

PROTECTION OF PRIVATE FOREIGN INVESTMENTS IN SENEGAL

*By Serigne Ndiagna Sow**

INTRODUCTION

Senegal like almost all African countries experienced for two decades (1980s and 1990s) Structural Adjustment Policies guided by the desire to improve public finances on the one part, and economic recovery through promotion of private national investments and also private foreign investments on the other hand.

It is for this reason that authorities, after sensitization on close relations existing between regulation and efficiency of public institutions on promotion of private foreign investments, started a process of improving the legal framework proposed to private capitals, mainly to companies. Senegal therefore was supposed to focus her efforts on these two aspects: institutional and normative or legal since on a purely political level she fits the bill for a target destination for investors.

Thus, on this level Senegal is a part of rare African countries which has never experienced up to date coup d'états and the democratic transition with the coming into power of the alternating regime led by Abdoulaye Wade and the fall of the socialist party remains up to today cited as an example to follow in the continent.

Besides globalization there are very significant transformations even to a point of threatening our right which, currently, is supposed to meet the new legal requirements of a market economy which is almost multinational. In that case, Senegal having aligned her regulations to the dictates of international market, decided to correct, improve and complete her regulations on private investments already realized or potentially realizable on the Senegalese territory, without however forgetting the organs supposed to implement and control the application of these rules.

But in reality, was this desire to encourage and to protect these private foreign investments both on legal normative and institutional levels translated into facts?

It is therefore in the reasoning of this question that it would be convenient to place our analysis on this subject relating to « *protection of private foreign investments in Senegal* ».

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Investment refers to the gross formation of capital, that is to say the value of durable goods acquired by units of production to be used for at least one year in their production process¹ with a view to get a long term gain².

As for protection, it can be taken to mean «the act of shielding (someone or something) from anything which can be harmful or dangerous». But in a more precise manner, protection of private investments must be understood here through the attitude of the Senegalese state in terms of adoption of measures defined through a normative, organic or institutional, organizational and functional entity, meant to attract investors to «the Senegalese market » and to secure them.

This policy of incentive or promotion of investment consists in a way of guiding the investor whether local or foreign and accompanying him from the beginning to the end of the process, for smooth running of his economic activities. This supervision must move not only from simplifying the formalities of business development but also and especially once settled, to enable these businesses to expand calmly in a peaceful and competitive environment.

Already, not long ago poverty affected two (2) out of every three (3) Senegalese and unemployment was at 40 to 50% of the population; which explains the necessity to create an attractive climate for private foreign investments to try to boost our moribund economies in order to promote economic growth.

Indeed, this necessity in concrete terms resulted into an effort to relax the legal framework, to exempt some companies from custom duties and tax charges by putting in place a fiscal incentive policy, by encouraging fair competition, by guaranteeing free transfer of funds and profits, by initiating a policy for modernization of justice and by being driven by the desire to ensure equity in transactions which involve the regulatory authority of the State.

Thus we can notice that the legal security, both at normative and institutional levels, can be a stimulant of entrepreneurship for business men and a guarantee to safeguard the interests of investors.

It thus appears relevant to ask ourselves the question of knowing to what extent are private foreign investments protected by the Senegalese law.

Regarding this question, it is important to note that our positive law put in place very pertinent legal mechanisms for protection of foreign investments in Senegal both at normative and institutional levels.

¹ JESSUA (C), LABROUSSE (C), VITRY (D), Dictionnaire des sciences économiques, Paris, PUF, 2001, 1043p

² Vocabulaire juridique de G. CORNU p. 464, Association H. CAPITANT

Private foreign investment has always been considered as the linchpin for economic development. However, not long ago, investment flows were very slow in Senegal. This suspicion of investors was largely due to legal and judicial insecurity characterized by the dilapidated state of our legal arsenal.

This is why Senegal, in order to make up for this difficulty, got down to develop new measures and mechanisms guaranteeing respect for rights and freedoms of the company on legal and judicial levels.

In the light of this direction, the study of this subject shall be articulated around two dimensions: normative and institutional.

With regard to the fact that the legal framework is composed of standards and support institutions, it is convenient then to locate forces and possibilities which the Senegalese law creates on investment at two essential points:

On the one hand at normative level **(I)** and on the other hand at institutional level **(I)**.

