

SENEGAL¹

I. Overview of Country

Senegal is one of Africa's most politically and economically stable countries. Since independence from France in 1960, Senegal has been a functioning democracy. The country's legal system is based on the French civil law system and judicial review of legislative acts. The judicial language used in the country is French and the main source of law in the country is the new constitution of 2001.

Article 8 of the Senegalese Constitution guarantees the freedom of association.² Article 12 also provides that each individual has the right to create an association. The country recognizes many different forms of association. In the case of for-profit organizations, the laws recognize partnerships, joint-stock companies, and limited liability companies. Senegal also recognizes three different forms of not-for profit organizations: associations, non-governmental organizations, and foundations. Each of these categories will be discussed in further detail below.

II. Registration Procedures

A. For-Profit Organizations

Senegal's company and securities law is set at the community level, not at the national level. Senegal is part of the West African Monetary and Economic Union (Etats Membres de l'Union Economique et Monétaire de l'Afrique de l'Ouest - UEMOA). The UEMOA zone has adopted the Organization for Harmonization of Business Laws in Africa (OHADA) legal framework. As such, the main statute governing companies in Senegal is the OHADA Uniform Act on Company Law (the Corporate Uniform Act), first adopted in 1997 and reformed recently, in 2014. This memorandum analyzes both the general requirements of the Uniform Act as well as the specific administrative requirements implemented internally, and recently modified.

a. Laws

1. General Requirements of the OHADA Uniform Act Applicable to Every Type of Organization

Pursuant to Article 4 of the Corporate Uniform Act, a for-profit organization is created by two or more founders who stipulate, by agreement, to allocate assets (either cash or in kind) or industry to an activity in order to share benefits or to profit from the savings that could result therefrom.

The Corporate Uniform Act recognizes several types of for-profit organizations, including, but not limited to, limited liability companies and joint stock companies.³ The by-laws are either notarized or

¹ The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association.

² Available at: http://www.gouv.sn/IMG/pdf/constitution_sn.pdf.

³ Corporate Uniform Act, Article 6(2).

produced through other forms allowing guarantees of authenticity in the state of the seat of the corporation.⁴

The bylaws must specify, among other items:

- The nature of the corporation.
- The name of the corporation.
- The scope of the corporation's activity.
- The corporation's seat.
- The length of time of the activity.

Except in case of joint ventures, every corporation must be registered with the Trade Registry⁵, and for-profit organizations will acquire legal capacity as from the date of the registration with this entity.⁶ Once the registration formalities are completed, within 15 days, a notice of registration must be published in an official publication for legal announcements in the member state where the seat of the corporation resides.⁷ The notice, signed by the notary public who has reviewed the by-laws or the founding member(s), must address topics such as:

- The purpose of the corporation.
- The length of the corporation.
- The amount of cash contributions and contributions in kind.
- The number of shares issued in consideration of contributions in cash, in-kind contributions, and industry contributions.
- The surname, first names, and addresses of the indefinite associates of the social debts.⁸

2. Specific Administrative Requirements As Implemented by Senegalese Law

In 2000, the government created the Investment Promotion and Major Project Agency (APIX), directly attached to the president's office, with the aim of facilitating registration procedure in Senegal.⁹ The law creates what it calls the "APIX Single Window," creating a one stop shop, which offers a single contact person who performs all the registration procedure in one place. The APIX Administrative Procedures Facilitation Centre (CFPA) is a major innovation, grouping the Office of Administrative and State Procedures (BFAD) and the Business Creation Support Office (ECB). Senegal recognizes several types of for-profit organizations: sole limited liability companies, limited liability companies, joint-stock companies, and economic interest groups. Registration requirements are, for the most part, similar for each type of organization.

Apart from providing criminal records, establishing deeds and forming capital, all other formalities for the creation of a company can be made in 24 hours at the APIX Business Creation Support Office (BCE).

⁴ Corporate Uniform Act, Article 10.

⁵ Corporate Uniform Act, Article 97.

⁶ Corporate Uniform Act, Article 98.

⁷ Corporate Uniform Act, Article 261.

