

**Any Reprieve for Property Taxation
in Lagos State –
*Highlights and Remarks on the
Land Use Charge Law Amendment
Bill 2018***

On June 22, 2001, a new regime of real property taxation commenced in Lagos State with the Land Use Charge Law, No. 11 of 2001 (the “**Law**”). The stated objective of the Law is to generate additional revenue via taxes to contribute to the development of Lagos State. The Law unified the taxes and rates hitherto payable under the Land Rates Law, Neighbourhood Improvement Charge Law and Tenement Rates Law of the State into the Land Use Charge (“**LUC**” or the “**Tax**”). No amendment has been made on the Law since commencement, with the first changes now being proposed by the Land Use Charge (Repeal and Re-enactment) Bill 2018 (the “**Bill**”).

We provide in this briefing, highlights of the Bill and our remarks on some of the new introductions of the Bill as well as the provisions of the Law which we consider otiose but which the Bill does not seek to amend. With the Bill set for public hearing at the Lagos State House of Assembly on Tuesday, January 16, 2018, we hope our Clients, friends and Government find our remarks helpful:

A Features of the Bill:

1	Short Title:	A Bill for a Law to Repeal the Land Use Charge Law, 2001 of Lagos State and Enact the Land Use Charge (Repeal and Re-Enactment) Law, 2018.
2	Principal Purpose:	The amendment of the Land Use Charge Law, No 11 of 2001 currently compiled as Cap. L61, Laws of Lagos State of Nigeria, 2015.
3	Tax Base:	All real property situated in Lagos State.
4	Nature of Tax:	Direct Tax
5	Principal Tax Payer:	The owner of the real property or an occupier with a leasehold interest of 10 (ten) years and above.
6	No. of Sections:	27
7	Status:	Passed 2nd Reading at the Lagos State House of Assembly. Committed to House Ad Hoc Committee on Finance for Public Hearing and further deliberations.

B Highlights of and Remarks on the Bill and Law:

Subject & Reference	Relevant Provisions	Remarks
<p>8 Taxable Persons - Sections 1, 5, 11 and 12 of the Bill.</p>	<p>These expressions now have the following interpretations set in front of them:</p> <p>“Occupier” in relation to a Property, shall include not only a person whether lawfully or unlawfully in actual occupation of the whole or part of such Property but also any person with a right to actual or beneficial occupation or mandated to occupy the land by a person with such right, whether solely or concurrently with other persons, although this does not mean it must be of pecuniary benefit and does not include a lodger;</p> <p>“Owner” in relation to any Property shall include the person for the time being receiving the Property in connection with which the word is used, whether on his own account or as agent or trustee for any other person who would receive the sum if such Property were let to a tenant, and the holder of a Property direct from the State whether under lease, licence or otherwise and will include the estate of a deceased holder of a right of occupancy, whether expressly granted by the Governor or otherwise, and shall include every assignee from a holder;</p> <p>“Property” includes –</p> <ul style="list-style-type: none"> (a) a building; (b) any improvement on land; (c) a parcel of land, whether or not reclaimed, waterlogged or otherwise; (d) a parcel of land and any building or improvement; or (e) a wharf or pier; (f) leaseholds of up to ten (10) years. 	<p>The Bill proposes to expand the scope of Taxable Persons to include: Occupiers under a lease of 10 (ten) years and above; the Estate of a deceased Owner; and Owners of land, whether or not it is habitable in its current condition. This expanded scope aligns with the intention of the sponsors of the Bill to increase the revenues of the State from real property taxation.</p> <p>While the Bill is not concerned about whether a right of ownership is lawful or not; it will be prudent to add to the relevant provisions that the act of payment of the Tax does not vest ownership or legal occupation on the payer, where such legal right does not exist in the first place.</p> <p>Section 4 of the Law imposed the obligation to pay Land Use Charge on the Owner. The Bill proposes to extend such obligation to an Occupier holding a long lease of ten (10) years and above, accordingly, the statutory obligation to pay the Land Use Charge shall be borne by either the Land Owner or an Occupier holding a lease of 10 years and above. In the Law, there is no obligation on the Occupier to pay the Land Use Charge unless he is designated an agent by the collecting Authority and sanctioned to offset such payments from any monies due to the owner. The Bill does not specify whether the Occupier holding a lease of 10 years’ and above is sanctioned to deduct the payment form monies due to the Owner. This lacuna is a potential area of conflict. It is recommended that the eventual law properly define the status of the Occupier holding a long lease of ten years and above – Upon payment of the Tax, is he entitled to recover such sums from monies due from him to the Owner? Will the Occupier qualify as an agent capable of being indemnified by the Landlord as provided under Sections 11 and 12?</p>

