


BUSINESS CREATOR'S GUIDE



INVESTOR SERVICES		
GUIDE FOR BUSINESS CREATORS		
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BUSINESS CREATOR'S GUIDE

I. CHOICE OF LEGAL FORM

Since September 18, 1995, Senegal has been a member of the Organization for the Harmonization of Business Law in Africa (OHADA), which today brings together the 14 countries of the CFA franc zone, plus the Comoros and Guinea Conakry.

OHADA's main objective is to harmonize business law in Africa in order to guarantee, at the level of its member states, legal and judicial security for investors and companies and thus propel economic development and create a vast integrated market in order to make Africa a "pole of development".

The legal status of the company determines, very broadly, its life. It even influences the lives of the partners.

It is therefore important to choose the status that best suits you:

- the motivations and objectives of entrepreneurs;
- the socio-economic and legal context of the country;

Les formes juridiques en vigueur au Sénégal sont régies par l'Acte Uniforme de a relatif au droit des sociétés commerciales et du G.I.E.



These include in particular :

- **Sole Proprietorship (Registration of a Natural Person),**
- **Economic Interest Group (EIG)**
- **Limited Liability Company (LLC)**
- **Public Limited Company (PLC)**
- **General Partnership (GP)**
- **Limited Partnership (LP)**
- **Civil Company (commercial by its purpose),**
- **Simplified Joint-Stock Company (SAS).**




A°/ COMPARATIVE TABLE FOR THE CHOICE OF LEGAL FORM

FEATURES	LEGAL STATUS			
	SOLE PROPRIETORSHIP	S.A.R.L and S.U.A.R.L	S.A. and S.A.U	G.I.E
□ MINIMUM NUMBER OF PARTNERS	01	01	01	02
□ MINIMUM SHARE CAPITAL	None	Left to the choice of the partners	10,000,000 FCFA with 1/4 release to the Constitution and the balance within 3 years	None
□ CREDIBILITY FROM THIRD PARTIES	Very Low	Important	Very important	Weak
□ SCOPE OF THE LIABILITY OF THE PARTNERS	Unlimited (extended to the contractor's personal property)	Limited to the amount of the contributions (unless the manager personally guarantees)	Limited to the amount of contributions	Unlimited and supportive (unless otherwise agreed with third parties)
□ ELIGIBILITY AT THE CI OR EFE	YES	YES	YES	YES
□ COMMISSIONER TO ACCOUNTS	Without	Not required*	Obligatory	Without
□ WHAT LEADER	Entrepreneur	Manager (partner or not) appointed by the partners	Chief Executive Officer, or General Manager	President
□ METHOD OF TAXATION BENEFITS	One-time global contribution of up to 50 million CFA francs for services and trade IS optional	Corporate income tax (CIT) 30% of net profit	Corporate income tax 30% of net profit	Corporate income tax (IS) for the EIG or Income Tax (IR) for optional members
□ FLAT-RATE MINIMUM TAX	0 MFI: This is the minimum due if the result is loss-making	0.5% of turnover with a minimum of 500,000 and a maximum of 25,000,000 FCFA	0.5% of turnover with a minimum of 500,000 and a maximum of 25,000,000 FCFA	0

(*) Unless the capital exceeds 10,000,000 CFA francs or the turnover exceeds 250 million CFA francs or the permanent workforce exceeds 50 people

B°/ TABLE ADVANTAGES – DISADVANTAGES

LEGAL STATUS	BENEFITS	DISADVANTAGES
SOLE PROPRIETORSHIP	<ul style="list-style-type: none"> + No capital required at the time of creation + Fast and simplified incorporation formalities + Fairly low cost of incorporation + Flat-rate, incentive and very flexible tax regime. 	<ul style="list-style-type: none"> ⇒ Unlimited liability of the contractor. In the event of bankruptcy, the entrepreneur's assets are committed ⇒ Low credibility with partners: banks, suppliers, customers, etc. ⇒ Difficult access to credit
S.A.R.L and S.U.A.R.L	<ul style="list-style-type: none"> + No minimum capital required at the time of incorporation + Liability of the partners limited to contributions + Partners have the possibility of ensuring close control of the access of new partners to the company's capital + The company may continue to exist in the event of the death of one of the partners or the manager (unless otherwise stipulated in the articles of association) 	<ul style="list-style-type: none"> ⇒ Obligation to go through a notary for the constituent deeds (articles of association, declaration of regularity and conformity, etc.) ⇒ Partners may freely transfer their shares
S.A. and S.A.U	<ul style="list-style-type: none"> + Highly credible with third parties + High capacity to mobilize financing + The S.A. can call on public savings + Shareholders' liability limited to contributions + Possibility of paying up only a quarter of the capital at the time of incorporation + Possibility for the partners to freely transfer their shares 	<ul style="list-style-type: none"> ⇒ Fairly high minimum share capital ⇒ Very high incorporation fees ⇒ Very cumbersome administrative system (Board of Directors, Statutory Auditors) for new companies
G.I.E	<ul style="list-style-type: none"> + The EIG can be created with or without starting capital + The incorporation formalities are quite simple and quick + Flexibility in organization and operation + Possibility of transforming the EIG into a SARL 	<ul style="list-style-type: none"> ⇒ The sole aim of EIG is to implement, for a fixed period, all the means appropriate to facilitate or develop the economic activity of its members, to improve or increase the results of this activity ⇒ Low credibility with third parties, especially banks ⇒ Members of the EIG are jointly and severally liable for the debts of the EIG

