



Series 2 Senegal's new corporate governance code assessment: Corporate Governance in Senegal and its dynamics

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Abstract

Understanding corporate governance in Senegal is not an easy task due to many influences the country has suffered. The question of corporate governance is of real concern as well as the issues of convergence since the country's newest corporate governance code has proven itself elsewhere. Good governance is any company's concern. Hence, talking about the effectiveness of a corporate governance system is measuring the power to direct strategic activities for companies, the appointment, and control of executives to whom the daily management of the company is entrusted and above all to what extent corruption and bad governance affected these actions. Senegal has proposed a new code of governance to alleviate these issues. Even though this code has advantages, it also has weaknesses which addressed make a better governance approach.

Keywords: corporate governance, Senegal, good practices, code, administrators

1. Introduction

Corporate governance “covers all the mechanisms that have the effect of delimiting powers and influencing the decisions of leaders, in other words,” governing “their conduct and defining their discretionary space” (Charreaux, 1997).

The multifaced nature of corporate governance (Clarke and Chanlat, 2009, Gomez and Korine 2009) raises the question of the evolution of national corporate governance systems. Senegal's case is not different from any other country. Even though the country's newest code of corporate governance has proven itself elsewhere, are these models a single model of reference or do they evolve autonomously?

2. Corporate governance practices in Senegal and its dynamics

Talking about the dynamics of corporate governance in Senegal comes to talking about corporate governance in other countries that shares similar codes with us. However, importing these codes to the Senegalese realities doesn't mean that these codes which proven themselves elsewhere will be of great fit in the Senegalese administrations and corporations.

Let's note that in the early 80s, capital markets have boomed in developed countries with the emergence of innovative high-tech and communication companies.

This new economic era marks the beginning of globalization with massive M&As.

The massive internationalization of corporate activities leads to the extension of the roles and responsibilities of managers. These changes brought about by an evolution of companies' legislation with the standardization of labor law, company law, and other market-related laws. These reforms often imposed in the form of legislation or presented as recommendations aimed at increasing the responsibility of the leaders and brought transparency in the sophisticated firms' structure, are called codes of good practice.

Because of the action of international political organizations such the EU or the UN, and global economic organizations

such as the OECD, the IMF, and the World Bank, we speak about a possible convergence of the principles of corporate governance. These organizations mostly act on sustainable development and advocate for a global model of corporate governance.

Now, because the dynamics of change are different according to the component of each corporate governance system (Aguilera, 2004), we can say that some essential elements of the Senegalese national system of corporate governance (even though new) adapt to a new dynamic that takes this system out of the static configuration in which it found itself.

This change can be interpreted as a result of the costs that each system entails and the difficulty in achieving a fair distribution of the resources available in this static situation. Nevertheless, even if there are alternations here and there towards a national, continental or globalized system, the adoption of such codes in Senegal is not done on the same scale and with the same success than it would be done in other developed countries, because the setting is different (e.g., missed management of public finances, bad governance and corruption are hot topics).

3. Senegal's good practices

The Code of Good Governance Practices is a set of rules of ethical conduct of the company that specifies the texts of the OHADA. It applies primarily to boards of directors. It allows companies to organize the operation and efficiently the decision-making process of the most important bodies: the Shareholders' Meeting, the Board of Directors, and General Management.

All companies can implement good governance practices, including:

- State-controlled companies in which the State has a significant stake or role;
- companies related to energy or raw materials;
- large industrial or service companies;
- listed companies;
- banks and insurance companies;

- mutual, insurance companies, provident institutions;
- investment companies;
- Significant associations or foundations are benefiting from public subsidies.

This Code provides that companies must ensure fair treatment of shareholders; they must ensure good relations between the shareholders and guarantee the timely dissemination of accurate information on all essential matters, including financial position, results, and share ownership.

Appropriate treatment must be guaranteed on two levels. First, it is crucial to ensure that all means and information allowing shareholders to exercise their rights are available. In the second place, the company must make available, before an important meeting, and within a reasonable time, not only the legal information but also the information that is useful to facilitate the understanding of the debates by the shareholder.

Concerning access to information, the dissemination of information must relate to the financial results; operating results; the objectives of the company; significant equity investments; the right to vote; the remuneration policy; administrator data (qualification, selection process, etc.); and the foreseeable risks. This information must be compiled and disseminated by nationally and internationally recognized accounting and financial and non-financial reporting standards.

3.1 Board of Directors: Role & Tasks

The composition of the board of directors of a company is a crucial element of good governance, and it must ensure that decisions are made in the interest of the company. This composition must be based on a necessary diversity as well as a complementarity of experiences, knowledge, and skills. For complementarity of competencies, directors with the same background play a specific role within the Board. The presence of directors in this Board allows for better management of situations of conflict of interest between shareholders, leaders.