Subject & Reference	Relevant Provisions	Remarks
<p>9 TaxRate - Sections 1, 6 and the Schedule to the Bill</p>	<p>The formulae for the computation of the Tax is: $[(LA \times LR) + (BA \times BR \times DR) \times RR \times CR]$ – where: LA = Land Area LR = Market Value of Land in the Area on a per square meter basis as determined by Professional Valuers. BA = Developed portion of Land Area BR = Average Construction Value of buildings in the area DR = Depreciation Rate for average buildings in the area RR = Relief Rate as may be determined by the Commissioner of Finance from time to time in respect of any person CR = Annual Charge Rate which means the percentage of the assessed value of the Property over a period of twelve months.</p>	<p>We consider the basis for the computation of the Tax quite subjective, particularly in relation to the fixing of Relief Rates. While the Schedule suggests a relatively objective process in the fixing of Relief Rates once every 5 years, Section 6(3) of the Bill is rather subjective as it provides that the Relief Rates may vary from person to person on factors which are, in our view, not objective.</p> <p>Whereas the Owner and an Occupier holding a long lease of 10 years and above are severally liable for the Tax, the provisions on Relief Rate only acknowledges the Owner as being entitled to the application of a Relief rate. The Occupier who is liable to pay Land Use Charge should be afforded the opportunity to benefit from the Relief Rate where applicable.</p>
<p>10 Disputes Resolution - Section 10, 13, 14, 16 and 17 of the Bill</p>	<p>The Bill intends to reduce the number of members of the Assessment Appeal Tribunal (Tribunal) from 15 to 9.</p> <p>The Bill has introduced a Mediation process, which appears to be mandatory, although no such express words were used. Where the mediation does not resolve the dispute within 45 working days of the first session, or where the mediator declares an impasse; the mediation shall be deemed inconclusive and parties may resolve their dispute at the Tribunal or through any other lawful means. Parties are also allowed to resolve their dispute through any other lawful means other than the Tribunal.</p> <p>In the case of a person aggrieved with the assessment on his Property, an appeal shall not lie unless 50% of the amount of the assessed annual LUC is deposited directly into the State Land Use Charge Account. Whereas the Law has a similar provision, the Law requires that such deposit is made into the State Government Assessment Appeal Account. The implication of paying 50% of the contested LUC suggests that such amount has been conceded by the Appellant. In an event where the Appellant's contention is that he is not due to pay the LUC in the first place, placing an obligation on him to pay 50% of the assessment to the State Government's account is somewhat prejudicial. It is recommended that the practice of only paying the undisputed amount be adopted.</p> <p>The Bill provides for a pre-dispute mechanism whereby the Commissioner can revise an assessment downward if payment is made within 15days. The Bill is however unclear as to what is to be paid within 15days. Will it be the entire assessment? The rebate granted? There is a need for the Bill to be explicit on this.</p>	

<p>1 1 Increment in Penalties Sections 20 and 21.</p>	<p>Non-compliance with the Law, obstruction of officials and damage to property identification plaques shall attract a maximum fine of Two Hundred and Fifty Thousand Naira (N250, 000.00) or a term of imprisonment for a period of up to three months or both. Penalty for inciting a person to refuse to pay Land Use Charge is a maximum fine of Two Hundred and Fifty Thousand Naira (N 250, 000.00) or a term of imprisonment for a period of up to three months or both.</p>
<p>1 2 Delegation of Collecting Authority by the Local Government to the State Section 2</p>	<p>The new Section 2 of the Bill (Section 1 of the Law) designates the various Local Government Areas (LGAs) in the states as Collecting Authorities for the purposes of the Charge; however, Section 2 (3) of the Bill stipulates that the Local Governments may by written agreement delegate its function of collecting rates, and assessment of privately owned houses and tenements to the State. The Local Government Area Councils of Nigeria by the Constitution of the Federal Republic of Nigeria, 1999 (the "Constitution") are vested with the power to assess, levy and collect taxes on privately owned houses and tenements in Nigeria. In <i>Knight, Frank & Rutley v. A.G of Kano State</i>[1990] 4 NWLR (Pt. 143) 210, the Nigerian Court of Appeal had expressed the view that a contract between the Kano State Government and Knight Frank and Rutley to prepare a valuation and assessment list for purposes of collection of property taxes in Kano State was ultra vires to the powers of the State Government as it constituted a usurpation of the constitutional powers vested on the Local Government Councils and was therefore null and void. The Supreme Court subsequently affirmed the judgment of the Court of Appeal (see[1998] 7 NWLR (Pt. 556) 1). It is our view that the provision of the Bill, as well as that in the Law, that enables LGAs to delegate the power to collect the Tax to the State is unconstitutional to the extent of its inconsistency with the provisions of Section 7(5), Paragraphs 9 and 10 of Part II of Schedule 2 and Paragraph 1(j) of Schedule 4 of the Constitution and in line with the decision of the Supreme Court in the <i>Knight, Frank & Rutley</i> case.</p>

Conclusively, we observe that strict rules of legislative drafting have not been adhered to in the Bill as there are copious typographical and syntax errors as well as wrong referencing of provisions. If Lagos State is to impose property taxes, it must do so correctly.

For further information on the foregoing, please contact Ifureuwem Udofa (ifureuwem.udofa@ao2law.com) or Bidemi Olumide (bidemi.olumide@ao2law.com) with the subject: "Any Reprieve for Property Taxation in Lagos State: Highlights and Remarks on the Land Use Charge Law Amendment Bill 2018".