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A CRITIQUE OF THE LAND USE CHARGE LAW OF LAGOS STATE 2018

On Monday, February 5, 2018, a new legislation on land charge, the **Land Use Charge Law 2018** (the “**new Land Use Charge Law**”), was passed and became effective in Lagos State. The new Land Use Charge Law came into effect following the assent given to the Land Use Charge Bill 2017 (the “**Bill**”) by His Excellency, Mr. Akinwumi Ambode, Executive Governor of Lagos State.

The Lagos State House of Assembly (the “**Lagos Assembly**”) had earlier on January 29, 2018, passed the Bill for “*a law to provide for the consolidation of property and land-based charges and make provisions for the levying and collection of land use charge in Lagos State and for connected purposes*” following which the Governor assented to the Bill, as indicated above.

The new Land Use Charge Law repealed¹ the Land Use Charge Law 2001², Land Rates Law³, and the Neighborhood Improvement Charge Law⁴ but provides that anything done under the repealed laws which was in force before the commencement of the new Land Use Charge Law, shall continue to exist or be in force as if done under the new Land Use Charge Law⁵.

Rationale for the new Land Use Charge Law

The long title of the new Land Use Charge Law provides the rationale for the law. It states that the law provides for the consolidation of all property and land based charges and the levying and collection of land use charge (“**LUC**”) in Lagos State. We however note that the consolidation of land related taxes in Lagos State is not peculiar to the new Land Use Charge Law, as this idea was first introduced under the repealed Land Use Charge Law 2001⁶. As a matter of fact, among the objectives of the repealed 2001 Law were the consolidation and simplification of the payment of property taxes in Lagos State and the generation of additional revenue for the State⁷. It will therefore appear that the 2001 Law should have been amended to address the gaps and inadequacies identified therein (rates unreflective of current economic realities; unclear definition of affected properties; and lack of an out-of-court settlement mechanism to resolve disputes arising from tax assessment)⁸, rather than enacting the new Land Use Charge Law.

We now proceed to highlight some of the key provisions in the new Land Use Charge Law.

General/Key Provisions

- **Collecting Authorities** – The new Land Use Charge Law designates each Local Government Area (“**LGA**”) in Lagos State as the Collecting Authority for LUC, and further empowers the LGAs

¹ See the Repeal provision, section 36(1), Land Use Charge Law 2018

² No. 11 of 2001 (Ch. L79, Laws of Lagos State 2015)

³ Ch. L76, Laws of Lagos State 2015

⁴ Ch. N3, *ibid*

⁵ See the Savings provision, section 36(2), *ibid*

⁶ *Supra*, see the long title of the repealed 2001 Law

⁷ See Scott Obagbemi: “Lagos: Land Use Charge and economic development”, The Punch, February 8, 2018 @ <http://punchng.com/lagos-land-use-charge-and-economic-development/>

⁸ *Ibid*. It is worthy of note that the Land Use Charge Law 2018 established in each Division of the State an Assessment Appeal Tribunal. There are also prescriptions under the Schedule to the Law with respect to: Land Use Charge Formula; Land Use Charge Annual Relief Rate; Land Use Charge Annual Rate; Land Use Charge (Depreciation) Rate; and the Rules Governing the Distribution of the Lagos State Land Use Charge.



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as the only body having authority to levy and collect Tenement Rates⁹. As a Collecting Authority, each LGA is also allowed to delegate to the State Government, by a written agreement, its functions with respect to the assessment of privately owned houses or tenement for the purpose of levying and collecting such rates¹⁰. An LGA is defined in the new Land Use Charge Law to include a Local Council Development Area (LCDA)¹¹.

