Thomson Reuters), at pp. 142– 193.*