



## ‘PINTS’: WHEN DOES EXTRACTING MORE TAX REVENUE BECOME TOO MUCH?



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### Introduction

Revenue generation across States in Nigeria continues to remain a critical concern to most stakeholders, not just the Revenue authorities and the public sector. Tax, levies and other charges have always been a tool by State Governments to generate additional revenue. According to the 2019 Internally Generated Revenue (IGR) data released by the National Bureau of Statistics (NBS), States in Nigeria generated the total sum of ₦986.2 billion between January and September 2019. During the period, Lagos and Rivers States recorded the most IGR of Nigeria's 36 States and FCT. Lagos State, Nigeria's commercial hub generated ₦297.09 billion, representing 30% of IGR generated by all the States.<sup>1</sup> This is understandable as Lagos State Government (LASG) cannot but benefit from the economic activities in its territory.

In 2020 however, according to the 2020 figures released by NBS, States in Nigeria generated a sum of ₦612.87 billion as IGR between January and June 2020. The IGR collected by the 36 states in the first half of 2020, dipped by 11.7% compared to ₦693.9 billion recorded in the corresponding period of 2019.<sup>2</sup> Lagos State was the highest performing State, with IGR of ₦204.51 billion between January and June 2020, accounting for 33.4% of the total states' revenue during the period.

The Governor Sanwo-Olu administration IGR strategy continues on the foundation laid by his predecessors, starting with Governor Tinubu, intending to use enhanced tax collections to fund its ₦1.17 trillion 2020 Budget, through monthly revenue of ₦73.86 billion. Whilst the projected monthly IGR of Lagos State Government (LASG) for 2018 (under Governor Ambode) was ₦60bn (or ₦720bn for the year), but it only realised about ₦382 billion (53%) at the end of the year.<sup>3</sup> Incidentally, the figure was a slight drop from LASG's 2019 revenue of ₦398.73 billion.<sup>4</sup>

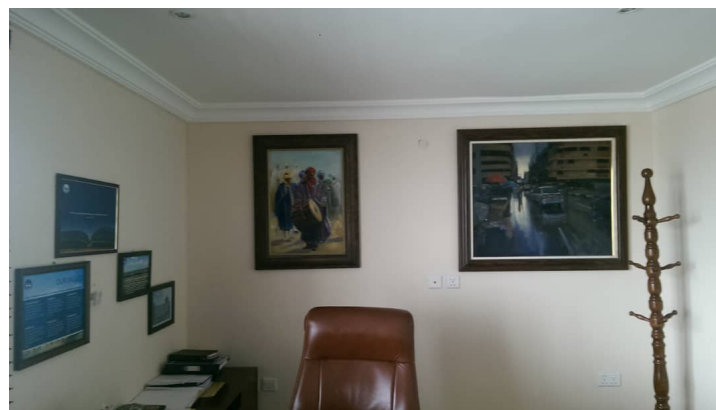
With increased tax revenues comes the concomitant implications of the long term effect of the additional tax burdens especially on formal sector taxpayers. It has been often said that the most efficient taxes are those which do not alter or modify the taxpayers' behavioural patterns. This article seeks to highlight some of the recent revenue generation

mechanisms introduced by the Federal and State Governments and the ripple effect of same on the economy.

### Sectoral Analysis - Recent Developments

#### Mobility Sector

After LASG's ban on commercial motorcycles (*Okada*) in Lagos State in January 2020 which forcibly altered the business model of tech based mobility franchises such as MAX.ng, *Gokada*, (or in the case of *ORide* resulted in complete cessation of operations,)



LASG released its *Guidelines for Online Hailing Business Operation of Taxi in Lagos State (the Guidelines)*.<sup>5</sup>

**Part 4, the Guidelines** provides that from 20<sup>th</sup> August 2020, service entities in Lagos City with less than 1,000 drivers are expected to pay a ₦10 million licence fee, while those with more than 1,000 drivers are to pay ₦25 million. Subsequent renewals are pegged at ₦10 million for those with more than 1,000 drivers and ₦5 million for those with less.

As a result of the public outcry on the development, the LASG made a *volte face* when on 15<sup>th</sup> August 2020, it reduced the operational license fee placed on ride-hailing companies operating within the State by 20%. LASG however included a flat fee of ₦20 to be known as contribution to *Road Improvement Fund* which will be levied on each ride/trip.



<sup>1</sup>Bamidele Samuel Adesoji, 'IGR: States Generate ₦986.2 Billion in 9-Month, Up By 16.8%' Nairametrics, 31.01.2020. <https://nairametrics.com/2020/01/31/igr-states-generate-n986-2-Billion-in-9-month-up-by-16-8-full-list/#:~:text=The%20latest%20IGR%20data%20released,the%20corresponding%20period%20of%202018>. (accessed 20.12.2020).

<sup>2</sup>Samuel Oyekanmi, 'IGR: States Generate ₦612.9 Billion in H1 2020, dips by 11.7%', Nairametrics, 6.10.2020. <https://nairametrics.com/2020/10/06/igr-states-generate-n612-9-Billion-in-h1-2020-dips-by-11-7/> (accessed 23.12.2020).