- **Exempted Properties** – The Law also provides that LUC shall be payable in respect of all properties in the State except those exempted under Section 12 of the Law. The exemption granted is applicable to some categories of properties including any property (1) owned and occupied by a religious body and used exclusively as a place of worship or religious education; (2) used as a public cemetery or burial ground; (3) used as a registered educational institution certified by the Commissioner for Finance to be non-profit making; (4) which is the palace of a recognized Oba and Chief in Lagos State; as well as (5) specifically exempted by the Executive Governor by a notice published in the State Official Gazette¹².
- **Forfeiture of Exemption** – Where any exempted property is leased out to private entities for the purpose of generating revenue, the relevant property shall forfeit its exemption status and thus become liable to pay LUC¹³. Forfeiture of exemption status also arises where (1) the use of a property changes to one that does not qualify for exemption; (2) a property owner changes its use to one that does not qualify for exemption; and (3) the property of a religious body is registered in the name of an individual or corporate body different from the corporate name of the religious body¹⁴.
- **Grant of Partial Reliefs** – Besides the grant of exemption, the Commissioner for Finance is empowered under the new Land Use Charge Law to, by a notice published in the State Official Gazette, grant partial relief for a property (1) that is occupied by a non-profit making organization; (2) used solely for community games, sports, athletics, or recreation for the benefit of the general public; and (3) used for a charitable or benevolent purpose for the benefit of the general public and owned by a non-profit making organization¹⁵.
- **Issuance of Demand Notice, Payment Conditions & Discounts** – Under the new Land Use Charge Law, the Commissioner for Finance is also entrusted with the responsibility for issuing in each Financial Year, a Land Use Charge Demand Notice (“**Demand Notice**”) with respect to every chargeable property that has been assessed in accordance with the provisions of the Law¹⁶. The delivery of the Demand Notice shall be to the owner or occupier, either of whom may also request for same at any Land Use Charge Office or via electronic platform either by themselves or through an authorized agent of the connected property¹⁷. Where there is no owner

⁹ Section 2(2), Land Use Charge Law 2018

¹⁰ Section 3, *ibid*

¹¹ See “Interpretation”, section 1, *ibid*

¹² Section 12(1), *ibid*

¹³ *Ibid*

¹⁴ Section 13, *ibid*

¹⁵ Section 12(2), *ibid*

¹⁶ Section 14(1), *ibid*

¹⁷ Section 14(2), *ibid*



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or occupier or authorized agent to take delivery of the Demand Notice, then same shall be pasted on the property and such pasting shall be deemed sufficient delivery of the Demand Notice¹⁸.

A person liable to pay the amount stated on the Demand Notice shall make the payment at one of the designated banks specified therein within thirty (30) days after the date of delivery of the Demand Notice¹⁹. The new Land Use Charge Law empowers the Commissioner for Finance to reduce the LUC payable by way of discounts. However, only a payment made within fifteen (15) days of the receipt of a Demand Notice shall qualify for this discount and the amount of the discount to be given shall be as specified in the Demand Notice. Furthermore, to enjoy the discount, a qualified payer shall make a written application to the Commissioner for Finance requesting for it²⁰. In our opinion, the requirement for a written application to enjoy the discount is unnecessary. We hold the considered view that discount should automatically apply once the condition indicated in the law (within 15 days of receipt of the relevant Demand Notice) has been complied with.

- **Value of Land Use Charge** – Essentially, the new Land Use Charge Law prescribes the mode of calculating the LUC due on a property. Accordingly, the annual amount of LUC payable on any property shall be arrived at by multiplying the Market Value of the property by the applicable Relief Rate and Annual Charge Rate, using the prescribed formulae stated in the new Land Use Charge Law and more particularly described in the Schedule thereto²¹. To create a seamless process, the Commissioner for Finance is empowered to make regulations, subject to the Regulation Approval Law of Lagos State, providing for self-billing and electronic payment of the LUC by property owners²².

Changes and New Developments

- **Chargeable Property**

The definition of chargeable property has been extended to include (1) a building; (2) any improvement on land; (3) a parcel of land, whether or not reclaimed, waterlogged or otherwise; (4) a parcel of land and any building or improvement, a wharf or pier; and (5) a leasehold of up to ten years²³.