The Board leads to the development of the company's strategy. He receives explanations from the CEO to assess the reasons why the objectives cannot be or have not been achieved. It is the responsibility of the Board to monitor the Company's good governance practices. The Board must recruit key management personnel, determine their compensation, monitor their activities and, if necessary, replace them, and prepare succession plans. The Board of Directors must be able to make an objective and independent judgment on the conduct of the business of the company. It must ensure that its obligations to all shareholders are understood and fulfilled by the principle of equity: all shareholders must have the same information and to participate in assemblies.

The functioning of the Board of Directors must be structured and evaluated. Its duties and responsibilities are defined by law and specified in the company's by-laws and the internal regulations of the Board of Directors. The functioning of the Council must be consistent with these missions and responsibilities. Operation is governed by the rules of procedure (role, composition, frequency, and modalities of meetings, decision-making process, etc.).

The directors then ensure that they receive detailed and

adequate information and that they are thoroughly acquainted with it to acquire and maintain excellent control critical aspects of the company's activities. Under the direction of its President, the Board evaluates its ability to fulfill its missions.

The Committees of the Board of Directors of the company allows it to carry out its missions better. Committee members are selected by the Board based on their expertise, availability, and independence. Committee members have no decision-making power. In larger companies with complex or international operations with subsidiaries, the Board needs to consider the need for committees to better prepare for its work. The tasks of the Committee, as well as its area of competence, are defined by the Board. The Audit Committee makes the work of the Board in the accounting and financial sectors. It controls the quality and integrity of the information provided to the Board. Other committees may be set up (Committee of compensation, appointments, strategy, risks, etc.)

3.2 The relationship between directors and executives is based on trust

The powers of representation of the company and their scope and limitations are clearly defined by the provisions applicable to company law.

All concerned must know in detail the extent of these powers.

The Board of Directors must establish and maintain a relationship of trust with management. The trust between the Board, the managers, and the auditors are established through transparency, mutual respect, and professionalism in the exercise of their missions.

3.3 Taking into account the interests of all stakeholders in the company's key decisions

Several stakeholders are interested in the life of the company. Governments, banks, competitors, customers, suppliers, and employees all contribute to bringing the business to life. The Board of Directors must ensure that all stakeholders are identified and that their expectations are taken into account in critical decisions.

4. Conclusion

In Senegal, most businesses are small and have a family structure.

As a result, a real corporate culture is not yet rooted in practices. Also, for the most part, the practice of corporate governance is not considered a priority. The aspects of governance that pose the most constraining problems relate to the promotion of ethical business practices such as accounting and management.

For the majority of companies, the elaboration of complex texts (shareholders' rights, the duty of the director, etc.) is not on the agenda. Indeed, not only companies do not understand the importance of good governance, but it also lacks reference points.

The progress made by the Governance Monitoring Committee is a significant step towards correcting the discrepancies between the doctrine of good governance and reality. The actions to be carried out must, therefore, focus on the training of actors with necessary skills in business management, as well as on capacity building and awareness-raising of actors in good governance practice.

5. Brief Introduction of Senegal

Senegal is a country with an excellent political organization since its independence. With a semi-presidential regime, Senegal is a model of democracy and is part of one of the most stable countries in Africa. Despite all the political crises in Senegal, the country has never experienced a coup compared to some African countries.

Senegal enjoys an excellent geographical position with its opening on the Atlantic Ocean. Its position facilitates exchanges with the rest of the world.

Besides, given the country's economic situation, the government has implemented the "Senegalese Emerging Plan" (PSE) to make Senegal an emerging country by 2035. This plan targets the development of several sectors, such as industry. Hence, Senegal has a favorable investments environment with modern and efficient infrastructures beneficial to exports.

Senegal has long enjoyed modest economic growth; its economy is mostly based on agriculture and the industrial sector. However, since 2014, with the implementation of the Senegalese Emergent Plan (PSE), the Senegalese economy is experiencing a significant growth momentum.

The growth rate went from 4.075% to 6.65% between 2014 and 2016. Thus in 2016, Senegal's gross domestic product amounted to 14.77 billion USD, an increase of 6.65% between 2015 and 2016, which shows the good results of the country's public policy. Moreover, according to the direction of the forecast and the economic studies of Senegal (ANSD), the growth rate increased to 6.8% in 2017 and an even higher number in 2018. The country has a rapid population growth.

According to the latest census of ANSD, the average age of the Senegalese population is 22.7 years old, which shows that the country has a young population, and life experience at birth is 65 years old. Besides, the Dakar region is home to 23.5% of the total population of 3,544,000 and is at the same time the most populated area.

With this demographic trend, the country has a very high rate of urbanization (44%). Nearly half of the total population resides in urban areas and remains dominated by the female gender (50.1% against 49.7 for rural).

In addition to the city of Dakar, holding 52% of jobs created, it also contains 50% of the urban population.

Its HDI, is 0.494. This index, although still weak, shows that Senegal is on the path of being an emerging country. This provides information on living conditions' improvements and favorable government policies' results.

The country has excellent public and private universities that provide quality higher education and thus form an effective and efficient workforce to meet the needs of the labor market. The country's literacy rate was 57.67% in 2015.