<sup>3</sup>Gbenga Salau, 'How to Grow States' IGR Without Increasing Taxes', The Guardian, 23.06.2019 <<https://guardian.ng/business-services/how-to-grow-states-igr-without-increasing-taxes/>> (accessed 20.12.2020).

<sup>4</sup>Samuel Oyekanmi, 'IGR: States Make ₦1.33 trillion in 2019, Grows by 14.1%', Nairametrics, 23.05.2020, <https://nairametrics.com/2020/05/23/igr-states-make-n1-33-trillion-in-2019-grows-by-14-1/> (accessed 23.12.2020).

<sup>5</sup>Emmanuel Paul, 'Lagos to Enforce Regulations on Uber, Bolt, others From August 20, 2020', TechPoint Africa, 11.08.2020 <https://techpoint.africa/2020/08/11/lagos-ride-hailing-regulations-august/> (accessed 23.12.2020).

All Operators of e-Hailing Taxi Services are also to pay LASG 10% service tax on each transaction paid by the passengers to the operators: **Para 4.1(v) Guidelines**. The provision means that LASG will collect taxes, licencing fees and then a percentage from every trip completed on these platforms.

#### Logistics Companies

On 23<sup>rd</sup> July 2020, the Nigerian Postal Service (NIPOST) increased the license fees for municipal operators to ₦1 million, and annual renewals fees to 40% of new license fees at ₦400,000 per annum. However, State, regional, national and international operators' license fees rose to ₦2 million, ₦5 million, ₦10 million, and ₦20 million respectively.<sup>6</sup> NIPOST claimed that the upward fee review was to "regulate" the industry, and ensure that there is proper categorisation of logistics operators.<sup>7</sup>

There is also now an obligation on a courier operator to contribute 2% of its total annual revenue to the Postal Fund, which will be used for postal development and delivery of postal services in rural and underserved areas.<sup>8</sup>

It should be noted that NIPOST is well within its rights to provide approval guidelines for licensing as a courier business in Nigeria, pursuant to **section 43 NIPOST Service Act**.<sup>9</sup> It provides that: "... no person shall operate a courier service in Nigeria, unless the person – (a) is registered as a company under or pursuant to the Companies and Allied Matters Act; and is licensed as a courier service operator under the provisions of this Part of this Act. (3) A person not licensed under subsection (2) of this section, shall cease to operate a courier service in any part of Nigeria."

While within their powers, the exorbitant fees charged caused the public outcry regarding the development. Furthermore, the fact that NIPOST had recently purchased a fleet of motorcycles



around the time of the release of the charges did nothing to alleviate the concerns of the public that the charade was a money grabbing scheme.

An anomaly is that NIPOST is regulating an industry in which it is a participant which cloaked the entire development as a mechanism geared towards restricting competition. By **sections 43 and 44 NIPOST Service Act**, NIPOST has significant leverage in the grant of licenses to courier companies operating within



Nigeria.<sup>10</sup> Per **section 45**, "the Minister may, on the recommendation of the Postmaster-General, grant a license to the applicant under this Act if he is satisfied, from all the evidence and information supplied to him, that the applicant is suitable to operate a courier service."

By virtue of the above provisions, NIPOST is effectively vested with powers to regulate its competitors which creates an unfair and repressive business environment. There is currently no pending legislative proposal to address this anomaly despite several calls for the National Assembly to do so.<sup>11</sup>

Instructively, the Minister of Communications and Digital Economy, Isa Ali Pantami, on 25th July 2020, through a tweet has suspended the policy due to public outcry.<sup>12</sup> However, there is no guarantee that such high handed regulation would not return in a different form as all the tiers of government in Nigeria have never shown a tendency to ignore an avenue to make money despite potential negative effects on stakeholders.

#### Digital Taxation of Audio and Visual Content

In August 2020, Lagos State Film and Video Censors Board (LSFVCB) issued a 30-day notice to all content producers operating in the state to register their products through the board's authorised agent within 30 days, adding that all audio and visual content produced and sold within Lagos State would attract the payment of 5% levy on each item.<sup>13</sup>

After much uproar from stakeholders, such as the Performing Musicians Association of Nigeria (PMAN), the LASG distanced itself from the agency denying that it authorised such action.<sup>14</sup> The backtracking of LASG in this matter was well advised as proceeding with the intention to prescribe levies on video content would be ultra vires its powers.

<sup>6</sup>The price for obtaining a new national licence fee was increased from ₦2 million to ₦10 million while the international licence fee moved from ₦10 million to ₦20 million. Ify Nnabuanyi, 'Examining the Validity/Propriety of the NIPOST Regulations under National Enactments' Lawyard, 11.08.2020 <https://www.lawyard.ng/2020/08/11/examining-the-propriety-of-the-nipost-regulations-under-national-enactments/> (accessed 23.12.2020).

<sup>7</sup>Adejapo Adesanya, 'New Logistics License Fees Aimed to Protect Operators - NIPOST', Punch Newspaper, 03.08.2020: <https://punchng.com/review-courier-regulation-by-nipost-lcci-tells-govt/> (accessed 23.12.2020).