⁸ Corporate Uniform Act, Article 262.

⁹ Decree n° 2000-562 of 10 July 2000, for the creation of Investment Promotion and Major Projects Agency.

There are 8 steps to complete:

- Provide an extract of the managers' criminal record. Foreigners should, in addition, provide a criminal record from their country of origin or equivalent document. In Senegal, it is issued within 24 hours.
- Provide deeds (for companies).
- Provide proof of capital formation with a notary or a bank (for companies).
- Filings of the articles of organization (for corporations and GIE).
- Filings with Registry of Commerce and Movable Assets (RCCM).
- Filings with the tax registry to obtain a NINEA.¹⁰
- Declaration of Establishment.
- Publication in the legal publication.

The fees for registration vary depending on the type of company: FCFA 10,000 to FCFA 25,000 for partnerships; FCFA 25,000 or one percent of the share capital (if the share capital exceeds FCFA 10,000,000) for LLCs and joint stock companies; FCFA 29,000 for the Economic Interest Group (EIG).

ii. Case Law

No relevant case law could be located.

b. De-Registration Procedures

i. Laws

Pursuant to Article 200 of the Uniform Act, an organization is dissolved when:

- The duration for which it was created has ended;
- The accomplishment or the extinction of its purpose;
- The repeal of the corporation agreement;
- By a decision of the partners based on the requirements for amending the by-laws;
- By a judicial decision of anticipatory dissolution, based on a request of a partner for good reason, notably for non-performance of a partner's obligations or in case of dissension amongst partners that impedes the good functioning of the corporation;
- Following a judicial decision ordering the liquidation of all of the corporation's assets;
- For any other cause set forth in the bylaws.¹¹

The dissolution is published by a notice in an official gazette authorized to publish legal notices at the seat of the corporation, by the filing at the commercial register of the documentation deciding or establishing the dissolution, and by the publication of the corporation's entry in the commercial register.¹²

ii. Case Law

¹⁰ Identification number

¹¹ Corporate Uniform Act, Article 200.

¹² Corporate Uniform Act, Article 202. See also generally Uniform Act, Articles 203 et seq.

No relevant case law could be located.

B. Not-For Profit Organizations

Article 8 of the Senegalese Constitution guarantees the freedom of association.¹³ Article 12 also provides that each individual has the right to create an association. Senegal recognizes three types of not-for profit organizations: associations, non-governmental organizations, and foundations. Associations are the most common and are governed by the Civil and Commercial Obligations Code (“CCOC”).¹⁴ Non-governmental organizations are governed by a special decree.¹⁵ Foundations are also governed by a specific law.¹⁶ The law also recognizes a special status for foreign associations, governed by the COCC.¹⁷

a. Laws

1. Associations

Before starting the registration process, the members of the contemplated association must hold a General Assembly and (1) decide the goal and the purpose of the association; and (2) enact the by-laws of the association.

Then, the constituents must provide the Ministry of the Interior with the following:

- Four copies of the Minutes of the First General Assembly (discussed above).
- Four copies of the by-laws (each page of the by-law must be stamped with a FCFA 1,000 stamp fee).
- Four copies of the list of the founding members.
- Four copies of the elected board members.

Then, the constituents are called by the police who will investigate their moral character. After the investigation is complete, the Ministry will provide an official receipt evidencing the official constitution of the association. Refusal by the Ministry to approve the constitution of the association must be motivated and supported by sufficient grounds. The constituents can contest the refusal before the State Council (the Supreme Administrative Court).

2. Non-Governmental Organizations

Only associations that have been registered as such for two years can be given the status of a non-governmental organization. The registered association must send a letter to the Ministry of the Interior and must provide a report of its activities for the last two years. The application must also provide the following:

- Two copies of the association’s by-laws.
- The official aforementioned receipt evidencing the constitution of the association; if it is a foreign association, the equivalent issued by the country of origin.

¹³ Available at: http://www.gouv.sn/IMG/pdf/constitution_sn.pdf.