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II. FORMALITIES FOR SETTING UP COMPANIES IN SENEGAL

Has. MANDATORY REGISTRATION FORMALITIES

There are 8 mandatory formalities for the incorporation of a company in Senegal:

1. production of an extract from the criminal record or a sworn statement, a template available at APIX, completed and signed by the manager;
2. drawing up notarial deeds (for companies);
3. deposit of capital with the notary or bank (for companies);
4. registration of articles of association (for companies and EIGs);
5. registration with the Trade and Personal Property Credit Register (RCCM);
6. registration with the NINEA;
7. declaration of the opening of an establishment to the Labour Inspectorate;
8. publication in the Journal of Legal Announcements (for companies).

NB: For foreigners: production of the criminal record of less than three (3) months from the country of origin or, failing that, sign a declaration of honour, duly completed (model available at APIX or at the Notary); He then has a period of 75 days, from the date of registration with the RCCM, to produce the criminal record of his country of origin.

Apart from obtaining the criminal record, drawing up the notarial deeds and depositing the capital, all the other formalities for setting up a company can be carried out, within 24 hours, at the APIX Business Creation Support Office (BCE).

B. MANDATORY POST-REGISTRATION FORMALITIES

Once the company has been registered with the BCE, additional procedures must be completed (information from the Centre for the Facilitation of Administrative Procedures).

☐ Declaration of tax existence:

To be carried out within 20 days of registration, at the level of the Tax Services Centre to which they are attached

☐ Registration with social institutions:


- Registration of employment contracts with the Inspectorate of Labour and Social Security
- Membership of the Social Security Fund
- Affiliation to the Institut de Prévoyance Retraite du Sénégal (IPRES)

☐ Other administrative formalities (see CFPA):

The exercise of certain activities is subject to conditions of access (issuance of permits, authorizations, licences) or operating conditions with which it is mandatory to comply.

EXAMPLE OF MANDATORY POST-CREATION FORMALITIES:

Road transport approval; Travel, Tourism and Tourist Transport Agency License; Authorization to open a restaurant; Authorization to open a security company; FRA authorisation for the manufacture and sale of food products; Gold import and export authorization;

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III. COMPOSITION OF THE COMPANY INCORPORATION FILE

A. FOR REGISTRATION OF A SOLE PROPRIETORSHIP

It can be created at the APIX OFC within 48 hours.


➤ **The documents to be provided are:**

1. Two copies of the national identity card for nationals;
2. Two copies of passport for foreigners;
3. An extract from the criminal record dated less than 3 months or a sworn statement, available at APIX, completed and signed by the applicant;
4. An extract from the criminal record of the country of origin dated less than 3 months for foreigners;
5. A certificate of residence (issued by the Police or the Town Hall);
6. A copy of the marriage certificate (if applicable);
7. Two tax stamps of 2,000 FCFA (for the RC and the NINEA).

➤ **The incorporation fee is:**

- **10,000 CFA francs** for registry fees for sole proprietorships without a trade name;
- **20,000 CFA francs** for sole proprietorships with a trade name, including:
 - 10,000 CFA francs for the registration of the trade name with the African Intellectual Property Organization (OAPI);
 - 10,000 FCFA for the costs of the registry.

NB: Applications must be submitted to the BCE between 8 a.m. and 11 a.m


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B. For registration of SARL & SA

C. For EIG registration

The creation of the EIG can be done at the level of the APIX BCE in 48 hours.

