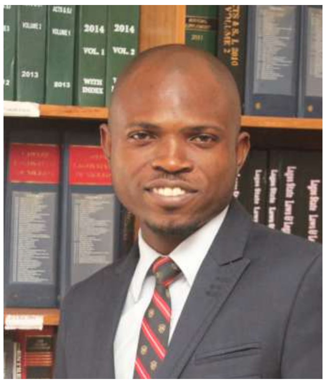
Increasing Investment Attractiveness of Nigeria's Hospitality Industry:
Legal and Other Considerations

Thought Leadership | **By Chuks Okoriekwe & Ayo Fadeyi** (Originally published in *BDLegal Business*, 17.05.2018, p.29)



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Introduction

The Hospitality and Tourism Industry (HTI) has the potential to bolster Nigeria's investment landscape and achieve increased contribution to our Gross Domestic Product (GDP). Given Nigeria's population and natural endowments, a steady investment in infrastructure and HTI friendly policies, coupled with sensitisation efforts to encourage in-country vacations and thereby conserving Nigeria's forex reserves - would be positive factors in this regard. Nigeria's abysmal ranking (129th out of 136 countries) in the *Global Travel and Tourism Competitive Index 2017*, should provide necessary impetus (coupled with efforts at improving Nigeria's *Ease of Doing Business*) to underpin government and stakeholder actions to deliver impactful outcomes, manifesting in improved ranking in future editions.

There have been diverse initiatives to promote the HTI, though arguably not enough to intensively spur the needed growth. The HTI was accorded preferred sector status by the Federal Government (FG) in 1999 with incentives such as tax holidays and import duty exemption on tourism-related equipment whilst some States, like Lagos and Cross River have designated specific areas as tourism development zones (Lekki Tourism Zone/ Tinapa Resort etc.) making acquisition of land easier. The Minister of Information and Culture had launched the *Economic Value of Geospatial Services* in Nigeria - a collaboration with Google to create street mapping of Nigeria potentially showcasing the country's rich tourism sites to the world.

The Minister of Information and Culture also disclosed that the FG had inaugurated the Presidential Council on Tourism which will be working closely with the United Nations World Tourism Organization (UNWTO) to implement the long abandoned *Nigeria Tourism Master Plan* focused on strengthening institutional capacity of the Nigeria tourism sector.

This article seeks to discuss HTI's potential in attracting investment and routing traffic to Nigeria's tourist destinations through applicable legal and other instruments.

Substance & Optics: Unbundling Tourism Potential in Nigeria

Whilst other countries have continued to provide the right investments to make their countries attractive tourist destinations; security challenges, poor infrastructure, especially unavailability of steady power supply, have continued to deter potential tourists from Nigeria. One fall out of the foregoing is the global 'price notoriety' of Nigerian hotels, they are considered as overpriced.

Another impediment is the burden of multiplicity of taxes weighing down HTI: hotel operators are liable to Company Income Tax (CIT), Tertiary Education Trust Fund Tax (TET Fund Tax), Industrial Training Fund (ITF) Contribution, Value Added Tax (VAT), and Consumption Tax in some States like Lagos Hotel Occupancy and Restaurant Consumption Tax. The recent automated monitoring of Consumption Tax initiated by Lagos State Government, has generated another form of controversy between hotel operators in Lagos State and the Lagos State Government.

In its recent decision, the Supreme Court (SC) in ***AG Lagos State v. Eko Hotels Limited (2018) 36 TLRN 1*** held that the imposition of Sales Tax (ST) on the Defendant constituted double taxation, since VAT was also chargeable in the same transaction. Following the SC's *ratio* in this case, its earlier decision in ***AG Lagos State v. AG Federation [2013] 16 NWLR (Pt.1380), 383*** where it validated the ***Hotel Occupancy & Restaurants Consumption Law (HORCL)*** which imposes tax equivalent to the ST on hotel operators in Lagos State in addition to VAT appears to have been impliedly overruled. However, the SC needs to expressly make a pronouncement on this issue.

Another challenge encountered by HTI is regulatory conflicts and competition: the Federal and State Governments' respectively vies to regulate hotels, resulting in duplicative compliance requirements, instead of complementary inter-government oversight for sector advancement. ***AG Lagos State v. AG Federation (supra)*** provided the opportunity for the SC to hold that it is States that have powers to regulate hotels since hotel is not included in the ***Exclusiv***e and ***Concurrent Lists*** of ***Parts 1 & 2, Second Schedule 1999 Constitution.*** The FG therefore lacks the constitutional *vires* to make laws outside its legislative competence: hotel regulation being a residual matter is reserved for States' Houses of Assembly.

New trends are daily evolving in the HTI. For example, conventional hotel and flight reservations are being disrupted by entrants like hotels.ng, wakanow.ng and travelstart.ng amongst other operators who

have continued to shape the HTI through bespoke services. Another major global digital disruptor is the Airbnb model (working with individuals who are willing to sub-let spaces in their homes for a fee), which reportedly made revenues of US $1 billion in Q3, 2017 alone.

No doubt the hospitality space in Nigeria would be transformed with the potential entrance of initiatives such as Airbnb. It is expedient that the Nigerian Government put in place, and ensure the enforcement of adequate policies to ensure that Nigerian HTI develop in line with emerging global trends. By so doing, operators in the HTI will take advantage of the enhanced tourism activities and economic benefits of Nigeria's HTI. This will increase competitiveness in the country's HTI.