<sup>8</sup>Emmanuel Paul, 'Besides license fees, Nigerian logistics players to remit 2% of their annual revenue' TechPoint Africa, 28.07.2020: <https://techpoint.africa/2020/07/28/license-nigeria-nipost-logistics/> (accessed 20.12.2020).

<sup>9</sup>Cap. N127, Laws of Federation of Nigeria (LFN) 2004.

<sup>10</sup>Section 44 NIPOST Service Act provides that "an application for a licence under this Act shall be in writing addressed to the Minister through the Postmaster-General."

<sup>11</sup>The Lagos Chamber of Commerce and Industry recently called for the review of the regulatory framework of NIPOST in the interest of the Nigerian economy, business continuity, private sector development and job creation. See Ife Ogunfuwa, 'Review Courier Regulation by NIPOST, LCCI Tells Govt', Punch Newspaper, 03.08.2020: <https://punchng.com/review-courier-regulation-by-nipost-lcci-tells-govt/> (accessed 23.12.2020).

<sup>12</sup>See Dr. Isa Pantami's tweet of 25.07.2020, <https://twitter.com/DrIsaPantami/status/1286957304928251905> William Ukpe, 'Minister Denies Approving NIPOST License Fee Increment', Nairametrics, 25.07.2020: <https://nairametrics.com/2020/07/25/minister-denies-approving-nipost-license-fee-increment/> (accessed 23.12.2020).

<sup>13</sup>William Ukpe, 'Lagos Dismisses Levy on Audio and Visual Contents, Suspends LSFVCB Boss' Nairametrics, 05.09.2020: <https://nairametrics.com/2020/09/05/lagos-dismisses-levy-on-audio-and-visual-contents-suspends-lsfvcb-boss/> (accessed 23.12.2020). See also Mateen Badru/Millicent Ifeanyichukwu, 'Censors Board Issues 30-day Notice on Mandatory Content Registration by Producers', News Express, 12.08.2020 <https://newsexpressngr.com/news/104083-censors-board-issues-30-day-notice-on-mandatory-content-registration-by-producers/> (accessed 23.12.2020).

<sup>14</sup>O. Olasukanmi, 'Lagos State Has No 5% Levy On Audio And Visual Contents Of Physical And Digital Platforms', LASG Website, 04.09.2020: <https://lagosstate.gov.ng/blog/2020/09/04/lagos-state-has-no-5-levy-on-audio-and-visual-contents-of-physical-and-digital-platforms/> (accessed 23.12.2020).



In June 2020, Obiozor J of the Lagos Division of the Federal High Court held that LASG cannot exercise regulatory powers to register and license cinema exhibition centres in Lagos State at the same time with the Federal Government: **Harris & Annis Limited v Attorney-General of Lagos State & 3 Ors.**<sup>15</sup> Faulting the dual registration and annual licensing fees exacted by both the FG and LASG, the Court held that the 1999 Constitution of the Federal Republic of Nigeria (as amended) gives concurrent powers to both the National Assembly (NA) and State Houses of Assembly (SHAs) to make laws to create a body to register cinema premises and collect annual license fees. However, since the NA has enacted an Act which covered the field, the Lagos SHA Law on the same issue, remains otiose and inoperative.<sup>16</sup>

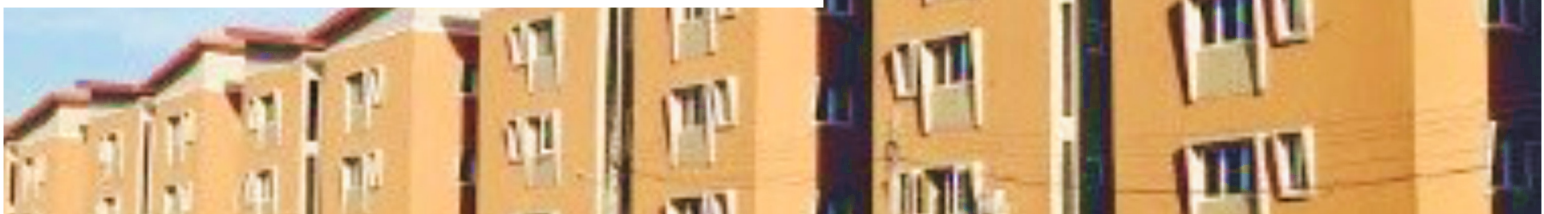
#### Real Estate Sector

The Lagos State Real Estate Regulatory Authority, LASRERA, recently launched a website and registration database for real estate (RE) practitioners in Lagos State. It added that part of its mandate “includes the preparation of rules and regulations for the practice of estate agency and other connected matters in the state, identification of persons eligible to be licensed as estate agents and renewal of annual licenses, sanction of unlicensed estate agency practitioners in the state, as well as the investigation of complaints and petitions against licensed estate agency practitioners, amongst others”.<sup>17</sup>

The LASG has gone further to take the first steps towards the promulgation of a law to regulate RE activities in Lagos State, by submitting the **Lagos State Real Estate Regulatory Authority Bill 2020 (the Bill)** to the Lagos SHA 2020.<sup>18</sup> The stated aims includes to maintain a register of estate agents as well as ensure the payment of fees, taxes or charges on property transactions. While the intention of the **Bill** seems laudable, there are signs that the overall aim is to ensure that LASG grabs a larger pie of the RE economy.