¹⁴ C.C.O.C., Articles 811 et seq. Available at: <http://www.droit-afrique.com/images/textes/Senegal/Senegal%20-%20Code%20des%20obligations%20civiles%20et%20commerciales.pdf>

¹⁵ Decree n° 966-103 of February 8, 1996.

¹⁶ Law No. 95-11 of April 7, 1995.

¹⁷ C.C.O.C. Articles 823 et seq.

- A list of the board members, indicating their age, nationality, and address.
- A memorandum presenting the association and explaining its activities.
- A “business plan” disclosing the prospective sources of financing of the association.

Then, the Ministry will examine the application and provide its approval or denial within two months. The approval is given either by the Woman Ministry, the Family Ministry, or the Social Development Ministry. The law does not provide any redress mechanism, however, in case of denial. As explained throughout this memorandum, non-governmental organizations have a special fiscal status and are exempt from certain type of taxes. Further, one of the biggest advantages provided by the status of a non-governmental organization is for its foreign constituents (when the non-governmental organization is foreign), as they and their families will be provided visas more easily.¹⁸

3. Foundations

Foundations require a prior agreement from the Ministry of Finance. The application must provide the following documentation:

- The foundation’s b -laws.
- The name of foundation.
- The headquarter of the foundation.
- A list of the foundation’s constituents and their address.
- The goal and the purpose of the foundation.
- The amount of the initial funding.
- A certificate attesting that the funds have been locked.

The Ministry of Finance has to give its approval or denial within one month. The funds must be deposited in a bank in Senegal until the foundation acquires the legal capacity. A special decree issued by the government expressly creates the foundation and will provide the foundation with legal capacity.

4. Foreign Associations

Foreign associations are associations incorporated abroad, or associations incorporated in Senegal when either: (a) one-fourth of its members are foreign nationals, or (b) one-half of the board members are foreign nationals. Foreign associations must have a representative/agent in Senegal. These agents will fill out an application to register the foreign association with the Ministry of Interior. Note that foreign associations are not only subject to the aforementioned police investigation, but also to a “special” investigation conducted by the police to ensure security. The constituents can contest the refusal before the State Council (the Supreme Administrative Court).

ii. Case Law

No relevant case law could be located.

b. Deregistration procedures

i. Laws

¹⁸ Decree No. 96103 of February 8, 1996, Article 11.

A not-for profit organization ends in the following situations:

- A unanimous decision of its members.
- The occurrence of a special event provided for in the by-laws.
- A judicial decision when:
 - The purpose of the association is against with the law.
 - If the association is in fact a “for-profit” organization.

Associations cannot be dissolved by the government. However, foundation and non-governmental organizations can be dissolved.

No publication formalities are required.

ii. Case Law

No relevant case law could be located.

C. Analytical Comparison

Senegalese law largely favors the registration of for-profit organization over not-for profit organizations. Registration of for-profit organizations is not subject to government approval and will take, at the most, 48 hours. Not-for profit organizations are subject to government approval and to prior police investigation. The registration process takes up to a month and foundations and non-governmental organizations can also be dissolved by governmental decree.

III. Tax Laws

A. For-Profit Organizations

a. Laws

Companies domiciled in Senegal are subject to corporate tax on their worldwide income, while nonresident companies are in general subject to tax on income derived within the country. A company is liable to a minimum tax in the year which it makes a loss or where its taxable income does not result in any corporate tax. The minimum tax payable is based on the turnover realized by the company and is payable on or before 15 February following the financial year when all companies will be making their first payment for corporate tax.

LLCs and joint stock companies are subject to a 25 percent tax rate on their corporate income. Partnerships are subject to capital gain taxation, taxed at the same rate as personal income taxation, which can be up to 40 percent.

Value Added Tax (VAT) is levied at a rate of 18 percent on transactions (supply of goods and services) in Senegal by persons who, either regularly or on a casual basis, purchase goods for resale or carry on activities other than those relating to agriculture. All activities except banking, insurance, education and farming activities are included in the scope of the tax. VAT payers who are non-residents are required to appoint a resident representative to be responsible for the payment of the VAT obligations and payments.