Additionally, the government invested in education through the program "Package" (Improvement Program of Quality, Ethics and Transparency) which has the vision of setting up an education and training systems in phase with the demands of economic and social development. This package is equitable, active, efficient and more committed to the care of the excluded and based on inclusive governance, greater empowerment of the local communities. This program is based on three axes that meet the needs of PSE - Equal access to the education system; - Improvement of the quality of teaching-learning; - Open, excellent and transparent governance of the education system.

The unemployment rate was 22% in 2017. This shows that 22% of Senegal's active population is jobless, and this rate is mainly composed of young graduates.

The unemployment level is 12.3% for people aged between 15 and 19, 18.8% for people aged 20 to 24, 16.3% for people between 25 and 29, 13.8% for older people between 30 and 34, 10.2% for people aged 35 to 64.

So to remedy this problem, the government of Senegal has set up the national agency for the promotion of youth employment (ANPEJ) which aims to help young people build their career and fulfil their dreams.

Senegal is a country with very diverse cultures and traditions. This diversity is due to the presence of several ethnic groups on the national territory.

Moreover, the country is known thanks to its legendary hospitality which facilitates the integration of any foreigners or its name Senegal or "pays de la Teranga".

Senegal has made significant progress with quality internet infrastructure and the use of 4G. Besides, the country has an excellent national transmission network that extends into the sub-region thanks to its active local businesses, the largest of which is Orange Sonatel. The latter has a network coverage that extends throughout the country.

With the vision of positioning itself as a regional logistics and industrial hub, Senegal wants to become a leading country in the West African region for the promotion of digital technologies. For this purpose, the government, through the "Plan Sénégal Émergent" (PSE), has implemented the "Digital Senegal 2025" strategy with the vision "In 2025, digital for all and all uses in Senegal with a dynamic and innovative private sector in an efficient ecosystem."

The Senegalese government has set up APIX, an agency to assist foreign investors in their business creation process.

For any foreign company wishing to set up in Senegal, the necessary documents to provide are:

- A copy of the articles of incorporation of the parent company;
- One (01) minutes recording the opening of the subsidiary or branch by the General Meeting specifying, in particular, the address, the registered office and the name of the officer;
- Initial registration in the business register of the parent company issued in the country of origin;
- Translation into French and certification by a notary in Senegal of the statutes of the parent company, the minutes and the commercial register in the case where they are written in a foreign language;
- The original criminal record established in the country of birth of the appointing officer;
- The original criminal record was drawn up by the Dakar Court of Appeal for foreigners;
- An amount of XOF30,000 (\$ 53.67) for processing fees;
- One (01) tax stamp of XOF2,000 (\$ 3.58);
- Define the type of company you want to create.

The cost of setting up a business depends on the legal form chosen.

Individual company

- Two (02) copies of the passport for foreigners
- The criminal record of the country of origin of fewer than three months for foreigners
- The residence certificate (issued by the police or the town hall)

- Marriage certificate (if applicable)
- Two (02) tax stamps of XOF2,000 (\$ 3.58), (for the Trade Register and the NINEA)

Incorporation costs

- XOF10,000 (\$ 17.89) for court fees for sole proprietorships without a business name;
- XOF20,000 (\$ 35.78) for sole proprietorships with business names including:
- XOF10,000 (\$ 17.89) for the registration of the trade name with the African Intellectual Property Organization (OAPI);
- XOF10,000 (\$ 17.89) for court fees.

Limited liability company

- Two (02) copies of the passport for foreigners
- The criminal record of the country of origin of fewer than three months for foreigners
- The residence certificate (issued by the police or the town hall)
- Marriage certificate (if applicable)
- Two (02) tax stamps of XOF2000 (\$ 3.58), (for the Trade Register and the NINEA)

Incorporation costs

- XOF10,000 (\$ 17.89) for court fees for unincorporated business enterprises;
- XOF20,000 for individual companies with commercial name of which:
- XOF10,000 (\$ 17.89) for the registration of the trade name with the African Intellectual Property Organization (OAPI);
- XOF10,000 (\$ 17.89) for court fees.

Public company

- A criminal record of fewer than three months; or a declaration on the honor, available from the notary, informed and signed by the Manager or the record of fewer than three months of the country of origin (for foreigners)
- Photocopy of the identity card of the associates
- Registration fees: 1% of the Capital if this is greater than XOF10,000,000 (\$ 17,891.33). In the case of real estate contribution, plan a surcharge of 3% of the value of the contribution for registration fees

Incorporation expenses

- The establishment of statutes
- They must be signed by all founding associates or their proxies for authority.
- The signing of the minutes of the constitution
- Issuing a declaration of conformity
- The deposit of Capital
- The capital must be deposited with the notary or in a bank account, called "Company account information".
- The account is released immediately after registration of the company in the Trade and Credit Register (RCCM).
- Notary fees: About XOF700,000 (\$ 1,252.39) for a capital of XOF10,000,000 (\$ 17,891.33)
- Registration of the constitutive acts
- Registration in the Trade and Credit Register
- NINEA registration
- Publication in the Journal of Legal Announcements

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