The comments of some members of the Lagos SHA, during its second reading provides further insight into the rationale behind the **Bill**.<sup>19</sup>

For example, Adedamola Kasunmu (Ikeja II) stated – “*The Bill will see to the valuation of real estate assets and prevent the breakdown of law observed among the realtors, real estate managers and others. It makes recommendations of policies that influence better deals in the Lands Bureau, New Town Development Authority NTDA and others, it will also enhance the Internally Generated Revenue (IGR) of the State.*”



Ibraheem Layorde, (Badagry I) stated that: – “*Most of the agencies collecting fees are not making returns to government coffers.*”<sup>20</sup>

How this **Bill** differs from the **Lagos State Estate Agency Regulatory Law, (the Law)**<sup>21</sup> which established LASRERA is yet to be seen. **Section 4 the Law** provides that the functions of LASRERA includes: “(b) identify persons eligible to be licensed as Estate Agents; (c) issue and renew licences annually; (d) maintain a register of licensed Estate Agents; (e) sanction unlicensed Estate Agency practitioners in the State”. There are no indicators as to whether the **Bill** is to repeal the **Law**.

While the fees for such licensing are yet to be determined, the guideline for property developers as stated on the LASRERA website includes that:

“*A Property Developer shall not practice the business of a Real Estate Agency or enter into any Real Estate developments in the State without due license from the Authority for that purpose; a Developer shall not advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority; and a Developer shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fees as may be specified by the regulations made by the Authority.*”<sup>22</sup>

Since the **Bill** recently passed the second reading,<sup>23</sup> hopefully, there would be significant amendments to it before its final passage by the LSHA as it is yet to go through the Committee, Third Reading and Joint Conference Committee stages.

<sup>15</sup>Suit No. FHC/L/CS/1502/2016.

<sup>16</sup>Court Bars LASG from Registering and Licensing Cinemas, ThisDay, 09.06.2020: <https://www.thisdaylive.com/index.php/2020/06/09/court-bars-lasg-from-registering-and-licensing-cinemas/> (accessed 23.12.2020).

<sup>17</sup>Chike Olisah, ‘Lagos Announces Mandatory Registration for Real Estate Practitioners, Introduces Rules and Regulations’ Nairametrics, 06.12.2020 <https://nairametrics.com/2020/06/12/lagos-announces-mandatory-registration-for-real-estate-practitioners-introduces-rules-and-regulations/> (accessed 20.12.2020).

<sup>18</sup>Temiloluwa Peters, ‘Lagos to Pass Bill for Real Estate Regulation’ Punch Newspaper, 21.12.2020: <https://punchng.com/lagos-to-pass-bill-for-real-estate-regulation/> (accessed 22.12.2020). According to LASRERA website, “In a memo Ref. No: CIR/HOS’20/Vol.1/027 dated the 7th February 2020 Mr. Governor approved the transition of Lagos State Real Estate Transaction Department (LASRETRAD) from a Department to a full Agency now known as Lagos State Real Estate Regulatory Authority (LASRERA).”

<sup>19</sup>The proceedings were done virtually (voice notes) under the leadership of the Honourable Speaker, Mudasiru Obasa.

<sup>20</sup>Nkasiobi Oluikpe, ‘How Desirable Is Lagos Real Estate Regulation Bill?’ Independent, 16.12.2020: <https://www.independent.ng/how-desirable-is-lagos-real-estate-regulation-bill/> (accessed 20.12.2020).

<sup>21</sup>Cap L28, Laws of Lagos State, 2015.

<sup>22</sup>LASRERA website, <https://lasrera.lagosstate.gov.ng/about.jsp> (accessed 20.12.2020).

<sup>23</sup>Temiloluwa Peters, ‘Lagos to Pass Bill for Real Estate Regulation’ Punch Newspaper, 21.12.2020 <https://punchng.com/lagos-to-pass-bill-for-real-estate-regulation/> (accessed 22.12.2020).

### Changes in Stamp Duties Regime

The LASG is expected to also benefit from the increased focus on stamp duties, following: (a) the **Finance Act 2020** (FA 2020);<sup>24</sup> amendment of the **Stamp Duties Act**<sup>25</sup> (**SDA**) to bring the **SDA** in line with current business realities and (b) FG's indication of heightened stamp duties enforcement by the Federal Inland Revenue Service (FIRS). There is potentially higher compliance arising from public sensitisation on stamp duties, as State Governments collect stamp duties on transactions involving natural persons resident in their States.<sup>26</sup>

Pursuant to the **FA 2020 SDA** amendments, the FIRS has also issued Information Circular and Public Notices, whereby it purported to vary by upward review stamp duty rates in the **Schedule** to the **SDA**, an action that is clearly *ultra vires* the FIRS.<sup>27</sup> The purported reviews included increasing *ad valorem* stamp duty rates on some instruments/transactions or transforming some nominally stampable instruments to *ad valorem*.

