

# *Nigeria Tax Alert*



July 2013

## *The Supreme Court Judgement on Hotel Licensing and Regulation*

### *Introduction*

The debate on the constitutionality of the Lagos State Hotel Licensing Law 2003 (and its amendment) and the Hotel Occupancy and Restaurant Consumption Law 2009 enacted by Lagos State has been finally laid to rest by the Supreme Court on 19 July 2013.

The Hotel Licensing Law and the 2010 amendment established the Lagos State Hotel Licensing Authority (“LSHLA”) and made other provisions for the licensing of hotels. It further empowered Lagos State to make laws to regulate, standardise and grade tourism operations which was previously the exclusive preserve of a federal government agency, the Nigerian Tourism Development Corporation (“NTDC”).

In the exercise of its powers to license and regulate hotels, the Lagos State House of Assembly enacted the Hotel Occupancy and Restaurant Consumption Law. The Law imposes a 5% tax on consumption of goods and services in hotels, hotel facilities, event centers and restaurants.

## **Overview of the Supreme Court Judgment**

### **Position of the federal government**

The federal government (before the Supreme Court) challenged the right of Lagos State to make laws on tourism specifically where the National Assembly had already legislated on the same issue through the NTDC Act.

The issues for determination were:

1. Whether matters pertaining to tourism fall under the exclusive legislative list of the Constitution of the Federal Republic of Nigeria 1999.
2. Whether the Lagos State House of Assembly and the Lagos State Government can enact and promulgate laws on matters within the exclusive legislative list.
3. Whether the Lagos State House of Assembly and the Lagos State Government can enact and promulgate laws which directly conflict with the provisions of an existing law of the National Assembly and if it can supersede the National Assembly law.

### **Position of Lagos State**

1. Whether regulation, registration, classification and grading of hotels, guest houses, motels, restaurants, travel and tour agencies and other hospitality and tourism related establishments are matters in the Exclusive and Concurrent Legislative List and outside the legislative power of Lagos State House of Assembly.

2. Whether the relevant laws of the Lagos State are invalid by reason of their inconsistency with the provision of the Nigerian Tourism Development Act.

### **The Judgment**

The apex court dismissed the federal government's suit and delivered its judgment in favour of Lagos state. It was the view of the court that the NTDC Act went beyond its powers as stated in the Exclusive Legislative List of the Constitution which is to regulate "tourist traffic". This effectively challenged the constitutionality of the NTDC's powers to unilaterally regulate and control of hotels and tourism in Nigeria. The court therefore validated the respective laws of Lagos State.

### **Implications of the Judgment**

The judgment was given by the apex court and therefore cannot be challenged further on the same principle. However, the judgment did not address the issue of the imposition of tax and whether or not Lagos State has the constitutional right to impose the tax.

### **Hotels to be licensed and subject to tax by Lagos State**

"...any building used as a guest house, inn, lodge, motel, tavern, night club, restaurant, event centre and any other place for the sale of food and drink within the premises of a hotel and includes fast food outlets and restaurants operating outside the premises of a hotel."

The Licensing Law does not clearly define an event centre or a restaurant. These were defined in the Hotel Occupancy and Restaurant Consumption Law as follows:

- Event centres includes hall, auditorium, fields and places designated for public use at a fee.

- Restaurant includes any food sale outlet, bar, tavern, inn or café, whether or not located within a hotel.

Both definitions have a wide scope and are potentially ambiguous. For example, an educational institution that provides its playing field or assembly hall for events such as weddings would be required to register as a 'hotel' based on the above definitions. Also, if any food outlet is considered a restaurant it would mean that the man or woman selling roasted corn on the road side would be required to register as a hotel and pay the tax.

## **Conclusion**

Lagos State would take necessary steps to enforce registration of hotel operators and similar businesses in Lagos. The Hotel Licensing Law

came into effect in 2003 and provides that an application for license shall be made within 3 months of the establishment of the Act and imposes a penalty on any person that fails to comply with the requirement. Hotels, hotel facilities, event centers and restaurants must therefore proceed to register and obtain relevant licenses from Lagos State in line with the Hotel Licensing Law.

However, it is unclear if a hotel that has not made such an application due to the fact that a suit was pending will be penalised retroactively.

One can reasonably expect that the Lagos Internal Revenue Service (LIRS) would seek to enforce the payment of the 5% consumption tax. It should however be noted that the Supreme Court judgment did not specifically validate the tax so it is expected that the ongoing case in this regard should continue.

### **Contact us:**

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