Registration fees are due on real estate transactions at a rate of 10 percent . A rate of five percentis due on leasing contracts for business use. Senegal also levies taxes on dividends at a 10 percent rate, as well as on royalties at the same rate of personal income (up to 40 percent).¹⁹

Corporations in Senegal are eligible for the following deductions: deduction of reported profits from half of the expenses undertaken during the year with respect to real estate or securities in real estate (limited to 50 percent of the taxable profits realized, with the outstanding balance deferred during eight years). The percentage of authorized deductions is increased to 30 percent for investments in the sectors of solar and wind energy without surpassing an amount equivalent to 25 percent of the taxable profits of the year. Capital gains realized during the business activity is exempted provided it is reinvested in real estate within a period of three years. A deduction, in excess of the depreciation, is provided for the renewal of tools and material. This provision is calculated according to an annual indices taking into consideration the inflation.²⁰

Senegal has set up several tax incentives in order to stimulate investment, provided for in the investment code.²¹

- New enterprises and extension projects
Custom duty exemptions (three years)
VAT suspension (three years); and
The tax credit of 40 percent for eligible investment but it is capped to 50 percent of the tax profit and should be applied within five years from the investment.
- Special regime is applicable to approved export firms
 - Approved export firms are obliged to export 80 percent or more of their turnover. The benefits of this regime remain valid for a period of 25 years and can be renewed. The corporate tax rate is 15 percent;
 - Exemption from customs duties and duty stamps on utilitarian vehicles and tourism vehicles and means of transportation clearly intended for production;
 - Exemption from taxes based on salaries paid by companies;
 - Exemption from all registration and stamp duties when registering a company and modifying its Articles of Association;
 - Exemption from patent fee, property tax on constructed and unconstructed property, and from the license fee; and
 - Exemption from the taxes on Income for Stocks and Shares drawn by the firm on the dividends distributed.

5. Reduction tax for export

- Industrial, agricultural and teleservices companies that export at least 80 percent of their production are allowed to deduct 50 percent of their taxable income in the calculation of income tax. To receive this discount, companies must prove the export is effective and the repatriation of the revenues into Senegal;
- Indirect exports are excluded in the determination of the turnover; and

¹⁹ For more information, see: <http://www.kpmg.com/Africa/en/KPMG-in-Africa/Documents/2014%20Fiscal%20Guides/Fiscal%20Guide%20Senegal.pdf>.

²⁰ For more information, see. <https://en.santandertrade.com/establish-overseas/senegal/business-environment>

²¹ Investments Code, Article 19.

- Mining and oil companies are excluded from this provision.

b. Case Law

No relevant case law could be located.

B. Not-For Profit Organizations

a. Laws

Associations, non-governmental organizations and foreign organizations are not subject to corporate tax, and their members are not subject to capital gain taxes (since they are not acquiring any capital gain from their activity in the association). Foundations, however, are subject to corporate taxation when they engage in commercial transactions. Donations made to a foundation are not subject to taxation, as long as the foundation is pursuing its not-for profit objective.²²

Not-for profit organizations are subject to the VAT. However, some transactions are exempted from the VAT, such as the acquisition of goods necessary to achieve the goal and purpose of the organization.

b. Case Law

No relevant case law could be located.

C. Analytical Comparisons

Senegalese tax laws largely favor not-for profit organizations over for-profit organizations in terms of taxation, by exempting not-for profit organizations from paying corporate taxes, taxes on capital gains, and, in some instances, VAT.

IV. Financial Transaction Laws

A. For-Profit Organizations

a. Foreign Investment/Foreign Funding Laws

i. Laws

Foreign investments are governed by the Investment Code, enacted in 2004.²³ Senegal, for the most part, welcomes foreign investment. There are no barriers to 100 percent ownership of businesses by foreign investors in most sectors. Some exceptions exist for sectors such as water, electricity distribution, and port services, where the government and state-owned companies maintain responsibility for most physical infrastructure and some services.

