

Legal Alert – April 2012 – Hotels & Tourism Licensing and Regulatory Regimes

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Introduction

The global financial crises in the last few years, the necessity to diversify the Nigerian economy away from oil, and improvements in the purchasing power of the Nigerian middle class, among other factors, have encouraged increased private investments in the leisure, hospitality and tourism industries in Nigeria.

A proper understanding of the various federal, state and local government licensing and regulatory regimes in the Hotels, Hospitality and Tourism markets in Nigeria is critical to the execution and substance of a viable business plan in any of these sectors. This Legal Alert is our contribution to your achieving this objective.

Federal Hotel & Tourism Regulation

At the federal tier of government, the apex regulatory authority is the Nigerian Tourism Development Corporation (“NTDC”) which is established by law to register, classify and grade all hospitality and tourism establishments, travel agencies and tour operators in Nigeria.

Every Owner of every hospitality and tourism establishment in Nigeria is therefore mandatorily required to register its business with NTDC within sixty (60) days

of its commencement of operations. Every certificate of registration issued by NTDC expires on the thirty-first (31st) day of December in the year of the issue of such a certificate; with renewals required on a year to year basis upon the payment of such renewal fees as may be prescribed by NTDC.

The Owner of every registered hospitality or tourism establishment must display in a prominent place, at its business premises, its NTDC certificate of registration indicating the name of the establishment, its classification and the grading status of the tourism and or hospitality establishment.

There are fines and criminal penalties for individual owners and corporate bodies who fail to register their hotels, tourism and hospitality establishments with NTDC.

Lagos State Hotel and Tourism Licensing Law (as amended)

For operators of Hotels, Tourism and Events establishments in Lagos State, attention is brought to the Lagos State Hotel Licensing Law as amended in 2010 (“LSHLL”). This Law regulates the licensing of Hotels and other Tourism Establishments in Lagos State.

It is an offence under the LSHLL for an operator of a Hotel or other Tourism Establishment to carry on any of these kinds of businesses in Lagos State without a licence duly issued by the Lagos State Hotel Licensing Authority (“LSHLA”). The penalties for non-registration include fines and terms of imprisonment.

Like the NTDC Act, the Lagos State Hotel Licensing Law (as amended) also requires all operators of Hotels and

Tourism Establishments in Lagos State to display in prominent sections of their Hotels their LSHLA license.

Grounds for Objection to Hotel License

The Lagos State Hotel Licensing Law (as amended) introduced among other things an objection procedure to the granting of, renewal and transfer of any license issued by the LSHLA to a Hotel or Tourism Establishment operator.

Grounds for objecting to a LSHLA license include (a) closeness to places of religious worship, schools or a hospital; (b) the use of the premises where the establishment carries on business as a brothel; (c) the population density of the area where the Hotel or Tourism Establishment is located or intended to be located; (d) the operator of such an establishment is found to be a person of bad repute or a tax defaulter or a convicted person under the LSHLL; or (e) the premises is unsanitary or will be a nuisance to the neighbourhood where it is situated.

Lagos State Hotel Proprietors Law

There is also in Lagos State a Hotel Proprietors Law which regulates the rights, duties and liabilities of all Hotel Proprietors to the customers who patronise the services offered in Hotels in Lagos State.

Duty of Care

Under the Hotel Proprietors Law, it is the duty of a Hotel Proprietor in Lagos State to take reasonable care of the safety of its customers such that each customer is not injured by the negligence or omission of the Hotel Proprietor, its staff and agents.

Extent of Liability

Where a Hotel Proprietor is found to be liable for any loss or damage to the property of a customer brought into its Hotel, such a Hotel Proprietor's liability is limited to ₦200 (Two Hundred Naira) in respect of any one article or ₦2,000 (Two Thousand Naira) for the aggregate of all the customer's items lost or damaged.

A Hotel Proprietor is however not liable for motor cars or vehicles that get missing while parked within the premises of the Hotel except if it is established that a independent and separate contract indemnifying the customer against the loss of his motor car or vehicle was entered into with the customer.

