

LADOL – Friend or Foe to Foreign Business?

By Musa Ibrahim

Recently, LADOL became the first company in West Africa to be awarded International Organisation for Standardization (ISO) certifications in recognition of international best practices in the areas of risk-based thinking and occupational hazards.

Commenting on the certifications, LADOL's Managing Director, Dr Amy Jadesimi, said soon the company will "not only exceed international standards, it will set them."

However, LADOL has recently shown a trend towards hostility, conflict and litigation with international businesses operating in the LADOL free-zone.

The company recently terminated the operating licenses of at least two foreign investors - Africoat and Samsung Heavy Industries (Nigeria) (SHIN) - with significant investments in the zone.

Over the past years, both companies have brought considerable investments, trainings, employment opportunities and transfer of technology to the local Nigerian workforce.

CONTRADICTING THE VISION

As indicated on its website, LADOL's vision since inception was to provide the "first purpose-built, state-of-the art logistics and engineering base west of the Niger Delta."

The industrial free-zone's core mission was to develop a 100 percent Nigerian-owned operation to attract international companies and encourage them to manufacture in Nigeria.

The project was vital to the Nigerian economy, as it promised to bring foreign investments into the country, provide jobs and training to local communities as well as unlock the country's vast oil wealth.

Africoat was one such companies set up in the free-zone to take advantage of an attractive regulatory regime and manufacturing conditions within the area.

Africoat specializes in pipe-coating and logistics and operated out of the LADOL free-zone for several years before LADOL terminated its operating license.

In November 2018, LADOL announced that Africoat had been evicted from the free-zone, in part due to alleged outstanding debts.

LADOL also accused Africoat of breaching free-zone regulations – LFZ Regulations, including financial reporting obligations.

Africoat protested its innocence. First, it denied that some of the outstanding charges brought against it by LADOL, were too 'exorbitant' and without merit, and not per the

original agreement between Africoat and LADOL, the free zone regulations or applicable law.

Africoat was never made aware of such charges, neither did it agree to the charges, and was not offered the chance to discuss or negotiate the charges once imposed.

Importantly, Africoat also claims it was never made aware by LADOL or GRML, the free-zone administrator, of the breach of LFZ regulations prior to termination.

The services agreement between LADOL and Africoat made no mention of the regulations and its impact on the agreed rates between the parties.

Several reporting cycles passed without Africoat being made aware that it was in supposed breach of the regulations.

Eventually, the Honourable Minister for State for Industry, Trade and Investment, Dr. Okechukwu Enelamah, was obliged to intervene to settle the dispute.

Africoat's operating license has since been renewed, but not without a considerable loss of trust between Africoat and LADOL.

SAMSUNG HEAVY INDUSTRIES (SHIN Nigeria)

In 2013, SHIN was awarded the contract by Total Upstream Nigeria Limited for the fabrication and installation of a \$3.3 billion Floating Production Storage Offloading (FPSO) platform destined for the Egina oilfield.

SHIN set a record for local content development, fabricating six out of the 18 modules in Nigeria using Nigerian work-force.

Also, SHIN shared the work with other Nigerian yards to complete the project, including Nigerdock and Aveon, all adding to the \$1.9 billion in-country spend.

SHIN and LADOL set up a free-zone joint venture in order to construct a state-of-art facility and quay wall to do certain in-country fabrication and integration of topsides on the EginaFPSO.

This joint venture entity (SHI-MCI Free Zone Enterprise) was granted an operating license to operate in the LADOL free-zone. The partnership promised to be a success and beneficial for all, including Nigeria.

However, in April 2018, LADOL made a demand for one percent of the total EginaFPSO contract price as a "FOB charge", which is a purported tax of about \$33 million.

SHIN challenged this request for tax payment as unlawful, bad faith and contrary to the tax regulations, charges and levies exemption offered by the free-zone in accordance with applicable law.

In addition, SHIN was of the view that such a charge, levy or tax, should only be payable directly into the government Treasury Single Account (TSA) as directed by the President of the Federal Republic of Nigeria and not into LADOL's personal account.

LADOL retaliated by suspending SHIN's operating license. This threatened the timely delivery of the EginaFPSO and forced SHIN to commence legal proceedings in July 2018 in the Federal High Court, Lagos.

The tax was ultimately paid by Total to guarantee delivery of the Egina FPSO.

However, as soon as the tax issue was settled by Total, LADOL gave further reasons why it will not renew SHIN's operating license. It cited alleged outstanding payments and non-compliance with Nigerian laws.