I- Protection mechanisms at normative level of private foreign investments

So as to be in perfect harmony with community and international provisions, Senegal laid down the principle of non discrimination for nationals and foreigners concerning the exercise of rights and freedoms **(A)**.

However, this principle of protecting foreigners wanting to invest in Senegal is also extended concerning certain guarantees **(B)**.

A- Establishment of the principle of equal treatment between nationals and foreigners from the point of view of rights

This absence of discrimination can be observed at two levels: through recognition of the right to certain freedoms to the company but also some fiscal benefits granted to investors.

1- From the point of view of freedoms

Concerning these freedoms we can say that it is Article 9 of the Senegalese Investments Code which lays the principle in these terms : « *Natural or legal persons targeted by the first Article of this Code can, within the framework of laws in force,*

acquire all the laws of any nature concerning property, concessions and administrative authorization to take part in public procurement procedures »³.

This explains why foreign investors in Senegal enjoy all rights and freedoms to become property owners for the same reasons as Senegalese nationals without any form of discrimination whatsoever, to take part in public procurement proceedings and to have access to raw materials.

- Acquisition of private property

In effect, Article 4 in relation to guarantees and protection of property provides that *« in accordance with the conditions provided by the laws and the applicable regulations, private property of any property, movable or immovable, material or immaterial is protected, in all its legal and commercial aspects, its elements and its subdivision, its transfer and the contracts it subjected to »⁴.*

This is how the acquisition of property is a better plan if one intends to settle in Senegal. It is possible to invest there in real estate sector, however such an investment must be done with care, requiring knowledge of laws and regulations in force in this country in relation to land property.

The Senegalese land law is largely inspired by the French legislation on federal land, thus an acquirer cannot effectively be the owner without a title deed which is obtained either through purchase, or through application after obtaining a piece of land through a long lease. However, according to the law of the country, land always belongs to the State and the title deed only gives right to use. This means there is actually no sale of land but sale of the title for the property. Thus once the sale is concluded, the title deed is registered in the name of the acquirer.

- Participation in public procurement procedures

No matter their nationality, natural or legal persons targeted in the first Article of this code receive, subject to the provisions of title III, the same treatment in respect to rights and obligations arising from Senegalese law and in relation to the exercise of activities defines in Article 2 above.

In this regard, natural or legal persons receive a treatment similar to that of natural or legal persons of Senegalese nationality, subject to reciprocity and without prejudice to

³ Voir aussi l'article 13 de la loi n° 2004-06 du 6 février 2004 portant code des investissements du Sénégal « Sous réserve du respect de ses obligations, telles que prévues à l'article suivant, l'entreprise jouit, d'une pleine et entière liberté économique et concurrentielle. Elle est notamment libre: D'acquérir les biens, droits et concessions de toute nature, nécessaire à son activité, tels que biens fonciers, mobiliers, immobiliers, commerciaux, industriels ou forestiers.... »

⁴ Article 4 of Act n° 2004-06 du 6 février 2004 portant code des investissements du Sénégal

measures which concern all foreigners or arise from provisions of treaties and conventions to which the Republic of Senegal is a signatory.⁵

In this regard, it is possible, due to this principle of non discrimination between local and foreign companies, for any foreign company having invested in Senegal to bid for tenders and hope to win.

Thus, any unjustified restriction to this possibility which is offered to these companies give them the right to seek redress for the rights violated before a court of law.

○ Access to raw materials⁶

The freedom to have access to unprocessed or semi-processed raw materials, produced in the entire national territory is guaranteed. Agreements or practices which distort competition are punished by the law.

2- *From the point of view of social benefits*

These social benefits, which investors are entitled to under certain conditions, are different depending on whether we are on the implementation or operation phase.

