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ON-LINE HAILING REGULATIONS IN LAGOS STATE 2020: UNCONSTITUTIONALITY AND UNCERTAINTY

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The Lagos State Government through the Ministry of Transportation (the 'Ministry') has issued regulations for e-hailing taxi services in Lagos State. The regulations, titled 'Guidelines for Online Hailing Business Operation of Taxi in Lagos State 2020' ('the Guidelines'), are set to come into effect on August 20, 2020.

Under the Guidelines, taxi operators and operators of e-hailing services are now required to pay licence fees ranging from N5,000,000.00 to N25,000,000.00 plus a 10% service tax on each payment made by the passengers to the operators. The Guidelines also provides that any vehicle to be deployed as a "taxicab" in Lagos state must be brand new or must be less than three years old, and the engine capacity of the vehicle must not be less than 1.3cc. The provisions of the Guidelines provoke at least three critical challenges.

First, the Guidelines appear to be unconstitutional for want of statutory backing. No legislation is cited as the source of the authority to make them. The Guidelines may well have been made on the assumption that the Lagos State Transport Sector Reform Law 2018 ("the Law") backs them. Although the Ministry is empowered under that Law to initiate, formulate and coordinate all transport policies and programmes in the state, it is not empowered to make Guidelines or other regulations. The Guidelines, being in effect subsidiary legislation, must be made pursuant to powers granted by statute. Otherwise making them is a usurpation of the legislative powers of the State House of Assembly under Section 4 of the 1999 Constitution.

Second, even if there were a state statute behind the Guidelines, the "service tax" that it imposes is an unconstitutional income tax. The 10% service tax on each payment made by the passengers to the operators is a tax on the income of the e-hailing companies. This is in effect companies' income tax and is outside the legislative competence of the State. Companies income tax is chargeable only by the Federal Government. State Governments cannot legally charge taxes on the incomes of companies.

Third, the Guidelines are unclear: key terms are not defined in them. "Motorcycles" are not expressly mentioned in the categories of vehicles to which the Guidelines apply. However, the repeated use of words such as "Taxicab" and "Hackney Carriage" suggests that the Guidelines apply only to motor vehicles other than motorcycles. Further, the Guidelines do not define "Taxicab". We are unable to say with certainty whether vehicles registered under e-hailing platforms are "Taxicabs" for the purpose of the Guidelines requirement that "Taxicabs" be brand new or less than three years old and have engine capacity not less than 1.3cc.

Instructively, the Guidelines provides that a "Taxicab" licence shall be the authority to operate a "taxi business". Under the Guidelines, "taxi business" is divided into "Service Entity (E-hailing

Operators)” and “Taxi” and “App Operators”. One may on this basis conclude that vehicles registered under e-hailing platforms need to comply with the requirements for “taxicabs”, but the obligation to comply would appear to be that of the drivers and app licensees, not those of the app owners or licensors.

The next several months promise to be interesting as the uncertainties and suspicions of unconstitutionality that attend the Guidelines are explored and addressed. The uncertainties can and should be resolved by the State amending the Guidelines. We are likely to need litigation to resolve the constitutional issues.

This publication does not constitute legal advice and does not create a client-attorney relationship. For assistance with any legal issues that may arise on on-line hailing regulations in general, please contact us at geliass@gelias.com.

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