Every Hotel Proprietor is mandatorily required to have a notice exhibited conspicuously at the entrance or reception area of its Hotel, and also in the sleeping rooms, intimidating customers of the Hotel that the Hotel Proprietor's liability is limited to ₦200 (Two Hundred Naira) in respect of any one article or ₦2,000 (Two Thousand Naira) for the aggregate of all the customer's items lost or damaged while a fee paying Guest at the Hotel.

Hotel Proprietor's Lien

The Lagos State Hotel Proprietor's Law re-establishes the age-long legal principle that a Hotel has a legal right of lien to detain any of its customer's property where the customer does not settle his or her Hotel bill, for services the customer enjoyed while at the Hotel. This right of lien does not however apply to the apparels worn by the customer at the time the Hotel Proprietor exercises its right of lien.

The Hotel Proprietor further has the right to dispose of the detained property if after twelve (12) weeks of an

advertised public auction, the customer continues to fail to settle his or her Hotel bill.

Local Governments' Permits and Licenses

There are other various Permits and Licenses which a Operator of a Hotel must also apply for from the Local Government Authority in the area where its carries on business; and ensure the renewal of these permits and licenses at all times while carrying on business.

Some of the Local Government Permits and Licenses applicable to Hotel operations in Nigeria, with minor variations from one State to another, include permits for food, liquor license, radio and television license, fire and safety permit, fumigation, sewage and food handlers' licenses, Tenement Rate or Land Use Charge on the property where the Hotel carries on business, ETC.

Hospitality & Tourism Tax Laws

Companies Income Tax

As most Hotels, Hospitality, Tourism and other leisure establishments are incorporated limited liability companies, they are required to pay thirty per cent (30%) of their annual profits as companies' income tax and two per cent (2%) as education tax at the end of each trading or financial year.

Related to the above provisions is the requirement to file annual returns with accompanying audited accounts at the end of each financial year, at the Corporate Affairs Commission.

Personal Income Tax

All Hotels, Hospitality and other leisure establishments are further required to ensure that they deduct the

applicable personal income tax from their employee's wages and remit these PAYEE taxes to the State Inland Revenue Service where they carry on business. There are fines and other penalties for any defaults.

Value Added Tax

Value Added Tax in Nigeria is a federal legislation that charges a five per cent (5%) tax on all goods and services provided in Nigeria. Humanitarian goods and services are however exempted from charge to this tax by the Value Added Tax Act (as amended).

All persons including all Hotels, Hospitality, Tourism and other leisure establishments are required to include five per cent (5%) value added tax on all invoices that they issue to their customers. They are also required to file monthly VAT returns and remit the excess VAT where the output VAT exceeds the input VAT.

There are punitive penalties for any infringement of the provisions of the Value Added Tax Act (as amended).

Lagos State Consumption Tax Law

There is in Lagos State a consumption tax law which is very similar to the federal law on consumption tax, i.e. VAT. The Lagos State Law is known as the Lagos State Hotel Occupancy and Restaurant Consumption Law (as amended).

The Lagos State Hotel Occupancy and Restaurant Consumption Law (as amended) imposes a five per cent (5%) consumption tax on any customer who pays for the use of any facility, goods or services in any Hotel, Hotel facility, Restaurant or Events Centre in Lagos State.

The 5% Lagos State Consumption Tax however excludes from charge the already charged 5% federal

Valued Added Tax and the traditional service charge invoiced in most entertainment and tourism establishments.

There are fines, interest charges and other penalties for non-collection and non-remittance of all Lagos State Consumption Tax in Lagos State.

Edo State Hotels, Events Centres and Restaurants Consumption Tax Law 2011

There is in Edo State, which is a Southern State in Nigeria, a Hotels and Events Centres Occupancy and Restaurants Consumption Law which imposes a 5% (five per cent) tax on the total invoice issued to a customer for all the consumable goods and for all the services rendered in all Hotels, Restaurants, Events Centres and other similar establishments in Edo State.

The consumption tax collected is required to be remitted to the Edo State Board of Inland Revenue. All Proprietors of the applicable Hotels and other leisure and entertainment establishments in Edo State are required to register their establishments with this Board of Inland Revenue, within sixty days (60) of their commencement of business, for the purpose of compliance with the provisions of this Law.