- **Computation of Land Use Charge Payable on Properties**

LUC is now calculated based on the commercial or market value of a property²⁴. Valuation is also now to be assessed by professional estate valuers appointed by the Commissioner for Finance²⁵ which shall be subject to review at least once every five (5) years²⁶.

¹⁸ Section 14(3), *ibid*

¹⁹ Section 14(4), *ibid*

²⁰ Section 14(5), *ibid*

²¹ Section 10(1)

²² Section 10(5), *ibid*

²³ See "Interpretation", section 1, *ibid*

²⁴ Section 10(1), *supra*

²⁵ Section 5(2), *ibid*

²⁶ Section 10(2), *ibid*



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▪ **Persons Liable to Pay Land Use Charge**

Under the new Land Use Charge Law, the obligation to pay LUC no longer rests solely on the owner of a taxable property as was the case under the repealed 2001 Law. The responsibility to pay LUC has now been placed on either the owner or occupier of a property on a lease arrangement of less than ten (10) years²⁷. Besides, for leases spanning ten (10) years or above, liability to pay the relevant LUC resides solely on the occupier²⁸. The definition of an occupier has now also been reviewed to include persons unlawfully in actual occupation of a property²⁹. In our opinion, whilst the obligation to pay LUC now extended to an occupier holding a lease of ten (10) years and above is understandable, the provision imposing payment obligation on either the owner or occupier of a property on a lease arrangement of less than ten years is a cause for concern. This provision will likely work against tenants under short-term lease arrangements, as it is highly probable that landlords will shift the responsibility of paying LUC to tenants/occupiers of their properties, particularly in view of the exorbitant rates of LUC.

▪ **Chargeable Rates**

The rate to be applied in computing LUC payable on a property has increased significantly under the new Land Use Charge Law³⁰. For an owner-solely-occupied residential property, the rate is now fixed at 0.076% of the chargeable value of the property as against 0.0394% applicable under the repealed 2001 Law. For a residential property without the owner in residence or a commercial property, the rate is now fixed at 0.76% of the chargeable property as against 0.394% previously applicable. Also for an industrial property, the new rate is 0.256% of the chargeable value of the property as against 0.132% previously applicable.

Given the current economic realities, we are of the considered view that the new Land Use Charge Law should have focused on addressing the issue of LUC avoidance with a view to capturing properties which otherwise were not assessed to LUC, rather than increase the rates of LUC. This is particularly because based on the information credited to officials of the Lagos State Government, LUC was reportedly paid on only about three hundred thousand (300,000) properties out of an estimated two million (2,000,000) eligible properties in Lagos State as at December 2017³¹. Thus, the expected revenue drive would have been achieved if the old rates were maintained and all eligible properties duly assessed.

▪ **Scope of Exempted Properties**

There is now restriction on the scope of exempted properties, such that properties used as private cemeteries and burial grounds are no longer exempt from LUC³². We believe that this will impact the costs incurred by the private owners of these properties (and relevant infrastructures), which may result in significant increases in their service charges.

²⁷ Section 9(1), *ibid*

²⁸ Section 9(2), *ibid*

²⁹ See "Interpretation", section 1, *ibid*

³⁰ See "Land Use Charge Annual Rate" in the Schedule to the Land Use Charge Law 2018

³¹ See Scott Obagbemi: "Lagos: Land Use Charge and economic development", *supra*.

³² See section 12(1), *ibid*

- **Self-Assessment**

The new Land Use Charge Law also makes provisions for owners of chargeable properties to voluntarily assess LUC payable and remit same to the relevant agency³³. Owners can also utilize electronic platforms approved under the Laws of Lagos State, in making payments³⁴. However, we note that the provision for self-assessment may not be effective until a framework (such as the regulation provided for in section 10(5)) is put in place to take care of issues that are likely to arise from the self-assessment regime such as claiming discount.

