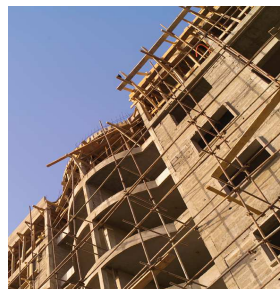


# THE ENTREPRENEUR'S GUIDE



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# THE ENTREPRENEUR'S GUIDE

## I. SELECTION OF THE LEGAL ENTITY TYPE

Senegal has, since 18 September 1995, been member of the Organization for the Harmonization of Business Law in Africa (OHADA), which now groups the 14 countries of the CFA zone in addition to Comoros and Guinea Conakry.

OHADA mainly seeks, on the one hand, to harmonize the economic law in the member states and remedy the legal and judicial insecurity, on the other.

The legal status of a company determines, to a large extent, its life, and even influences the life of the associates.

It is therefore important to opt for a status that corresponds most to:

- Partners' motivations and objectives;
- The country's socio-economic and legal context.

The legal entity types in force in Senegal are governed by the OHADA uniform act relative to the rights of trading companies and Economic Interest Groups. These entity types are:

- Single proprietorship;
- Economic Interest Groups (GIE);
- Limited Companies (SARL)
- Business corporations (SA)
- Co-partnership (SNC)
- Limited partnership (SCS)

Each corporate form has its administrative, tax, social and financial characteristics. The comparative chart below presents the different corporate types.

## COMPARATIVE CHART FOR LEGAL ENTITY TYPE SELECTION

Legal Status	Single proprietorship	Limited Companies (SARL)	Business corporation (SA)	Economic Interest Groups (GIE)
Minimum number of partners	01	01	01	02
Minimum startup capital	0	1,000,000 CFA francs minimum to be paid up in full at incorporation	10,000,000 CFA francs minimum; ¼ of the capital to be paid up at incorporation, the balance within three(3) years	0
Credibility with third parties	Very low	Important	Very important	Low
Partner's liability	Unlimited (extended to the entrepreneur's personal properties)	Limited to the contributions	Limited to the contributions	Unlimited and joint and several (unless otherwise agreed with third parties)
Eligibility to CI or EFE	YES	YES	YES	YES
Registered auditors	None	Not mandatory*	mandatory	None
Management	Entrepreneur	Manager (partner or not) appointed by the associates	General Manager or Managing Director	Chairman
Taxation on profits	Unique Global Contribution to the tune of 50 millions of CA for services and traded goods  IS (corporate income tax) on option	Corporate Income Tax (IS) 30% of the net profit	Corporate Income Tax (IS) 30% of the net profit	Unique Global Contribution to the tune of 50 millions of CA for services and traded goods  (or IS on option)
Minimum flat tax (IMF)	0 IMF : minimum tax payable in case of loss-making results	Between 500,000 and 1,000,000 CFA francs (depending on the turnover)	Between 500,000 and 1,000,000 CFA francs (depending on the turnover)	0

(\*) If the capital exceeds 10,000,000 CFAF or if the turnover exceeds 250 million CFA, or in case the staff exceeds 50 workers