The FIRS action could be seen as stemming from the pressure of the 2020 stamp duties target that the FG set for it: ₦1 trillion.<sup>28</sup> For instance, electronic receipt or transfer of money deposited in any bank of an amount from ₦10, 000 and above attracts the SD of ₦50, liable to be paid by the recipient of the money.<sup>29</sup>

Following massive outcry against FIRS' new stamp duty rates especially on real estate transactions and the related negative implications for the sector, it backtracked and announced a reversion to the Schedule rates.<sup>30</sup> Assuming it did not backtrack, there was every likelihood that aggrieved taxpayers will successfully challenge the invalid impositions.

The FIRS has through its publications also sought to provide clarity where the **SDA** itself has gaps; for example, by stating a general rule that the obligation to pay SD is on the party making the payment, or “enjoying benefit” of the transaction. All these are emblematic that on the matter of stamp duties, it would no longer be business as usual.

On leases, FIRS purported to impose a “flat” *ad valorem* rate of 6% as stamp duty on leases, contrary to the tenor based band in the

**Schedule** to the **SDA** under which leases are stampable at 0.78%, 3.0% and 6% for under 7 years, 7 -21 years and above 21 years respectively.<sup>31</sup> FIRS eventually recanted as a result of public disapproval and to obviate potential litigation.

Prior to enactment of **FA 2020**, the Central Bank of Nigeria (CBN) tried to achieve an equivalent result on deposits of ₦1,000 and above through a circular (**the CBN Circular**) it issued to all banks and financial institutions in Nigeria in January 2016.<sup>32</sup>

Upon challenge, the **CBN Circular** was invalidated by the Court of Appeal (CA) in **Standard Chartered Bank Nigeria Ltd (SCBNL) v. KIS Ltd & 22 Ors**;<sup>33</sup> the CA overturning the FHC decision in **KIS Ltd v. 22 DMBs**<sup>34</sup> held that it was improper to charge SDs on cash deposits or electronic transactions. The CA further held that the provisions of **the CBN Circular** being inconsistent with **the Schedule** is therefore invalid, null and void.<sup>35</sup> Apparently, the lessons learnt must have informed the enactment of **section 89(3) SDA** in 2020.<sup>36</sup>

### Analysis – Effects of LASG/FG's Increased Revenue Generation

On the mobility sector, the real losers will be the customers. Operators will simply pass the increased and increasing operating costs to end users, making cab fares more expensive. This, coming after the ban on *okada* which affected startups like *Max.ng* and *Gokada*, seems inconsiderate.<sup>37</sup> LASG should consider the impact of policy overhauls on businesses who did their investment planning based on a regulatory landscape that is then changed drastically without notice. Such tumultuous operating environment projects nervousness to the investment community, especially foreign investors.

Some of these companies had to pivot into alternative businesses such as food delivery and logistics just to stay afloat while some outrightly shut down. Where the business environment is not conducive, startups and SMEs would be unable to thrive. This would in turn lead to unemployment, reduction in taxes and other unsavoury conditions. Furthermore, ride sharing is a tool to reduce traffic congestion which currently plagues Lagos State.



<sup>24</sup>No. 1 of 2020. See also the 36 page LeLaw special publication, ‘Questions and Pathways: Recent Issues in Nigerian Stamp Duties’ Regulatory Framework’, December 2020, available on request.

<sup>25</sup>Cap. 58, Laws of the Federation of Nigeria (LFN) 2004.

<sup>26</sup>Section 4(2) SDA.

<sup>27</sup>Section 116 SDA.

<sup>28</sup>Ayodeji Adegboye, ‘Nigerian Govt Sets ₦1 Trillion Stamp Duty Target’ Premium Times, 01.07.2020: [https://www.premiumtimesng.com/news/top-news/400554-nigerian-govt-sets-n1-trillion-stamp-duty-target\\_.html](https://www.premiumtimesng.com/news/top-news/400554-nigerian-govt-sets-n1-trillion-stamp-duty-target_.html) (accessed 20.12.2020).

<sup>29</sup>Section 89(3) SDA (FA 2020 amendment).

<sup>30</sup>[https://stampduty.gov.ng/stamp\\_duty\\_charges](https://stampduty.gov.ng/stamp_duty_charges) (accessed 23.12.2020). See also FIRS’ tweet of 29.07.2020 at: <https://twitter.com/firsNigeria/status/1288382142502797319>.

<sup>31</sup>See FIRS’ SD Public Notice captioned, ‘Clarification on Administration of Stamp Duties in Nigeria’, BusinessDay, 20.07.2020, pp. 6-7.

<sup>32</sup>CBN, ‘Collection and Remittance of Statutory Charges on Receipts to Nigeria Postal Service under the Stamp Duties Act’, 16.01.2016: <https://www.cbn.gov.ng/Out/2016/CCD/SCAN0001.pdf> (accessed 17.07.2020).

<sup>33</sup>(2016) 27 TLRN 1.

<sup>34</sup>Suit No: FHC/L/CS/1462/2013.