Increasing Private Sector Participation in the Hospitality and Tourism Industry

New operators are emerging in the HTI whilst existing operators are also upgrading their operations. For example, Carlson Rezidor, owners of *Radisson Blu* brand which recently welcomed a second Lagos hotel to its fold, made known its plans to invest about US$400 million in Nigeria in the next four (4) years and also open additional six (6) hotels in Nigeria under its various brands, *Transcorp Hotel* recently commenced construction of a 25 storey hotel building project in Ikoyi, *Marriott*, *Accor*, *Hilton* are also looking to improve and increase their investment in Nigeria by constructing new hotel apartments. These developments illustrates importance of the HTI in contributing to Nigeria's economy.

In order to enhance and foster participation in the HTI, the FG is set to enact the ***Nigeria Tourism Development Authority (NTDA) Bill 2017 (the NTDA Bill),*** harmonised version of which was passed by the Nigerian Senate in October, 2017. Currently, Nigerian Tourism sector is regulated by the ***Nigerian Tourism Development Corporation (NTDC) Act, Cap. N137 LFN, 2004.*** Enacted in 1992, and with some of it provisions held to be unconstitutional by the Supreme Court in ***AG Lagos State v. AG Federation (supra),*** the ***NTDC Act*** is expected to be repealed by the passage of the ***NTDA Bill***.

A perusal of the ***NTDA Bill***, points to FG's intention to create an enabling environment for practitioners in the industry, particularly the introduction of Tourism Development Fund, ***sections 26*** and ***27, NTDA Bill***. The various sources of the Fund include monies provided by the FG, donations from other tiers of government as seed capital by way of intervention fund, contribution, loan, grant; monies borrowed and capital raised by the Authority under the Bill or any other enactment including such sums as may be received by the Authority from other sources. Others include monies earned by the operation of any project, enterprise financed from the fund or investment and other sums collected or received by the Authority for services rendered; and other monies that the Minister of Finance in consultation with the Minister may determine with the approval of the President.

The Fund would be utilised for funding tourism development and tourism related projects/programs including: marketing and promotion of tourism, capacity building, market research and development of tourism infrastructure, amongst others. ***Section 17 NTDA Bill,*** also established the Conventions and Visitors Bureau focusing on destination marketing as well as involvement in international biddings for hosting rights of events.

The initial draft of the ***NTDA Bill*** proposed a Tourism Development Levy (***section 30***) which was to be generated from tourism visa fee, tourism development contribution levy of 1% per room rate or flat rate or any rate as may be prescribed by the Authority, levy on corporate Nigeria comprising an approved minimum percentage of interest rate on banks, telecommunication and other corporate entities and from such other levies or fees as the Authority may prescribe. However, after much controversy on this Levy, it was deleted from the final Bill passed by the National Assembly. Unlike the NTDC, the ***NTDA Bill*** excluded the State and Local Government from the National Tourism Board, this is perhaps in a bid to give effect to the Supreme Court judgment in ***AG Lagos v. AG Federation*** *(supra).*

Moreover, there are incentives for practitioners in the industry which arguably, have not been fully utilised. For example, ***section 37, Companies Income Tax Act (CITA), Cap C21 LFN, 2004*** provides a 25% income tax exemption to hotel operators where the income is in convertible currencies derived from tourists by a hotel and such income is put in a reserved fund to be utilised within five (5) years for building of new hotels, conference centres and new facilities for the purpose of tourism development. This ***CITA*** provision aims at combating the financial challenges faced by hotel operators given the long gestation periods of most hotel projects. Investors in the HTI are also allowed to maintain domiciliary accounts with no compulsion to convert their foreign currencies receipts into Naira, ***section 15(4) Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap. F34, LFN 2004.***

The tourism plans of various States, is an indication that the HTI will experience a positive turn around in the nearest future. Lagos State for instance has three hundred and twenty- seven (327) parks and gardens. Significant events like Osun-Oshogbo Festival (Osun State), Calabar Carnival (Cross-River State), Ojude-Oba Festival (Ogun State), Durbars (Kano and many Northern States), etc. awareness attract tourists and spices up Nigerian HTI.

Conclusion

Undoubtedly, creating an enabling environment for HTI would ensure steady growth with increased revenue potential through taxes: at the corporate (profits) level; on transactions (VAT and Consumption Tax on goods and services); and Personal Income Tax of direct and indirect employees. This is apart from the positive and impactful spill over effects for the wider economy. It is therefore prescient that sector friendly policies be put in place to encourage investment in the HTI. If HTI potential in Nigeria is to be unlocked, government at all levels must put in place holistic policy with well thought out implementation strategy.

All hands will need to be on deck to ensure the improvement of Nigerian HTI, avoiding mistakes and errors from the past and embracing modern development trends including technology. Hotel and hospitality staff should utilise the opportunity of enhanced foreign training and exposure. Various industry opportunities resident in Nigeria should foster new energy, spawning a competitive landscape that hopefully, a favourable business environment will make more appealing to investors and tourists. All said and done, a positive outlook beckons and all stakeholders should make it realisable.