- **The procedure for the formation of capital companies is carried out at the ECB as follows:**
 - Deposit of the capital with a Notary and establishment of the articles of association which must be signed by all the founding partners or their representatives justifying a related power of attorney. ;
 - The Notary will then submit the file online through the electronic platform for the creation of a company (Orbus-entreprise), with a view to the registration of the deeds of incorporation and the registration of the company (RC, NINEA, Declaration of Establishment) **within 24 hours**;
 - Legal announcements relating to the incorporation and modification of companies are made online, on the BCE's website (<https://www.creationdentreprise.sn>) or by the notary in an authorised newspaper.
- **The documents to be provided for the incorporation of an SARL or an SA are:**
 1. A sworn statement, available from the notary, completed and signed by the Manager or his criminal record dated less than 3 months;
 2. The record of the country of origin (for foreigners) less than 3 months old;
 3. A photocopy of the partners' identity card;
 - + The articles of association, the minutes of incorporation and the declaration of conformity are drawn up by the notary.
 - + It should be noted that the valuation of contributions in kind for SARLs and SAs must be made by a contribution auditor chosen from the list of auditors. For the SA, the use of the statutory auditor for the valuation of contributions in kind is mandatory regardless of their value. For the SARL, only contributions with a value of more than five million francs must be evaluated by a contribution auditor.
 - + In the event of the incorporation of an SARL, the capital must be deposited with the Notary or in a bank account, "Company account in the process of being set up". The account is unblocked immediately after the company is registered with the RCCM.

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- **The documents to be provided for the constitution of an EIG are:**
1. Three printouts of the statutes, the rules of procedure and the minutes of the constitutive General Assembly;
 2. A copy of the members' identification documents (identity cards or passport for foreigners);
 3. An extract from the criminal record of the director and the treasurer dated less than three (3) months, or a sworn statement, available at APIX, completed and signed;
 4. An extract from the criminal record of less than three (3) months from the president's country of origin for foreigners;
 5. Two tax stamps of 2,000 CFA francs.
- **The costs of setting up an EIG are 54,000 CFA francs made up of:**
- registration fees for an amount of 20,000 CFA francs,
 - incorporation fees for 30,000 CFA francs, including:
 - 20,000 CFA francs for the costs of protecting the company name at the OAPI;
 - 10,000 FCFA for the costs of the Registry.

NB: Applications must be submitted to the BCE between 8 a.m. and 11 a.m

D. OTHER LEGAL FORMS

There are other types of companies, less well known, but provided for by the OHADA Uniform Act on Commercial Companies and EIGs and by the Code of Civil and Commercial Obligations (COCC) of Senegal.

❖ **The General Partnership (SNC):**


It is a company in which the partners have an indefinite and joint responsibility. The partners, unlike the partners of capital companies, have the status of trader. The very high level of risk explains why this type of company is almost non-existent.

❖ **The Limited Partnership (SCS):**

It is a new form of company provided for by the AUSCG. In an SCS, two categories of partners coexist: the "general partners" who are indefinitely and jointly and severally liable for the company's debts, and the "limited partners" who are responsible for the company's debt within the limits of their contributions.

❖ **civil society:**

This type of company, provided for by the COCC, can constitute a legal form for all activities that are not commercial, such as professional civil partnerships (SCP) for liberal professions or real estate companies (SCI) for real estate or commercial activities.

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❖ **The Simplified Joint Stock Company (SAS):**

It is a company set up by one or more partners and whose articles of association freely provide for the organisation and operation. The partners of the SAS are only liable for the company's debts up to the amount of their contributions, and their rights are represented by shares, and the amount of capital is set by the articles of association.

❖ **The Cooperative Society (Simplified or with a Board of Directors):**

It is a form of company provided for by the AUSCG whose register (RS – COOP) is entrusted to the Ministry in charge of Agriculture.

❖ **Secondary registrations for existing companies whose registered offices are established abroad :**

Possibility of opening a Branch, for a renewable period of two years, with the authorization of the Ministry of Commerce.

❖ **Secondary registrations for existing companies:**


Possibility of opening a Representative Office or a Liaison Office.

IV. PROTECTION OF INTELLECTUAL PROPERTY

Classification of intellectual property rights into two categories:

- ❑ Those that fall under the industrial property that are protected in Senegal through the Senegalese Agency for Industrial Property and Technological Innovation (ASPIT) which is the national liaison structure of the African Property Organization (OAPI):
 - industrial creations (patents for inventions, industrial designs, utility models, plant varieties);
 - and distinctive signs (trade names, trademarks and geographical indications).
- ❑ Those that fall under the literary and artistic property that are protected in Senegal at the level of the Senegalese Society of Copyright and Neighboring Rights (SODAV):
 - Copyright (rights of musicians, authors of novels, authors of cinematographic works, etc.)
 - and related rights (rights of performers, producers of phonograms or videograms, etc.).

The TRADE NAME, which is the name under which a natural or legal person designates the business or business that he or she operates, in order to identify it in its relations with customers, is registered at the time of registration of the company with the BCE (Natural Person, EIG, Company).

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