

## TEMPLARS LEGISLATIVE WATCH: THE GENERATING SETS (PROHIBITION/BAN) BILL 2020

It has been suggested that Nigeria requires approximately 50,000 MW to achieve uninterrupted power supply. However, it is a well-known fact we are nowhere close to this target. Recent estimates place installed generating capacity to be in the region of 11,000 - 17,000 MW while actual distributed power from this is said to be less than 4,000 MW on average.

Surprisingly, in spite of the country's visible shortage of power supply, the Senate recently considered the *Generating Sets (Prohibition/Ban) Bill 2020* ("GSB") which seeks to prohibit the importation, sale and usage of generating sets in the country, with the exception of essential services requiring 24 hours power supply or on a grant of an approval for exclusion by the Minister of Power.

### THE GENERATING SETS (PROHIBITION/BAN) BILL 2020 (SB 366)

The GSB ostensibly seeks to reduce environmental pollution caused by emissions from these generating sets as well as facilitate development in the power sector by placing a ban on the importation and sale of generating sets.

Section 1 of the GSB places an express ban on the importation and sale of generating sets

<sup>1</sup> Section 2 GSB provides that essential services include: Medical purpose, Airport, Railway stations/services, Elevator,

and contravention attracts imprisonment of not less than ten years. The Bill however permits importation or sale of generating sets where same is used for essential services<sup>1</sup> or where the Minister of Power grants an Approval for exclusion.<sup>2</sup> This imposes a regulatory obligation of an approval from the Minister of Power for exclusion from the application of the Bill before importation generating sets.

Escalators, Research institutions and such facilities that require 24 hours electricity supply.

<sup>2</sup> Section 2(b)

Section 3 of the Bill requires the cessation of the use of generating sets which run on diesel, petrol or kerosene with immediate effect. No penalty is stated for derogation from this provision and no mention is made of how this provision will be enforced. Given the widespread inadequacy of manpower among the law enforcement agencies, it is difficult to envisage how this bill will be implemented if passed into law.

Section 4 of the GSB defines ‘Generating Sets’ to mean a machine that is used for producing electricity.

In line with the above provisions, the GSB appears counterproductive given that it provides for facilities which require 24 hours electric power supply as essential services but fails to provide a scope for these facilities. Thus, business setups such as Industries, hotels, restaurants, malls etc. which were not expressly provided for in the GSB but often operate round the clock and require 24 hours power supply and thus arguably fall within the definition of essential services.

Operation of escalators and elevators is considered as essential services under the GSB and several commercial buildings have these installed. However, it is not clear if the installation of an escalator or elevator automatically qualifies the entire building housing these facilities as falling within the category of essential services to benefit from the exemptions. Otherwise, perhaps hypothetically there may be a situation where a commercial landlord has a generator for escalators and elevators, but the building fails to qualify as rendering “essential services”

within the context of the Bill thereby depriving other areas of the building of power by the same generating set.

Also, in Nigeria, current estimates indicate that over 90% of businesses and 30% of homes have diesel-powered generators.<sup>3</sup> This means that if more businesses become operational for 24 hours so as to fall within the exemptions, the GSB might fail to effectively curb environmental pollution due to generator emissions.

## CONCLUSION

The GSB although commendable considering the positive impact on the environment and its advancement of the cause of climate change and green energy advocates, does not reflect the realities of power supply in the country. In the short term, it would be more productive for the government to create an enabling environment for such a law to succeed, which can be by providing uninterrupted power supply and providing incentives to investors in renewable energy and generally increase the supply of electricity in the country.

Given that the Bill has only passed first reading, we expect vigorous debate around the Bill as it goes through the various rule making process. Thus, we do not expect that the Bill will be passed before Q4 2020. In addition, in view of the concise nature of the current edition of the Bill, we expect that a more detailed version would be developed if the Bill progresses. Such a detailed version will no doubt address some of the issues noted in the current draft of the Bill.

## Contacts:



**Dayo Okusami**  
Partner  
[dayo.okusami@templars-law.com](mailto:dayo.okusami@templars-law.com)



**Moses Pila**  
Senior Associate  
[moses.pila@templars-law.com](mailto:moses.pila@templars-law.com)

<sup>3</sup> American Journal of Respiratory and Critical Care Medicine  
“Generator Diesel Exhaust: a Major Hazard to Health and the Environment in Nigeria”