<sup>35</sup>Furthermore, NIPOST and CBN lacked the power to arbitrarily increase the amount of SD to ₦50 under the guise that 2 kobo stamps were no longer in circulation, without an enabling amendment of the **SDA** to that effect. CBN and its agents, etc. were restrained from implementing the **CBN Circular**. For a detailed discussion, see Ayo Fadeyi, ‘CBN Stamp Duty Charges On Deposits – Can Something Be Built On Nothing?’ LeLaw Thought Leadership Insights, August 2017: <https://lelawlegal.com/pdf/Ayo%20-%20Stamp%20Duty%20Article.pdf> (accessed 15.07.2020). We understand that appeals against the CA decisions in *Standard Chartered* and sister cases are pending at the Supreme Court. We however do not believe that they have bright prospects of success, and even if successful, their outcomes would be nugatory, given the new **SDA** amendment provisions.

<sup>36</sup>The foregoing also fortifies arguments that the FIRS (like the CBN) is incompetent to increase SD rates in **the Schedule**.

<sup>37</sup>One of the reasons for the ban was to ensure the security of residents. It was stated that “the top concern was safety. Citing records over the last decade, Dr Taiwo Salaam, the Permanent Secretary at the Lagos State Ministry of Transportation, said motorcycles killed over 11,000 people in the state between 2011 and 2019. Dr Frederic Oladeinde, the Lagos Commissioner for Transport, said at least 600 deaths between 2018 and 2019 are attributable to motorcycles. Security was another issue. Within the last ten years, Lagos has witnessed an influx of informal *okada* riders from other Nigerian states and even neighbouring countries.” Abubakar Idris, ‘The Multifaceted Implications of a Ban on *Okada* and Tricycles in Lagos’ Tech Cabal, 14.02.2020: <https://techcabal.com/2020/02/14/lagos-ban-okada-tricycles-not-solving-problems/> (accessed 23.12.2020).





As data from the Nigeria Inter-Bank Settlement System (NIBSS) shows, online transactions dropped drastically in volume and value during the Covid-19 lockdown. Country wide online transactions reportedly dropped by 20% from 135 million in March to 107 million during the lockdown in April 2020.<sup>38</sup>

On the RE sector, creating a database would not solve the problems plaguing it. There are no assurances that using a licensed agent in property transactions would make fraud proof. Part of the goals of the **Bill** is to “manage” real estate transactions. This additional level of oversight is surprising given that the LASG oversees perfection of RE transactions through the grant of Governors Consent under the **Land Use Act**.<sup>39</sup>

Due to the complexities involved in perfecting RE titles at the land registries, people are avoiding perfection in its entirety (despite its attendant risks), and oftentimes relying on only on takeover of possession. This is resulting in reduced revenue for the government. LASG in typical fashion, is seeking to by this Bill, oversee the entire real estate transaction; from purchase to perfection. By virtue of this Bill, LASG would receive revenue from registrable transactions (assignment, long leases etc.) and non-registrable transactions (leases under 3 years).<sup>40</sup> As long as it is a RE transaction, a fee would be receivable by the LASG. This is in addition to the license fees from RE agents and practitioners.

It has been suggested in some quarters that the aggressive approach in the RE sector may lead to parties attempting to evade taxation possibly by not entering into any lease agreement or not issuing rent receipt. Apart from the fact that failing to issue rent receipts is an offence under **section 5 Tenancy Law of Lagos State 2011** (Tenancy Law) liable to a fine of ₦100,000, the tax authority are also, similar to the courts, able to determine the length of the tenancy through frequency of payment of rent: **section 13(6) Tenancy Law**.



It appears that LASG has spread its net out wide to capture as much revenue as available irrespective of manner. The hospitality sector is not left out as LASG, in 2019, obtained judgment from the FHC in **Registered Trustees of Hotel Owners and Managers Association of Lagos v. Attorney General of Lagos State (Hotel Owners' Case)**<sup>41</sup> to charge and collect 5% consumption tax from hotels, restaurants and event centres within the

State. LASG had also attempted to introduce the **Restaurant Consumption (Fiscalisation) Regulations 2017 (Regulations)** pursuant to the **Hotel Occupancy and Restaurant Consumption Law 2009 (HOCL)**,<sup>42</sup> which granted LASG the powers to install electronic fiscal devices for the purpose of monitoring the consumption tax at the point of sale to customers however same was denied by the FHC in its judgment in the **Hotel Owners' Case**.<sup>43</sup>

LASG had in 2018, attempted to levy Sales Tax on hotel operators, restaurants etc. operating in Lagos State through the **Sales Tax Law of Lagos State (STLLS)**.<sup>44</sup> In **A-G Lagos State v. Eko Hotels & Anor**,<sup>45</sup> the Supreme Court agreed with the decision of the lower courts and held that since the instant taxable goods and services under the **STLLS** and **Value Added Tax Act**<sup>46</sup> are the same; it would therefore amount to double taxation to require that LASG collect both VAT and Sales Tax on them.<sup>47</sup> Thus the Lagos State Sales Tax initiative became still born, and was probably why LASG proceeded to enact the HOCL.