A law to enhance transparency in public procurement and public tenders entered into force in 2008, establishing a Public Procurement Regulatory body (ARMP) that publishes annual reviews of government public procurement contracts. The Government of Senegal enacted a Public Private

²² Decree No. 94-415 of April 7, 1995, Article 16.

²³ Available at: <http://www.droit-afrique.com/images/textes/Senegal/Senegal%20-%20Code%20des%20investissements.pdf>.

Partnership Law in 2014 to facilitate expedited approval of public-private partnerships for projects that include a minimum share of domestic investment.²⁴

Senegal has developed a strategic plan, Plan Senegal Emergent (PSE), which includes a priority investment plan for 2014-2018. It focuses on priority sectors including agriculture, mining, energy, tourism and infrastructure. The PSE includes 27 priority projects and 17 economic reforms intended to reinforce the enabling environment for private sector investment. The government has indicated that it will further focus initial efforts on a handful of priority projects and reforms. The government has established a delivery unit in the President's office to coordinate and monitor implementation of investment projects by line Ministries.²⁵

Senegal allows foreign investors equal access to ownership of property and does not impose any general limits on foreign control of investments. Senegal's Investment Code includes guarantees for equal treatment of foreign investors, including the right to acquire and dispose of property.²⁶ There is no provision in Senegalese law permitting domestic businesses to adopt articles of incorporation or association that limit or control foreign investment. There is no pattern of discrimination against foreign firms making investments in Senegal.

ii. Case Law

No relevant case law could be located.

b. Political Contribution Laws

i. Laws

Political contributions are not legislated by Senegalese Laws, which raises several concerns, especially in terms of corruption. Therefore, nothing bars for-profit organizations from providing political contributions.

The APNAC²⁷ has recently submitted a bill to the Senate, proposing to legislate political contributions. According to the first chapter of the bill, for-profit organizations are prohibited from providing political contributions of any kind. The law extends this prohibition to foreign states, as well as foreign companies.

ii. Case Law

No relevant case law could be located.

B. Not-For Profit Organizations

a. Foreign Investment/Foreign Funding Laws

²⁴ Law No.05/2014, available at: http://www.onecca.org/sites/default/files/Loi_PPP_version_votee_10022014.pdf.

²⁵ Available at: <http://www.gcsenegal.gouv.sn/docs/PAP%202014-2018%20du%20PSE%20version%20definitive%20commentaires%20et%20ANNEXES.pdf>.

²⁶ Investment Code, Articles 10 and 11.

²⁷ African Parliamentarians Network Against Corruption. Website available at: <http://www.apnacafrica.org/index.php?limitstart=15&lang=en>

i. Laws

As explained in the section above, foreign associations must have a representative/agent in Senegal to be able to register with the proper authority in Senegal. Further, pursuant to the CCOC, an association cannot receive a donation from anyone, except its members.²⁸ If the association is declared by the government to be of public utility or it acquires the status of a non-governmental organization, it can obtain a donation from anyone and receive subsidies from the government.²⁹ There does not seem to be any other specific provision regulating this area of law.

ii. Case Law

No relevant case law could be located.

b. Political Contribution Laws

i. Laws

Again, as explained in the section above, political contributions are not legislated by Senegalese laws. However, the CCOC expressly prohibits an association that is not a political party from engaging in any political activity or to have a political purpose. As such, it can be inferred that a not-for profit cannot provide political contribution, as it would be considered to be a “political activity.”

ii. Case Law

No relevant case law could be located.

C. Analytical Comparison

Senegalese laws favor the financing of foreign direct investment, offering more incentive for private investors to invest. Although not-for profit organizations may receive subsidies from the government, it is only after being recognized as being of public utility, which requires government approval and a police investigation. As to political contributions, the Senegalese law is silent on the matter, meaning that any type of organization, in theory, may provide political contribution. However, and as explained above, because not-for profit are prohibited by law from engaging in any political activity, they might be barred from making political contributions under this provision.