On September 3, LADOL abruptly stopped all services to SHIN's yard in the free-zone, effectively denying access to SHIN and its workforce.

The following day, September 4, SHIN received a letter from LADOL terminating the sublease agreement over the yard.

LADOL demanded that SHIN removed its fixtures and fittings and vacate the zone within 90 days. The grounds of the demand were breaches of the sublease agreement.

NIGERIAN EXPORT PROCESSING ZONES AUTHORITY (NEPZA)

The Nigerian Export Processing Zones Authority (NEPZA) is the government-owned body responsible for regulating the Nigerian free-zones, including LADOL.

Barrister Emmanuel Jime, Managing Director of NEPZA, having reviewed LADOL's allegations against SHIN/SHI-MCI and the latter's defense, directed LADOL to renew SHIN's operating license for 2018/2019.

Also, LADOL was asked to restore all rights and services to the free-zone yard as SHIN were entitled, pending the outcome of a NEPZA committee review.

LADOL ignored this directive issued by its own regulator and delegator of LADOL's authority to administer the free zone area.

SHIN was once again forced to resort to the protection of the Nigerian courts and lodged an urgent motion before the Federal High Court, Lagos.

The court has since granted an interim order in SHIN's favour restraining LADOL from evicting SHIN from the fabrication and integration yard.

The court ordered that SHIN be free to move in and out of its yard with its employees, agents and service providers.

Furthermore, the court directed LADOL to provide all services, such as water and power supply to the yard. The case is ongoing.

WHY LADOL RESORTED TO EXTREME MEASURES AGAINST SHIN?

SHIN alleged bad faith. Its legal action against LADOL claimed since the beginning of the relationship between LADOL and SHIN, LADOL has been scheming to take over SHIN's fabrication yard within the free-zone to use it as a port-terminal, which it currently lacks.

This point was also been noted by Nigerian oil-industry experts.

From an early stage in the relationship between LADOL and SHIN, oil-industry experts in Nigeria had questioned LADOL's ability to host the Egina FPSO project.

The Nigerian Local Content Group (NLCG) described the free-zone as an empty land-mass without visible investment, debunking LADOL's claims that \$500 million had gone into the site.

The NLCG equally argued that, for a free-zone without a fabrication yard, it was not surprising that LADOL was seeking to actively mislead the public.

This dispute has reportedly cost the Nigerian economy approximately \$15 million a day in lost oil production.

This is inconsistent with LADOL's mission of attracting international investment to benefit the Nigerian economy.

Africoat and SHIN have demonstrated a commitment to Nigeria that should be respected.

SHIN has created over 2,000 jobs and opened opportunities for Nigerians at management level.

It has also set up a welders' training facility where it has trained almost 600-welders at its purpose-built Technology Training Centre up to international standards.

In 2016, SHIN gave a grant of \$2.7 million to LADOL to develop a Santa training facility. To-date, LADOL has not utilized the funds to develop the facility.

As part of its corporate social responsibility (CSR) since 2015, Samsung has worked with Vision Care in the annual Eye camp to give free cataract surgeries to patients at risk of blindness.

Overall, the fabrication of six of the modules locally was a testament to the potentials discovered locally and the collaboration between SHIN, Total, government departments and local businesses.

The EginaFPSO was the largest ship to ever sail out of an African port and was the product of teamwork and collaboration.

WHAT NEXT FOR LADOL?

LADOL must operate on the global stage to fulfil its mission of encouraging international businesses to manufacture and invest in the free-zone.

As Dr Jadesimi noted, “LADOL must exceed international standards.” However, LADOL is, sadly, developing a reputation for hostility towards international business. Worse still, international business will not invest in the free-zone if there are lingering concerns that LADOL will move to seize their assets.

LADOL is now at a junction – it will either go the way of graft and short-term gain, or it will engage properly, fairly and transparently with its international partners for its own long-term benefits, and the benefit of all Nigerians.

SHIN’s newly appointed Managing Director, Jejin Jeon, said the Egina project, “plugs into the core themes about development, energy transition, human capital development, and responsible investment.”

Far from frightening SHIN from the Nigerian market, the local content laws were the lifeblood of the project, allowing SHIN to train and employ the local workforce.

Jeon is optimistic for replication of the Egina project elsewhere in Nigeria, creating a “wealth of opportunities, job and education for people of Nigeria.”

Nigeria should hope that these opportunities are not squandered needlessly.

Mr Ibrahim, a public policy expert, writes from Abuja