**ADVANTAGES – DRAWBACKS CHART**

Legal status	Advantages	Drawbacks
<b>Single proprietorship</b>	<ul style="list-style-type: none"> <li>• No minimum capital required for start up;</li> <li>• Rapid and simplified incorporation formalities ;</li> <li>• Low incorporation costs ;</li> <li>• Flat tax regime, incentive and very flexible.</li> </ul>	<ul style="list-style-type: none"> <li>• Unlimited liability of the entrepreneur. In case of bankruptcy, the entrepreneur’s liability is engaged;</li> <li>• Low credibility vis-à-vis third parties: banks, suppliers, clients ...</li> <li>• Uneasy access to credit.</li> </ul>
<b>Limited Companies (SARL)</b>	<ul style="list-style-type: none"> <li>• Minimum capital required not very high (1,000,000 CFAF)</li> <li>• Limited liability: associates are liable to the tune of their contributions;</li> <li>• Associates have the possibility of exerting a close control on new partner’s access to the company’s capital ;</li> <li>• The company will still exist in case of the demise of one of the partners or the manager (unless otherwise stipulated in the Articles).</li> </ul>	<ul style="list-style-type: none"> <li>• The minimum capital required blocks certain initiatives ;</li> <li>• Obligation to refer to a notary for the deeds of incorporation (statutes, statement of compliance...);</li> <li>• High incorporation charges (over 40 percent of the minimum capital)</li> <li>• Associates cannot freely transfer their shares.</li> </ul>
<b>Business corporation (SA)</b>	<ul style="list-style-type: none"> <li>• Very credible with third parties;</li> <li>• Great funds mobilization capacity (One S.A can call for public savings);</li> <li>• Limited risks to contributions ;</li> <li>• Possibility of only paying up one quarter of the capital;</li> <li>• Possibility for partners to freely transfer their shares.</li> </ul>	<ul style="list-style-type: none"> <li>• High corporate capital ;</li> <li>• High incorporation charges ;</li> <li>• Heavy management system (Board, auditors...) for new companies</li> </ul>
<b>Economic Interest Groups (GIE)</b>	<ul style="list-style-type: none"> <li>• Possibility of creating a GIE without a startup capital ;</li> <li>• Flexible incorporation formalities ;</li> <li>• Flexible organization and operation ;</li> <li>• Flat tax regime, incentive and very flexible</li> </ul>	<ul style="list-style-type: none"> <li>• GIE members are supposed to have an activity. The GIE itself is not meant to have a goal of seeking and sharing profits, but it is rather aimed at « putting in place all the means likely to facilitate and develop the economic activity of its members, and improving or raising the wherewithals of this activity;»</li> <li>• Low credibility vis-à-vis third parties, mainly banks ;</li> <li>• GIE members are jointly and severally liable for the group’s debts.</li> </ul>



Legal Status		Advantages	Drawbacks	Procedure	Taxation
Sales Agency		<ul style="list-style-type: none"> <li>Flexibility</li> <li>Contracts are signed and executed by the parent store</li> </ul>	<ul style="list-style-type: none"> <li>Long recognition procedure</li> <li>Impossibility to carry out commercial operations</li> <li>Difficult recruitment of the support staff</li> </ul>	Headquarter agreement with the Foreign Ministry	Since the agency is not supposed to undertake commercial operations in Senegal, it is therefore not under a fiscal regime
Branch		<ul style="list-style-type: none"> <li>Flexible as opposed to the subsidiary</li> <li>Commercial structure</li> <li>Strong ties with the parent store</li> </ul>	<ul style="list-style-type: none"> <li>A life time of maximum 2 years at the end of which the company is obliged to change its status or stop operating</li> </ul>	Two stages : <ul style="list-style-type: none"> <li>Statutes established by the Notary (provide the manager's police clearance)</li> <li>Company recorded and registered by BCE</li> </ul>	30 percent of the net profit
Subsidiary	S.A.R.L	<ul style="list-style-type: none"> <li>Rather credible with third parties;</li> <li>Minimum capital required not very high (1,000,000 CFAF) ;</li> <li>Limited liability: Associates are only liable to the tune of their contributions;</li> <li>Possibility for associates to exert a close control of new partners' access to the capital;</li> </ul>	<ul style="list-style-type: none"> <li>Legal independence between the parent store and the subsidiary.</li> <li>On the operational front, nothing precludes the subsidiary from collaborating with the parent store in the execution of the contracts</li> </ul>	Two stages: <ul style="list-style-type: none"> <li>Statutes established by the Notary (provide the manager's police clearance)</li> <li>Company recorded and registered by BCE</li> </ul>	30 percent of the net profit
	S.A.	<ul style="list-style-type: none"> <li>Very credible with third parties ;</li> <li>Great funds mobilization capacity (S.A can call for public savings) ;</li> <li>Risk limited to contributions ;</li> <li>Possibility of only paying up one quarter of the capital;</li> <li>Possibility for associates to freely transfer their shares.</li> </ul>			



## II. INCORPORATION FORMALITIES IN SENEGAL

### A. mandatory formalities

There are eight (8) mandatory incorporation formalities in Senegal:

- Presentation of the police clearance (for the Manager); foreigners must, in addition to that, present the police records of the country of origin or any other equivalent document;
- Establishment of notarial documents (for companies) ;
- Capital build-up with the Notary or the Bank (for companies)
- Registration of the Statutes (for companies and GIES) ;
- Trade Register and Chattel Loan (RCCM) registration;
- NINEA registration;
- Incorporation Statement;
- Public notice (for companies).

It is currently possible to obtain the police record in a maximum of 24 hours thanks to the circular letter n° 1006 MJ/ACS of 14 March 2007 issued by the Ministry of Justice.