V. Auditing and Reporting Requirements

A. For-Profit Organizations

a. Laws

A Common General Accountancy Plan, named the West African Accounting System, was put in place in the Western African Union on January 1, 1998. The main objective was to establish uniform accounting practices in the Union so as to have homogeneous data. To date, the accounting principles are mainly governed by the Uniform Act regarding the Organization and Harmonization of the Accounting of

²⁸ C.C.O.C., Article 819.

²⁹ C.C.O.C., Article 820.

Corporations adopted on February 22, 2000 (“Accounting Uniform Act”).³⁰ The Accounting Uniform Act provides the general guidelines companies must follow in terms of accounting and reporting. Entities must maintain an accounting system that, together with the principle of prudence, complies with the rules regarding regularity, sincerity, and transparency inherent in holding, controlling, presenting and disclosing the information the entities have processed.³¹

Accounting reports must contain the following documents: a balance sheet, a profit and loss account, and the annexes.³² At the end of each accounting year, companies have to produce summary tables and financials that include:

- Statement of financial analysis.
- Statement of patrimonial accounts balance.
- Balance sheet, profit and loss account.
- Funds statement and evolution of the working capital.
- Identification form of the company.
- Off-balance sheet commitments (contingent liabilities).
- Statistical annexes.

These various tables and documents are presented on normalized printed forms, called CUCI states (Single Centre for the Collection of Information).

Companies limited by shares must appoint one or more auditor(s) to perform the controls.³³ The auditor issues an opinion stating that the summary financial statements are consistent and fair and fairly represent the operational results for the past fiscal year and the financial position of the company’s assets at the end of said fiscal year.³⁴

Further, the revised Uniform Act of 2014 provides some new guidance in terms of corporate governance and reporting requirements:

- The mandatory appointment of statutory auditors by general partnerships which meet certain financial conditions.³⁵
- The mandatory requirement of having an audit committee for publicly traded companies covered under sections 828-853.³⁶
- When managing a company becomes “impossible,” a court may designate a temporary administrator (section 160-1), the procedure for such appointment and the duties and powers of this temporary administrator are subject to specific provisions.³⁷

b. Case Law

No relevant case law could be located.

³⁰ The OHADA Accounting Uniform Act was published in the OHADA Official Journal n° 10 on 20 November 2000.

³¹ Accounting Uniform Act, Article 3.

³² For more information visit the website of the West African Economic and Monetary Union (West African Economic and Monetary Union (UEMOA)). Available at: <http://www.uemoa.int/Pages/Home.aspx>.

³³ Corporate Uniform Act, Article 694(1).

³⁴ Corporate Uniform Act, Article 710.

³⁵ Corporate Uniform Act, Article 289-1.

³⁶ Corporate Uniform Act, Article 829-1.

³⁷ Corporate Uniform Act, Article 160-2 to 160-8.

B. Not-For Profit Organizations

a. Laws

The law does not provide for any particular reporting or auditing requirements applicable to associations. It appears that this area of law has not yet been legislated. The OHADA Uniform Acts only apply to for-profit organizations and I have not seen any Senegalese laws/regulations extending these principles to not-for profit organizations.

With regards to foundations, the initial contribution has to be evaluated by an independent auditor.³⁸ Foundations have to report their financial statements each year to the Ministry of Finance.³⁹ Such documents must be submitted within a month after the Board of the Foundation has deliberated on such financial statements.⁴⁰ The Ministry has a right to investigate the financial documents of the foundation at any time upon demand.⁴¹

Non-governmental organization are not subject to any particular auditing or reporting requirement. The law only provides that the non-governmental organizations report to the Ministry on their investment program on a regular basis (once each semester).⁴²

b. Case Law

No relevant case law could be located.

C. Analytical Comparison

Senegalese auditing and reporting requirements apply only to for-profit organizations and do not seem to extend to not-for profit organizations. Only foundations are subject to some kind of audit and reporting requirements, allowing the government to request financial information any time on demand.

VI. Penalties for Non-Compliance

A. For-Profit Organizations

a. Laws

Pursuant to Article 866 of the Corporate Uniform Act, founding members, the president-chief executive officer, the chief executive officer, etc. are expressly prohibited from issuing shares before registration or at any time when the registration had been fraudulently obtained or that the company is improperly constituted. Other acts related to the registration are also punished, such as when a person of knowledge willingly falsifies reports to obtain funds from third parties or presents to the notary public

³⁸ Decree No. 94-415 of May 15, 1995, Article 8.