- **Incentives/Reliefs**

In order to ease payment and promote general compliance, the new Land Use Charge Law incorporates certain incentives such as 100% relief for pensioners³⁵; partial reliefs for owners on the consideration of their age & retirement status, depreciation Rate of the property, physical challenges/disability; duration of residency, and the speed and efficiency with which the property owner usually pays the LUC³⁶. The definition of a pensioner under the new Land Use Charge Law covers only a person who retires from a pensionable office of the Lagos State's civil service. In our view, this provision is discriminatory, as same does not seem to take into account millions of residents in Lagos who are retirees from either the services of the Federal Government or private establishments. We believe a better approach would have been a total exemption for elderly property owners (particularly owner-occupiers) of 65 years of age and above.

- **Establishment of an Assessment Appeal Tribunal**

An Assessment Appeal Tribunal (“**the Tribunal**”) has been constituted under the new Land Use Charge Law as a quasi-judicial body, established to receive and determine complaints from the public on overvaluation or exemption of their respective properties³⁷, with additional powers to adopt Alternative Dispute Resolution (ADR) mechanisms³⁸. We note that this is a laudable development which was lacking under the repealed 2001 Law. We believe that this initiative (particularly the mandatory provision in section 25(1) for parties to a dispute to submit to a confidential mediation) will aid fast and amicable resolution of LUC related disputes, as it will give room for negotiation among the contending parties.

- **Conditions for Appeal**

The new Land Use Charge provides that Notice of Appeal is to be given to the Tribunal, as opposed to the Commissioner for Finance under the repealed 2001 Law. We believe this provision will lead to efficiency in dealing with such as appeals. Also, any person who feels aggrieved for any reason relating either to the taxability of his/her property or the amount payable thereon is now required to deposit into the State's Land Use Charge Account, an

³³ Section 10(5), *ibid*

³⁴ *Ibid*, any framework issued to enable this must be subject to the Regulations Approval Law of Lagos State

³⁵ A pensioner is defined as “a person who retires from a pensionable office in Lagos State”. See “Interpretation”, section 1, Land Use Charge Law 2018

³⁶ Section 10(3), *ibid*

³⁷ See sections 17(1) and 23, *ibid*

³⁸ See sections 23(e) and 25(1)

amount equivalent to a reduced sum of 25% of the assessed annual LUC being disputed³⁹, as against the deposit of 50% under the repealed 2001 Law, which was a bit too much in the circumstance when someone is contesting LUC.

- **Offences and Penalties**

The penalty for contravention of the provisions of the new Land Use Charge Law has been increased to a maximum fine of Two Hundred and Fifty Thousand Naira (₦250,000.00) as against One Hundred Thousand Naira (₦100,000.00) applicable under the repealed 2001 Law⁴⁰.

- **Appointment of Consultants**

The new land Use Charge Law empowers the Commissioner for Finance to appoint Professional Valuers and other Consultants such as Property Identification Officers, who shall not be less than six (6) in number, to carry out property assessments and levying of the LUC. The agreement under which the Consultants are appointed shall be subject to the ratification of the Lagos Assembly and be further registered with the Lagos State Valuation Office⁴¹. Under the repealed 2001 Law, the appointments of such Property Identification Officers and qualified assessors as consultants was neither subject to legislative ratification nor made registrable with the Lagos State Valuation Office. We are of the view that the new requirements for ratification by the Lagos Assembly and registration are good measures for ensuring checks and balances as well as promoting transparency and best practices.

- **Failure to Remit Land Use Charge Collected**

The new Land Use Charge Law provides that any Consultants appointed in accordance with its sections 5(2) and 6 and who fails to remit any LUC collected from payers as appropriate, commits an offence and shall be liable to refund the amount not duly remitted, and in addition to the refund, pay penalty of a sum equivalent to 25% of the amount not duly remitted. Besides, such Consultant may further be liable to imprisonment for a term of six (6)⁴². In our view, the criminalization of failure to appropriately remit LUC collected by appointed Consultants with specified penalties will go a long way, in addressing the challenges of leakages and misappropriation of public funds.