***Apart from the delivery of the police record, the establishment of notarial acts and the capital build-up, all the other incorporation formalities can be done in 24 hours at the Incorporation Support Office (BCE) within APIX.***

### B. Single proprietorship

The documents required are the following:

- 02 copies of the National ID card or the passport (for foreigners)
- 02 copies of the consular card;
- Police clearance of less than 3 months;
- The police record of the country of origin for foreigners of less than 3 months ;
- Certificate of residence;
- Marriage Certificate (if any)
- Two revenue stamps of 2000 CFAF (for the Trade Register and the NINEA)

The incorporation charges are:

- 10,000 CFAF worth of registry fees for single proprietorship without trade name;
- 20,000 CFAF for single proprietorship with trade name, broken down as follows:
  - 10,000 CFA for the registration of the trade name with the African Intellectual Property Organization (AIPO) ;
  - 10,000 CFAF for the registry fees.



### **C. Limited Companies (SARL) & Business Corporation (SA)**

The incorporated company establishment procedure is divided in two stages:

- The establishment of the Statutes at a Notary and the deposit of the capital (within 24 hours). The Statutes must be signed by all the founding associates or their duly represented proxies;
- The recording of the deeds of incorporation and the registration of the company at the Incorporation Support Office (BCE) of APIX.

The public notices related to incorporation and company modifications are made either online on the web site of the Ministry of Economy and Finance by BCE, or by the notary in the authorized newspaper.

The documents required for the creation of a Limited Company (SARL) or a Business Corporation (SA) are the following:

- The Manager's police clearance of less than 3 months ;
- The police record of the country of origin (for foreigners) of less than 3 months;
- The photocopy of partners' ID card;
- The Statutes;
- Minutes of the incorporation;
- The Statement of compliance.

The statutes, the minutes of the incorporation and the statement of compliance are established by the notary.

It should be noted that the assessment of the contributions in kind for SARL and SA is done by an auditor selected on a list of comptrollers. For the SA, the resort to the comptroller for the assessment of the contributions in kind is mandatory whatever their value, while for the SARL, only the contributions amounting to more than five (5) million CFAF must undergo assessment by an auditor.

The capital must compulsorily be deposited with a notary or in a bank account titled "account of a company being set up." The account is unfrozen immediately after the company is registered at the RCCM.

The incorporation charges are essentially composed of:

- Registration fees:
  - 25,000 CFAF for a Capital ranging from 1,000,000 to 10,000,000 CFAF;
  - 1 percent of the Capital if the latter is above 10,000,000 CFAF;

NB: In case of contribution in real estate, there is a tax surcharge worth 3 percent of the contribution value for the registration fees.

- Notary charges:
  - For SARL, the charges stand at about 400,000 CFAF;



- For SA, they stand at about 700,000 CFAF.

#### **D. Economic Interest Groups (GIE)**

The Economic Interest Group (GIE), like a Single proprietorship, can be created at the Incorporation Support Office (BCE) of APIX.

The Statutes, by-laws and minutes of the constituent General Assembly are drafted by the founders, but must necessarily be registered at the “Impôts et Domaines” (***Tax and State-owned Land Department***). Standard forms of Statutes, By-laws and Minutes are available at BCE.

Following are the documents required for the creation of a GIE:

- 03 copies of the Statutes, By-laws and Minutes of the constituent General Assembly;
- 01 copy of members' ID card ;
- The Chairman's police clearance of less than 3 months ;
- 11 revenue stamps of 2,000 CFAF : 9 of them to be affixed on each page of the Statutes, the by-laws and the minutes for registration and 2 for the Trade Register and the NINEA

The costs are broken down as follows:

- Registration fees amounting to 35,000 CFAF;
- Incorporation fees worth 30,000 CFAF divided as follows:
  - 20,000 CFAF for the trade name protection at AIPO;
  - 10,000 CFAF for the registry fees.

NB: There are other types of company, less known, but envisaged under the OHADA uniform act on trade companies and GIEs and by the Civil and Trade Obligations Code (COCC) of Senegal.

These are:

- The Co-partnership (SNC): it is a company in which the associates have an undefined and joint and several liabilities. The associates, unlike partners of incorporated companies, have the capacity of traders. Due to its high level of risk, this type of company is almost non-existent;
- The Limited Partnership (SCS): it is a new form of company planned under AUSCG. There are two categories of associates In a SCS: the “General Partners” that are indefinitely and jointly and severally liable for the company's debts, and the “Limited Partner” who are liable for the partnership debt to the extent of their contributions;
- The Professional Civil Society (SCP): this type of company is envisaged under COCC.