### Conclusion

It is not difficult to predict that tax compliance will be low on real estate transactions; whether by way of perfection costs or by way of SD compliance. The sectoral impediments resulting in sub-optimality or under-utilisation of real estate in Nigeria and how to reverse same, has been well discussed elsewhere.<sup>48</sup> If perfection is ignored, real estate assets would only be 'assets' by nomenclature. If real estate assets can no longer be utilised as security, it is impossible for the economy to thrive.

<sup>38</sup>In the same period, the value of online transactions also decreased by ₦3.9 trillion, with a 36% drop from ₦10.9 trillion to ₦7 trillion being witnessed. Emmanuel Paul, 'Online Transactions in Nigeria Dropped by \$10 Billion During the Lockdown' *TechPoint Africa*, 26.07.2020: <https://techpoint.africa/2020/07/14/online-transactions-nigeria-lockdown/> (accessed 20.12.2020).

<sup>39</sup>Cap. L5, LFN 2004. See section 22 LUA.

<sup>40</sup>*Lands Registration Law of Lagos State 2015*.

<sup>41</sup>*Suit No. FHC/L/CS/360/2018*. There was a similar suit in Kano State between Nigeria Employers Consultative Association and Retail Supermarkets Nigeria Limited (the Plaintiffs) against Kano State Inland Revenue Service where the FHC sitting in Abuja declared **sections 96 and 97 of the Kano State Revenue Administration (Amendment) Law, No. 3 of 2017** null and void on the basis that the said law seeks to legislate on a field covered by the VAT Act. This suit arose after the introduction of the 5% consumption tax on goods and services by the Kano State Government in 2017. See Joseph Onyekwere, 'Court Nullifies Kano State Law on Consumption Tax', *Guardian Newspaper*, 23.07.2018, <https://guardian.ng/news/court-nullifies-kano-state-law-on-consumption-tax/> (accessed 24.12.2020).

<sup>42</sup>HOCL, from its passage in 2009, sought to impose 5% tax on services rendered by operators in the hospitality industry, e.g. hotels, event centres, restaurants etc. For a detailed discussion see Afolabi Elebiju's 'The Hotel Occupancy and Restaurant Consumption Law' in 'Indirect Taxes in Nigeria', (CITN, 2014), pp. 150-165.

<sup>43</sup>Kenneth Erikume and Folajimi Akinla, 'Federal High Court Upholds Consumption Tax and Limits Application of Value Added Tax in Lagos State', *PwC*, October 2019: <https://www.pwc.com/ng/en/assets/pdf/fhc-decision-on-lirs-consumption-tax.pdf> (accessed 28.12.2020).

<sup>44</sup>Cap. 175, *Laws of Lagos State 1995*.

<sup>45</sup>(2018) 36 TLRN 1.

<sup>46</sup>Cap. V1 LFN 2004.

<sup>47</sup>For detailed see discussion see, Afolabi Elebiju and Ayo Fadeyi, 'Tussles: A Review Of Attorney General of Lagos State v. Eko Hotels & Anor (2018) 36 TLRN 1', *LeLaw Thought Leadership*, May 2019: <https://lelawlegal.com/add111pdfs/AG-vs-Eko-Hotels.pdf> (accessed 24.12.2020).

<sup>48</sup>Frank Okeke 'Unlocking Real Estate Value in Nigeria: Legal and Regulatory Issues' *LeLaw Thought Leadership* May 2019 <https://lelawlegal.com/2019/05/16/unlocking-real-estate-value-in-nigeria/> (accessed 15.08.2020).

It should however be noted that LASG/FG has indeed undertaken some measures to relieve businesses/residents from certain compliance obligations, especially as a result of the Covid-19 pandemic.

For instance, on 4<sup>th</sup> November 2020, FIRS issued a Public Notice informing taxpayers of its decision to grant additional extension on the waiver of penalties and interests on outstanding tax debts arising from desk examinations, audit exercises, investigations or all other forms of tax assessment to 31<sup>st</sup> December 2020.<sup>49</sup> Also, the FIRS, had earlier, through a Public Notice extended the deadline for remittance and filing of VAT returns to the last working day of each month.<sup>50</sup> The FIRS also relaxed transfer pricing filing compliance requirements, due to Covid.

Furthermore, in August 2020, LASG reviewed its Land Use Charge rates downwards via the **Land Use Charge Law 2020 (the LUCL)**. By virtue of **section 27 the LUCL**, for instance, the penalties for days outstanding were reduced as follows: 45-75 days; reduced from 25% to 10%; 75-105 days; reduced from 50% to 20%; and 105-135 days; reduced from 100% to 50%. It was further reported that penalties for non-compliance for 2017, 2018 and 2019 were also waived.<sup>51</sup>

Also, Lagos State Internal Revenue Service (LIRS) extended its deadline for filing annual tax returns for individual taxpayers including self-employed persons from 1<sup>st</sup> April 2020 to 31<sup>st</sup> May 2020.<sup>52</sup> The LIRS further announced through an undated p that

there would be a waiver of interest and penalty on liabilities arising from 2009 to 2015 tax audit for taxpayers who can pay up on or before 31<sup>st</sup> December 2020. In appreciation of taxpayers that have supported LASG during pandemic, the LASG through the LIRS will be granted tax credit of 20% of all cash and kind donations made towards Covid-19 by individuals resident in the State for the 2021 Year of Assessment (subject to a cap of 35% of tax due).<sup>53</sup>