○ During the implementation phase

During this phase of implementation, special benefits are granted to the investor with the aim of enabling him to pay-off his investments. These benefits which cover a period of three (03) years are presented as follows:

- Exemption from payment of customs duties for equipments and materials which are neither produced nor manufactured in Senegal and which are specifically meant for production or operations within the framework of the program agreed;

The modalities for exemption on spare parts, passenger vehicles, when they are specific to the agreed program, and individual vehicles shall be fixed by decree ;

- Suspension of value added tax (VAT) charged at the point of entry for equipments and materials which are neither produced nor manufactured in Senegal and which are specifically meant for production or operations within the framework of the program agreed , in accordance with modalities which will stated by decree ;

⁵ V. Article 10 of Act n° 2004-06 du 6 février 2004 portant code des investissements du Sénégal

⁶ Article 8 de la loi n° 2004-06 du 6 février 2004 portant code des investissements du Sénégal

- Suspension of value added tax (VAT) invoiced by local suppliers of goods, services and works necessary for the realization of the program agreed, in accordance with modalities which will be stated by decree⁷.
- During operations phase

The benefits offered are spread over different schemes as follows⁸ :

➤ **The scheme for new companies:**

- Exemption from Employers lump-sum contribution (CFCE) for five years.

If the jobs created, within the framework of the investment program agreed, are above two hundred (200) or if at least 90% of jobs created are situated outside the region of Dakar, this exemption is extended up to eight (8) years.

- Special benefits on tax on profits :

In terms of tax on profits, newly certified companies are allowed to deduct from the taxable amount of profit a part of investments whose nature shall be defined by decree.

For new companies, the amount of deductions authorized is fixed at 40% of the amount of investments retained. For each fiscal financial year the amount of deductions shall not be above 50% of the taxable profit.

These deductions can be spread over five (5) successive fiscal financial years at the end of which, the balance of the tax credit authorized and not used is neither chargeable nor refundable.

➤ **The scheme for expansion projects :**

- Exemption from Employers Lump-sum contributions (CFCE) for five (05) years. If additional jobs are created, within the framework of the program agreed, are above a hundred (100) or if at least 90 % of the jobs created or situated outside the region of Dakar, this exemption is extended up to eight (08) years.
- In terms of tax on profits, expansion projects agreed are allowed to deduct from the taxable profit amount a part of investments whose nature shall be defined by decree. For expansion projects agreed, the deduction amount authorized is fixed at 40% of the investment amount retained.

⁷ V. Art. 18 de la loi n° 2004-06 du 6 février 2004 portant code des investissements du Sénégal

⁸ Voir art. 19 de la loi n° 2004-06 du 6 février 2004 portant code des investissements du Sénégal

For each fiscal financial year, the amount of deductions shall be above 25% of the taxable profit.

These deductions can be spread over five (5) successive fiscal financial years at the end of which, the balance of the tax credit authorized and not used is neither chargeable nor refundable.

B- Establishment of the principle of equal treatment between nationals and foreigners from the point of guarantees

Business in Senegal enjoys certain financial guarantees (1) and also and especially a right to a certain guarantee against any action of nationalization, compulsory acquisition or requisition over the entire territory of Senegal ; in one word, risks of dispossession of property (2).

1- Financial guarantees

These guarantees are provided in Articles 5, 6 and 7 of the Investments Code. These guarantees touch on the availability of foreign exchange, transfer of capital and profits.

○ Transfer of capital

The freedom for the company to transfer income or proceeds of any nature, arising from its operations, from any sale or liquidation of its assets, is guaranteed in accordance with the laws in force⁹.

In this precise point, it is possible to compare Senegal with Ghana, a country which provides incentives for foreign investments but very restrictive on transfer of capital and profits outside the country.

○ Transfer of profits

The freedom to transfer all or part of profits of an investor, regardless of his legal nature and the amount expressed in local or foreign currency, is also guaranteed, to any associate or shareholder of a company, a national of a third country.¹⁰

This is also provided by Article para.2 which provides that : « *The same guarantee (Freedom to transfer income or proceeds of any nature) is extended to investors, entrepreneurs or associates, natural or legal persons who are not Senegal nationals, concerning their profit share, proceeds from the sale of their associate rights, contribution in kind, their share of bonus after liquidation* ».

⁹ Article 6 de la loi n° 2004-06 du 6 février 2004 portant code des investissements du Sénégal

¹⁰ Article 7 de la loi n° 2004-06 du 6 février 2004 portant code des investissements du Sénégal

- Availability of foreign exchange ¹¹

Obtaining foreign exchange necessary for the activities of companies is not limited within Senegal. The company has, consequently, the guarantee that no restriction can be imposed against him, on his needs for foreign exchange, mainly to :

- make his normal and current payments ;
- finance his supplies and provisions of various services, mainly those provided to natural or legal persons outside Senegal.

