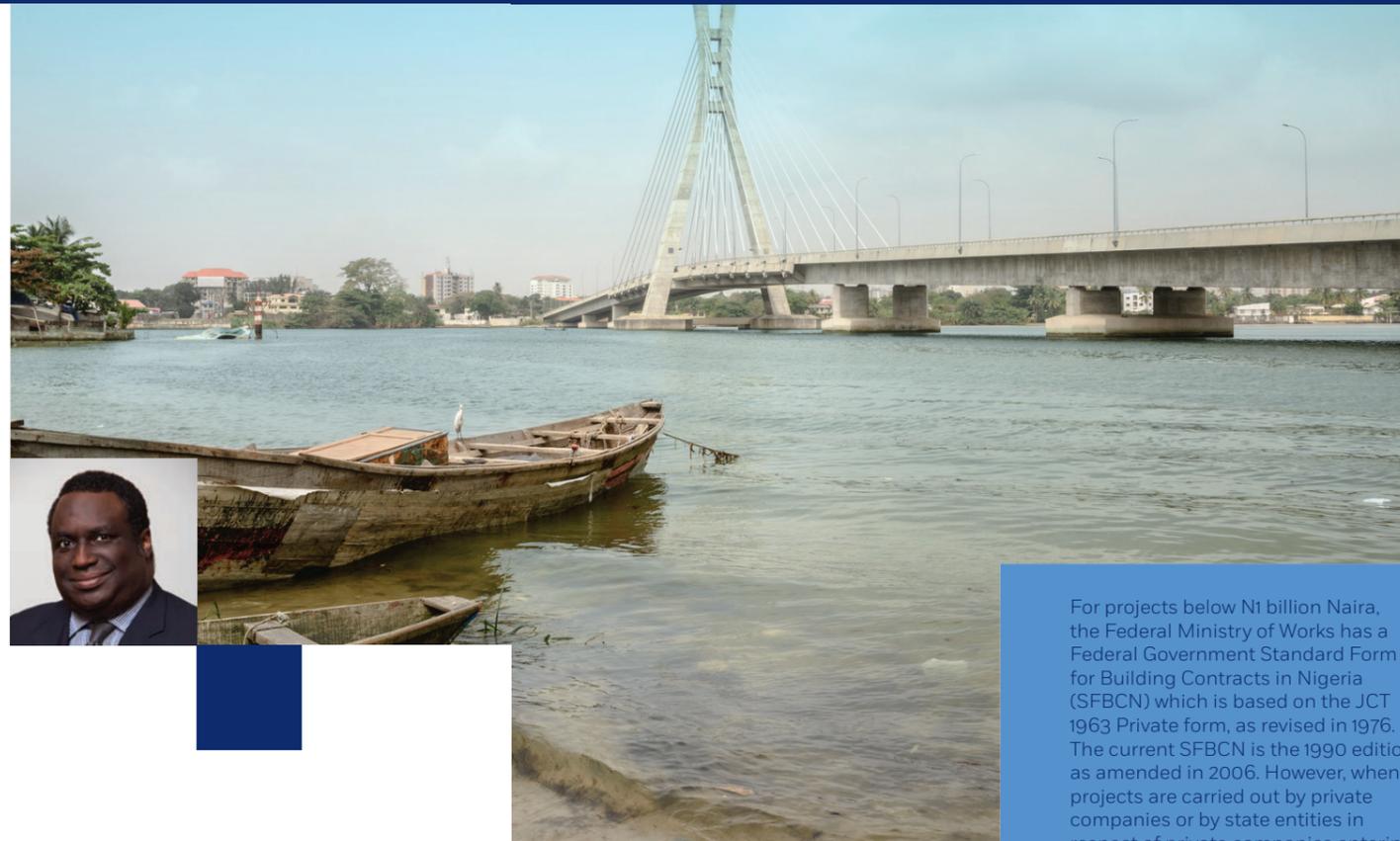


THE SOCIETY OF CONSTRUCTION LAW NIGERIA

Abdul Jinadu highlights the purpose and goals of the newly founded SCL Nigeria, of which he is one of the founding management committee members.



Issues regarding prompt payment are perhaps more acute in Nigeria than in most other markets because of a range of factors, including fluctuations in currency values, inflation and frankly a sometimes-cavalier attitude to compliance with contract provisions. Therefore, another area in which SCL Nigeria hopes to make immediate impact is to provide recommendations to state and the Federal Government regarding legislation making provision for adjudication and regulations for prompt payment. It would be useful for a study to be carried out by SCL Nigeria into the feasibility, desirability and impact of the introduction of similar laws in Nigeria.

(iii) Building Regulations

There is a persistent problem of building collapses in Nigeria. A recent collapse in Lagos led to the loss of 20 lives. A government committee set up to investigate that and other recent collapses stated that the collapses were the result of "non-adherence to the building construction process, inappropriate/poor designs, hasty construction work, non-supervision of the construction work by professionals, and non-monitoring by the development control authorities."

The weakness of the regulatory and supervisory regimes is responsible for these failings. SCL Nigeria is unique in that it will be the only space in which all of the professions engaged in the construction industry can interact together and with lawyers. Therefore, SCL Nigeria can function as a platform for the professional bodies to make use of the skills and experience of fellow professionals and of the legal practitioners to develop recommendations for the improvement of the relevant regulatory regimes and how to train their members in the sue of and compliance with these regulations.

Conclusion

SCL Nigeria has been long in gestation but it is now ready to be launched. Membership is available through the website at <https://www.scl-nigeria.org/> and is open to local and foreign practitioners, professionals and firms. The benefits of membership are explained on the website, the most important of which is access to and membership of the only forum in which all of the professional disciplines engaged in the Nigerian construction and engineering industries can meet to exchange ideas and to fashion solutions to the very real and specific challenges of the Nigerian market.

