

Introduction

The economic potential that the Tourism Industry holds, both internally and externally, especially in diversifying the economy away from a mono crude oil export economy, continues to be magnified as the economy slowly recovers from a recession. One of the recent attempts to harness the opportunities in the Tourism Industry is the second reading of the Nigerian Tourism Development Corporation (Repeal & Re-enactment) Bill, 2017 at the National Assembly. This Bill has elicited a lot of concern from various stakeholders in the Tourism and Hospitality Industry such that an appraisal of some of its provisions will make for a better informed opinion.

Tourism Development Bill

The Nigerian Tourism Development Corporation Bill, 2017 (?NTDC Bill?) seeks to repeal the Nigerian Tourism Development Corporation Act (?NTDC Act?), and in its place establish the Nigerian Tourism Corporation (?NTC?) to among other things develop, promote, regulate, accredit, grade, classify and supervise every aspect of the Tourism Industry in Nigeria.

The NTC Bill further contemplates the establishment of a Tour Operating Company (?TOC?), with offices in each of the six (6) geo-political zones. TOC is to establish tour services within and outside of Nigeria.

Some of NTC's funding options includes the levying of a Tourism Visa Fee on all in-bound International Travellers to Nigeria; a Tourism Departure Levy on all out-bound Travellers; a Tourism Development Contribution Levy of 1% per Hotel room rate or such flat fee as maybe fixed by NTC; and a Corporate Tourism Development Levy to be charged on the revenue of Banks, Telecommunications and other corporate entities.

Constitution, Case Law and Tourism

In 2010, the Federal Government of Nigeria (?FGN?) challenged the constitutionality of the following statues enacted by the Lagos State House of Assembly:- (i) The Hotel Licensing Law; (ii) The Hotel Licensing (Amendment) Law; and (iii) The Hotel Occupancy and Restaurant Consumer Law. FGN contended that these legislations usurped and undermined the provisions of Section 4(2)(d) of the Nigerian Tourism Development Act.

The Lagos State Government, in response to FGN's above legal challenge, contended that under the 1999 Constitution of the Federal Republic of Nigeria, Hospitality and Tourism Enterprises, not being among the items in the Exclusive and Concurrent Legislative Lists, were residual matters in which the States' Houses of Assembly can legislate. To the extent that some of the provisions of the NTDC Act are inconsistent with the provisions of the 1999 Constitutional regarding Tourism and Hospitality regulation, such inconsistency should be held by the Supreme Court to be null and void, and of no effect whatsoever.

The Supreme Court dismissed FGN's claims in this suit, and unanimously upheld the above submissions of the Government of Lagos State. This is especially as Nigeria operates a Federal System of Government, with each State in the Nigerian Federation enjoying its separateness and independence from the Federal Government.

The Supreme Court further held that by virtue of the provisions of Section 4(1-3) and item 60(d) of Part 1 of the Second Schedule of the 1999 Constitution, FGN can only exercise jurisdiction over Tourist Traffic

; and Tourist Traffic the Supreme Court described to include only the ingress and egress of International Tourists from other countries, via visa controls.

Conclusion.

Until the provisions of the above referred 1999 Constitution, which provisions were followed by the Supreme Court in the above case of Attorney General of the Federation v. Attorney General of Lagos State (2013) 7SC (Pt.1) 10 @ 88-90, **are amended or repealed**, the provisions in the NTC Bill regarding the regulation of the Tourism Industry, will if passed into law, again be held to be invalid, null and void once such provisions are challenged in a Court of Law.

Also, most of the financial provisions in the NTC Bill are inimical to the Tourism and Hospitality Industry which is already burdened by multiple and double taxes, a recessed economy with dilapidated infrastructure nationally, an unskilled 21st century compliant manpower pool, aggressive foreign tourism competition for other destinations, etc. Examples of such injurious provisions include a Tourist Visa Fee, a Tourist Development Levy, a 1% per room hotel Tourism Development Levy and a Corporate Tourism Development Levy.

The Federal Government will do well to concentrate on more essential National issues, than on Tourism and Hospitality Regulation which are better managed by States and Local Governments.

Lastly, the above cited Supreme Court decision centered solely on who has the Constitutional authority to legislate on the Regulation, Registration, Classification and Grading of Hospitality and Tourism Businesses in Nigeria. Arguments and a final decision on whether or not the Lagos State Hotel Occupancy and Restaurant Consumption Law can be administered concomitantly or at the same time with the Value Added Tax Act in Lagos State were not made in this case.

The continued application of the Value Added Tax Act and the Hotel Occupancy and Restaurant Consumption Law on the Hospitality Industry needs to be determined by a superior Court of Record as the application of both taxes on the same tax base increases the cost of consumption and jeopardises the growth of the Hospitality Industry. A preferred option will be for the 1999 Constitution to be amended and the Value Added Tax Act to be repealed with States and Local Governments allowed to administer any form of consumption tax in their jurisdiction.

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