These payments as well as transfer operations, provided in Articles 7 and 8 hereinafter, however remain subjected to justifications required by foreign exchange regulations in force in Senegal.

Save for these financial guarantees, foreign investments are also protected from risks of dispossession.

2- *Guarantees against risks of dispossession*

Disputes relating to operations of promotion and protection of investments often involve an investor and a state which initiates nationalization and compulsory acquisitions measures. They result into clarification of the investments law and logical declaration relating to these measures of dispossession, potential sources of legal and ideological controversies, behind which emerges difficulties of compensation operations.

In strict sense, the term dispossession targets nationalization and compulsory acquisition that is to say any measure « *which deprives the investor of his essential rights on the investment to the benefit of the public authority* »¹².

This explains why our study will essentially open up to these two forms of dispossession.¹³

For PSD, the principle of permanent sovereignty justifies the measures for compulsory acquisition and nationalization affecting foreign investors and preserve free economic choice. But it is necessary to also remember that these measures should not be initiated by ignoring the rights of the investors who are the victims.

It is under this framework that Resolution 1803 which supports these measures states that : « *Nationalization, compulsory acquisition or requisition should be founded on*

¹¹ Article 5 de la loi n° 2004-06 du 6 février 2004 portant code des investissements du Sénégal

¹² D. CARREAU et P. JUIILLARD, Droit international économique, Paris, L.G.D.J., 1998, p. 522

¹³ Such a meaning however leaves aside forms of dispossession of the investor like confiscation, spoliation or privatization

reasons or motives of public utility, security and national interest recognized as dominant over simple particular or private interests for both nationals and foreigners. In this meaning, the owner shall be adequately compensated, in accordance with rules in force in the country which takes these measures in the exercise of its sovereignty and in conformity with the international law ».

Similarly CIJ affirmed vigorously this necessity to encourage investors with an obligation of protection of the investment: « *From the moment when the State admits on its territory foreign investors or foreign nationals, it is supposed to grant them the protection of the law concerning their treatment* »¹⁴.

This is why any action for dispossession of property belonging to foreign investors for the benefit of public activity must be justified by utility needs or public interest.

However, transfer within the framework of nationalization must be generally be guided by political, economic or social reasons.¹⁵

Today in Senegal, laws are such that the legality of compulsory acquisitions and nationalization is subordinate to the triple condition of public interest requirement, non discriminatory character and non exploitive character of these operations¹⁶.

That said, it is necessary to remember that these measures for dispossession must be accompanied by an obligation for compensation of the victims.

And this particular field, the Senegalese law is very clear¹⁷. The compensation relating to these measures must be prompt, effective and represent the full value of the property nationalized or acquired compulsorily.

These terms hold a terminological diversity; in this case the compensation is ***prompt*** if it occurs with a reduced time line; ***prerequisite*** when it is fixed before the operation of disposition and effectively transferred to the investor; ***fair*** through its representation of the real value of the property corrected by reason and truth.

¹⁴ C.I.J., Barcelona Traction Light and Power Company (deuxième phase), 5 février 1970, Rec. 1970 § 33, p. 32; Voir sentence CIRDI, Asian Agricultural c/Sri Lanka (N° ARB/87/5) du 27 juin 1990, J.D.I., chr. 1992, p. 216.

¹⁵ See Act n° 99-85 of 3rd September 1999 authorizing the President of the Republic to ratify the Agreement on promotion and protection of investments between the government of Malaysia and the government of the republic of Senegal, signed in Montégo Bay 10 February 1999 (J.O.R.S. 25 september 1999, pp. 1268-1272)

¹⁶ In the matter of Benvenuti, the congolese government had transformed the mixed economy company through a simple internal memo and the company was acquired by the State.

¹⁷ V. Art. 4 al. 2 of the abovementioned law « the company is mainly the guarantee against any measure of nationalization, compulsory acquisition or requisition on the entire national territory, safe for purposes of public utility legally provided. Where necessary the company shall be entitled to fair and prior compensation.