Whilst the foregoing 'empathetic' gestures are commendable, it bears repetition that where business operations are strangled by multifarious and excessive taxation, same discourages investment, hampering contribution to economic growth. We do not need any scenario of milking the cow till it dies. Nigeria should learn from France which attempted to overburden wealthy people with excess taxation. It resulted in a huge number of persons taking up citizenship elsewhere.<sup>54</sup> Of course, for a host of factors, Nigerians have shown their readiness to relocating for a more conducive professional and business environment.<sup>55</sup> Aggressive taxation should not be added to that host of reasons. Whilst it is understood that revenue generation is a key factor for every government,<sup>56</sup> but the questions remains "at what cost"?



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<sup>49</sup>See FIRS Public Notice, 'Recent Business Disruptions – Further Tax Palliatives', 04.11.2020 <https://www.firs.gov.ng/sites/Authoring/contentLibrary/ENDSARS%20ADDITIONAL%20PALLIATIVE.pdf> (accessed 26.12.2020).

<sup>50</sup>See FIRS Public Notice, 'COVID-19: Statement on Palliative Measures to Cushion Effects on Taxpayers' <https://www.firs.gov.ng/Covid19/cushioneffect> (accessed 26.12.2020).

<sup>51</sup>Abiola Odutola, '4 Key Points in the New Lagos 2020 Land Use Charge', *Nairametrics*, 06.08.2020: <https://nairametrics.com/2020/08/06/4-key-points-in-the-new-lagos-2020-land-use-charge> (accessed 23.12.2020).

<sup>52</sup>This was further increased to 30<sup>th</sup> June 2020. Monsurat Amasa, 'LIRS Extends Deadline for Filing of Annual Returns to May 31 2020', *LIRS*, <https://lirs.gov.ng/assets/docs/returnextension2.pdf> (accessed 28.12.2020).

<sup>53</sup>Furthermore, to ensure compliance with guidance on the need for social distancing, Tax Audit Reconciliation Committee meetings was announced to be conducted via video conferencing. Monsurat Amasa, 'LIRS to Implement Additional Tax Incentives and Reliefs to Taxpayers in Lagos State', *LIRS*, <https://lirs.gov.ng/assets/docs/LIRS%20to%20Implement%20Additional%20Tax%20Incentives%20and%20Reliefs%20to%20Taxpayers%20in%20Lagos%20State.pdf> (accessed 28.12.2020).

<sup>54</sup>Noah Smith, 'France Tried Soaking the Rich. It Didn't Go Well. A wealth tax and sky-high rates on top incomes didn't yield much revenue.' *Bloomberg*, 14.11.2019: <https://www.bloomberg.com/opinion/articles/2019-11-14/france-s-wealth-tax-should-be-a-warning-for-warren-and-sanders> (accessed 20.12.2020).

<sup>55</sup>Ollie Williams, 'The Wealthy Nigerians Buying Citizenship Overseas', *Al Jazeera*, 10.12.2020 <https://www.aljazeera.com/features/2020/12/10/wealthy-nigerians-buying-citizenship-overseas> (accessed 20.12.2020). See also, Afolabi Elebiju and Gabriel Fatokunbo, 'Remittances: Legal Regulatory and Commercial Issues in Diaspora Transactions', *LeLaw Thought Leadership Insights*, February 2020: <https://lelawlegal.com/add111pdfs/REMITTANCES.pdf> (accessed 31.12.2020).

<sup>56</sup>For instance, LASG's Fair Market Value of land and buildings as contained in the *Lagos State of Nigeria Official Gazette No. 10, Vol. 48*, dated 5<sup>th</sup> February 2015 – issued to curb the tendency of purchasers to reduce the consideration/purchase price as stated in registrable documents in a bid to lower consent fees. This was a responsive action by the LASG to plug revenue leakages being exploited by purchasers. There is also the **Wharf Landing Charge Law of Lagos State 2009 (WLCL)** which came into force on 16<sup>th</sup> March 2009. The effect of this WLCL is that all consignments which arrives Nigeria through the Lagos ports are subjected to a certain levy. By virtue of the WLCL, the fees are stated as follows: cars are required to pay the sum of N300; Trucks and other heavy duty vehicles of N1, 000; and 40 foot and 20 foot containers N1, 000 and N500 respectively. There are also penalties for contravention of the provisions: **Section 7 WLCL**. The law has been in operation since 2009 despite various groups challenging its validity. Since its enactment, the Law has been embroiled in endless controversy, with many stakeholders resisting the payment of the charges and clashing with collection officials. See Olasukanmi Akoni, 'Lagos Clears Air on Wharf Landing Fees Controversy', *Vanguard*, 30.06.2020: <https://www.vanguardngr.com/2020/06/lagos-clears-air-on-wharf-landing-fees-controversy/> (accessed 28.12.2020).