- **Power of Enforcement & Right of Action**

In addition to the power to institute legal action (if payment is not received after one hundred and thirty five (135) calendar days after the receipt of Demand Notice) for an order of court for distraint of a property, such that same is brought under enforcement for the purpose of attaching accrued earnings on the relevant property for the settlement of all outstanding LUC (which was also the position under the repealed 2001 Law),; the Attorney General of Lagos State has been granted additional powers, under the new Land Use Charge Law, to attach the goods or

³⁹ Section 26, *ibid*

⁴⁰ Section 29, *ibid*

⁴¹ Sections 5(2) and 6, *ibid*

⁴² Section 32, *ibid*



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earnings of defaulting chargeable persons pursuant to a liability order made by a court of law⁴³.

Remarks

Whilst the consolidation of property and land based charges, stated as one of the main objectives of the Land Use Charge Law 2018 is a laudable idea, it is worthy of note that the repealed 2001 Law also provided for same. Save for the few, new developments and certain changes introduced; the main thrusts of the repealed and new laws are virtually the same. Therefore, it would have been better to simply amend the 2001 Law in order to incorporate the highlighted new initiatives.

The way and manner in which the new higher rates for LUC in Lagos State were introduced pursuant to the new Land Use Charge Law are symptomatic of a unilateral legislative process exclusive of the populace. Expectedly, the commencement of the new Land Use Charge Law has been greeted by widespread hot debates and mass protests among persons, businesses and professional groups resident in the State, including the Organised Private Sector⁴⁴. The measures taken by the State Government in addressing relevant concerns following protests (such as reductions of rates up to 50%; waiver of penalties for late payment; and introduction of payment by installment as announced by the Commissioner for Finance), have not been able to address the crises⁴⁵.

The harsh economic situation in the Country and the challenging nature of property acquisition and leasing of properties in Lagos State have been cited as the reasons why there is mass agitation against implementation of the new Land Use Charge Law. There seems to be a consensus of opinions that the State Government did not take cognizance of the effect the legislation will have on lease/tenancy transactions in Lagos State, as landlords will likely pass on the responsibility for paying the new higher rates to tenants by way of increase in rent. We are of the opinion that the inauguration of a six (6) man ad hoc committee⁴⁶ by the Lagos Assembly on Monday, March 19, 2018 to review the Land Use Charge Law 2018 presents a fresh opportunity for the Government to fully engage the public with a view to arriving at a common and mutually beneficial position on the Law and we sincerely hope that this will be achieved.

⁴³ Section 28, *ibid*

⁴⁴ The Nigerian Bar Association (Ikeja Branch) staged a protest on Tuesday, March 13, demanding for a reversal of the law by the State Government. The NBA was supported by the National Conscience Party (NCP), Committee for the Defence of Human Rights (CDHR) and Joint Action Committee (JAC), among others. See "NBA, others protest, warn Ambode against new land law", *The Punch*, Wednesday, March 14, 2018 @ <http://punchng.com/nba-others-protest-warn-ambode-against-new-land-law/>

⁴⁵ There have been arguments on the validity and legality of amending a legislative enactment passed by the Lagos Assembly and assented to by the Governor through mere press conferences and public notices. The NBA Ikeja Branch has reportedly vowed to continue with its protest until the Lagos State Government reverts to status quo on the land use charge. See "NBA vows to continue protest over Land Use Charge", *Vanguard*, Tuesday, March 20, 2018 @ <https://www.vanguardngr.com/2018/03/nba-vows-continue-protest-land-use-charge/>

⁴⁶ See "Land use charge: Lagos assembly sets up review committee", *The Guardian*, Monday, March 19, 2018 @ <https://ft.guardian.ng/news/land-use-charge-lagos-assembly-sets-up-review-committee/>



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Contact Persons



OLAMIDE OSHIKOYA
loshikoya@banwo-ighodalo.com



OLUWATOBA OGUNTUASE
ooguntuase@banwo-ighodalo.com