All consumption tax collected under this Law are required to be remitted to the Edo State Board of Inland Revenue on or before the 7th day of the following month of the collection.

Failure to register for the collection of this consumption tax, or to file monthly returns or to remit the consumption tax collected attracts penalties, fines and terms of imprisonment which could be imposed on the principal

officers of the establishment if found guilty of committing any of these offences.

The Pension Reform Act (as amended)

The Pension Reform Act (as amended) requires all employers and employees, whether engaged in the public or private sectors of the Nigerian economy, to contribute a minimum of seven and a half per cent by the employer, and another minimum of seven and a half per cent by the employee, of the employee's monthly emolument towards the employee's mandatory pension scheme and plan.

There are penalties for breaching the various statutory provisions of the Pension Reform Act (as amended).

The Employee's Compensation Act 2010

The Employee's Compensation Act 2010, which repealed the Workmen Compensation Act, requires every employer, whether in the private or in the public sector of the Nigerian economy, to contribute to the Employees' Compensation Fund, which is managed by the National Social Insurance Trust Fund ("NSITF"), a compulsory employees' compensation contribution of one per cent of the employer's total monthly payroll.

There are fines and penalties for any breach of the provisions of the Employee's Compensation Act 2010.

Tourism and Hospitality Regulatory Disputes in Nigeria

The constitutionality of the concurrently existing Federal and State legislations on the registration of Tourism, Hotels and others Hospitality Establishments, especially in Lagos State, remains unresolved either by litigation or by legislative amendments to the existing laws.

The Contention of Lagos State Government

It is the contention of the Lagos State Government that the regulation of Hotels and other Tourism establishments is a residual matter to which the Federal Government of Nigeria has no constitutional authority to legislate or pass laws.

Lagos State further contends that the only reference to tourism in the exclusive legislative list of the 1999 Constitution of the Federal Republic of Nigeria (as amended) is in item 60(d) which relates “to regulate tourist traffic” and the intention here is to control immigration and monitor border formalities which later national security function is the exclusive responsibility of the Federal Government.

Based on the above assertion, the Lagos State Government contends that the only valid legislation that regulates the licensing of Hotels and other tourism or hospitality establishments operating in Lagos State is the Lagos State Hotel Licensing Law as amended in 2010.

Response of NTDC?

Neither the Federal Government nor NTDC have responded to the above advertised position of the Lagos State Government thereby placing the operators and customers of Hotels and other Tourism Establishments in Lagos State in a double registration and taxation position, which position will only increase the cost of doing business in Lagos State.

Without holding brief for the Federal Government of Nigeria or for NTDC, the latter’s reliance on item 68 of the exclusive legislative list in the 1999 Constitution (as amended) which provides that any matter incidental to or

supplementary to any matter in the exclusive legislative list will be construed to be on the exclusive legislative list, is an interpretation that is too wide and could not have being intended by the makers of this 1999 Constitution (as amended).

Conclusion

Until otherwise determined by a competent Court or by Constitutional amendment, it is our opinion that based on the existing 1999 Constitution (as amended), the Nigeria Tourism Development Corporation Act is null and void when it comes to the regulation of Hotels and other Tourism Establishments in Lagos State.

It would however be foolhardy for any operator of a Hotel or other Tourism Establishment operating in Lagos State to ignore registration with either NTDC or with the Lagos State Hotel Licensing Authority in the light of the cost-benefit of double compliance far outweighing non-compliance pending amendment to the existing laws.

In the nearest future, it is expected that the Federal and State Governments in Nigeria will harmonise all tourism and other hospitality legislations in Nigeria to ensure that investments in this industry are not inhibited by double taxation and resulting high costs of doing business in Nigeria.

Capacity building and enlightenment in the hospitality and tourism industry in Nigeria, with the fines and other penalties for non-compliance with current regulations, are behind those of countries with less tourism and hospitality potentials like Nigeria has. Private sector owners will do well to self-regulate this industry for maximum returns on their investments.

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