³⁹ *Id.* Article 14.

⁴⁰ *Id.* Article 15.

⁴¹ *Id.*

⁴² Decree No. 96103 of February 8, 1996, Article 17 et seq.

falsified documents.⁴³ Other criminal provisions exist, notably in the dissolution process⁴⁴ and the auditing and reporting process.⁴⁵

b. Case Law

No relevant case law could be located.

B. Not-For Profit Organizations

a. Laws

The CCOC expressly declares as void, any act or transactions made by the association that would exceed its legal capacity.⁴⁶ This includes any donation made to an association by a non-member (when the association has not been declared as an association of public utility) or any commercial transaction involving a profit.⁴⁷ Foreign associations are subject to specific sanctions. Indeed, foreign associations constituted without the required government prior approval do not have legal capacity. They must cease any activity and the government can seek dissolution of the said association.⁴⁸ Non-governmental organizations might be subject to a warning and might be suspended for any justifiable and legal grounds that might be advanced by the Ministry.⁴⁹ Further, the Ministry may decide to suspend the organization's license, especially in, but not limited to, the following circumstances: (1) when serious irregularities have been noticed in the management and functioning of the non-governmental organization; (2) when the non-governmental organization exceeds its stated purpose; (3) in case of serious violation of Article 2, prohibiting discrimination based on religion, ethnicity or political views.⁵⁰

b. Case Law

No relevant case law could be located.

C. Analytical Comparison

The law seems to more harshly sanction not-for profit organizations than for-profit organizations since the law enables the government to shut down an association for the reasons stated above, while such power is not granted as to for-profit organizations.

OVERVIEW CHART

Issue	For-Profit Organizations	Not-For Profit Organizations	Similarities
Registration Procedures	Up to 48 hours.	Up to 12 months depending on the organization.	No similarities.

⁴³ Corporate Uniform Act, Article 887.

⁴⁴ See generally Corporate Uniform Act, Articles 902-904.

⁴⁵ See generally OHADA Auditing Uniform Act, Article 111.

⁴⁶ C.C.O.C., Article 822.

⁴⁷ C.C.O.C., Article 819.

⁴⁸ C.C.O.C., Article 826.

⁴⁹ Decree n° 966-103, Article 23.

⁵⁰ Decree n° 966-103, Article 24.

	<p>No prior governmental approval.</p> <p>Registration with APIX.</p>	<p>Subject to prior government approval and to prior police investigation.</p> <p>Registration with the Ministry of Finance or Ministry of Interior.</p>	
Tax Laws	<p>25% Corporate tax.</p> <p>Taxation on Corporate Gains up to 40%.</p> <p>10% Taxation on Dividends.</p> <p>Transactions Subject to VAT (18%).</p>	<p>No corporate Tax.</p> <p>No Taxation on Corporate Gains.</p> <p>No Taxation on Dividends.</p> <p>Some transactions are exempted from VAT.</p>	No similarities.
Financial Transaction Laws	<p>Open To FDI</p> <p>No Restrictions on Foreign Ownership.</p> <p>No Express Prohibition on Political Contribution Laws.</p>	<p>Foreign Organization subject to special approval</p> <p>If more than 1/4 members foreign or more than 1/2 board foreign, subject to special provisions.</p> <p>Prohibited from engaging in any political activities.</p>	No similarities.
Auditing/Reporting Requirements	<p>Some organizations must appoint 1 to 2 independent auditors.</p> <p>West African Accounting System Applies requiring specific yearly publication.</p>	<p>No law govern the auditing/reporting requirements for not for-profit organizations.</p> <p>Foundations only are subject to reporting requirements every year and the laws even allow the government to request financial information anytime upon demand.</p>	No similarities.
Penalties	No government intervention.	Government intervention and dissolution in certain circumstances.	No similarities.