An inaugural conference is to take place in Lagos in September/October 2019, the details of which will be published on the website in due course.

For projects below N1 billion Naira, the Federal Ministry of Works has a Federal Government Standard Form for Building Contracts in Nigeria (SFBCN) which is based on the JCT 1963 Private form, as revised in 1976. The current SFBCN is the 1990 edition as amended in 2006. However, when projects are carried out by private companies or by state entities in respect of private companies entering into agreements, the most popular standard form is the FIDIC family of contracts.

The absence of up to date, state of the art contracts which are specifically drafted for the Nigerian market is one of the gaps in knowledge and skill which SCL Nigeria hopes to help to fill. One of the principal aims of SCL Nigeria will be to bring together professionals in the construction and engineering industry with lawyers with the relevant local expertise to draft a family of standard form contracts, which will be drafted with the particular conditions of the Nigerian market at their core.

(ii) Adjudication and Prompt Payment

A common issue in all construction and engineering markets around the world is the issue of cash flow. The problems created by the failure of employers to pay main contractors and main contractors to pay sub-contractors retard the growth of this sector of the economy. The UK Government identified this as a problem in the mid-1990s in the Latham Report and this led to the present adjudication and prompt payment regimes which are encoded in the Housing Grants, Construction and Regeneration Act 1996 and the Scheme for Construction Contracts.

Other Commonwealth jurisdictions have copied the UK's example and introduced legislation which make provision for adjudication and prompt payment.

projects will be funded from banks and capital markets which will bring greater scrutiny of contractual arrangements. In addition, as the Nigerian economy develops it will be necessary to know more about what is going on in the construction industry and in particular on what basis people are contracting.

At present, where projects are funded by the World Bank either directly or through the IFC, or by the African Development Bank or other international multilateral institutions, such projects are usually carried out using the FIDIC family of contracts with amendments to suit the particular lending or donor institution. The World Bank standard form is used for World Bank assisted projects and the ADB standard form is used for ADB assisted projects. Both are derivatives of the FIDIC form.

Where projects are commissioned by state entities, the Bureau of Public Procurement (BPP) - which is the regulatory body responsible for monitoring, regulating, setting standards and developing the legal framework and professional capacity for public procurement in Nigeria - publishes a standard form used for government contracts that are above N1 billion Naira (approximately US\$4m). The BPP standard form is an adaptation of the World Bank standard form. It was first formulated in 2010, revised in 2011 and revised again in 2013.

SCL Nigeria was constituted with a board of trustees which included the then President of the Society of Engineers, the Past President of the Nigerian Society of Architects, the Past Director of the Bureau of Public Enterprises, the then President of the Nigerian Society of Quantity Surveyors and the Chairman of the only indigenous Nigerian company to have delivered and operated a major infrastructure project on a Build, Operate and Transfer ("BOT") basis.

The founding motivational principle driving the management committee of SCL Nigeria was to provide a forum in which professionals engaged in the construction and engineering industries can meet to learn, co-operate and exchange ideas.

Immediate Goals

SCL Nigeria was formed not just to provide a "talking shop" but to deliver a mechanism by which the immediate challenges facing the Nigerian construction and engineering industry can be addressed. To this end, the proposal for SCL Nigeria is that it should set itself three immediate and achievable goals:

(i) Standard Form Contracts

As the Nigerian economy grows and becomes more sophisticated there will be an increasing focus on projects which are funded privately or by state entities through capital raised from sources other than the governmental or quasi-governmental multilateral lenders or donors. This means more

The global constellation of Societies of Construction Law is well known. From its origins in the UK in 1983 with the founding of the original Society of Construction Law, the "SCL" is now a global franchise with associated societies in many common law, quasi common law and indeed entirely civil law jurisdictions.

There are SCLs in many jurisdictions which have strong historical ties to the United Kingdom and to the common law, such as Australia, New Zealand and Hong Kong. However, the global footprint of UK trained or affiliated lawyers and construction professionals has also seen the SCL spread to jurisdictions such as the Gulf and North America. In Europe, the umbrella European Society of Construction Law includes individual societies in 18 countries covering most of Western Europe but now with members as far East as the Ukraine.

The pioneer society on the African continent was SCL Egypt. This was followed by the formation of SCL Africa in 2013. SCL Africa is a South Africa based organisation which is focused on South Africa and neighbouring countries.

SCL Nigeria was incorporated in 2016 with the purpose of bringing Nigeria into the constellation of global SCLs by forming a society which is specifically tailored to address the challenges and opportunities of the Nigerian construction and engineering market.

Nigeria is the largest economy in Africa with a GDP of \$411 billion. Like much of the

continent, it has substantial infrastructure deficits across the board in everything from roads to power to communications to health care and education. It has a rapidly growing population which is estimated to be between 180 and 200 million and this population is young. Coupled with this is a rapidly growing middle class fuelling a demand for consumer goods and retail outlets.

All of this has translated into substantial growth in the construction industry. The large oil and gas industry, which contributes about 9% to the GDP, has resulted in a very well-established engineering sector.

Aims of the Society of Construction Law Nigeria

The aims of SCL Nigeria are:

- (i) To promote for the public benefit, education, study and research (and publication of the useful results of such research) in the field of construction and engineering law and related subjects in Nigeria.
- (ii) To encourage the development of knowledge within the legal, construction and engineering professions and the application of all aspects of construction and engineering law in Nigeria.
- (iii) To seek the enactment of appropriate Federal and State laws and the proper application of the same.