II- Institutional mechanisms for private foreign investments in Senegal

These institutions are those which are grouped following the two orders of intervention:

On the one hand, there are institutions in charge of investments promotions and supervision of major works (**B**).

On the other hand institutions in charge of settlement of investments disputes (**A**).

A- Judicial mechanisms for the protection of private investments: the possibility of institutional settlement of disputes related to private investments.

Investment is a very unstable and dynamic field due to the fact that it is largely practiced behind state borders. Consequently, it is not only accompanied by many international and community standards but also by institutions specifically responsible for settlement of disputes which would arise.

This is mainly the International Centre for Settlement of Investment Disputes (ICSID).) (1) ; and the Common Court of Justice and Arbitration of the OHADA. (2).

1- By international institutions (for example ICSID)

The World Bank Group has within itself five institutions. These are International Bank for Reconstruction and Development (IBRD.), Agency for International Development (AID), International Finance Corporation (IFC), Multilateral Investment Guarantee Agency (MIGA), and lastly Centre for Settlement of Investment Disputes (ICSID).

ICSID founded in 1966 seeks to facilitate, through reconciliation and arbitration, disputes which would arise between foreign investors and the receiving states.

Since it came into force on 14th October 1966, the convention links a big majority of African states.¹⁸

Moreover, « international investments contracts, national investment codes and bilateral or multilateral investment conventions often contain provisions foreseeing that disputes shall be settled through arbitration under the auspices of ICSID ». Its importance is attested by the number of member states.

¹⁸ On 1st october 2002,153 signed the treaty and 136 ratified it. Among the latter we can name some sub-Saharan African states as follows : Benin, Botswana, Burkina Faso, Burundi, Cameroon, Congo, RDC, Cote d'ivoire, Gambia, Ghana, Guinea, Kenya, Liberia, Malawi, Madagascar, Mauritiuous, Mauritanie, Mozambique, Niger, Nigeria, Uganda, République Centrafrique, Rwanda, Senegal, Sierra Léone, Sudan, Tanzania, Chad, Zambia, Zimbabwe.

Indeed, until 30th June 2004, 150 states appeared on the list of members who had signed the convention for settlement of investment disputes between states and nationals of other states. 140 states of the same list had presented their ratification instruments, among them Senegal. In a more precise manner, Senegal signed the said Convention in 1966, she thereafter presented her ratification instruments on 27th April 1967, which led to coming into force of the Convention on 21st May 1967.

ICSID has today more and more power-treaties. Besides assistance on settlement of disputes, it carries research activities, consultancy and publication in the fields of law relating to arbitration and investment.

Among the publications is a bi-annual review known as "ICSID Review - Foreign Investment Law Journal " and two series of periodic publications " Laws on investments in the world " and " Investment conventions". ICSID publishes its own **annual report**, which can be enquired at its secretariat.

That being the case, the advantage which Senegal was able to draw from her relations with the ICSID, is rather the fact that the latter enhances riches and diversity of her legal framework mainly through international arbitration, for a better promotion of her knowledge on regulations applicable to investment disputes on her territory. This is without substantial gain both for already established international investors, potential investors not yet established in Senegal, Senegalese lawyers in their preoccupation to adapt to modern techniques for settlement of business disputes.

This is almost the same goals assigned to CCJA, only this time, they are contemplated under a community dimension and more recently, which advocate for fight against legal insecurity above all.

2- *Through community institutions (for example the CCJA)*

According to a study done on the relations between OHADA reform and globalization, it is stated that «Judicial insecurity constitutes one the recurrent grievances of private investors among member countries of the OHADA. Among the many troubles often decried is instability of jurisprudence which itself has the consequence of doubtful origin of procedures. One of the explanations of this phenomenon is insufficient training of judges on disputes of business law. Other causes less respectable would explain the constant fear African business environments which are under state controlled justice systems. It therefore seemed imperative to the authors of the OHADA Treaty to adopt measures susceptible to restore confidence in judicial institutions. One of these measures, undoubtedly the most important was the creation the Common Court of Justice and Arbitration (CCJA). Emphasis was also put on the training of judges and judicial officers».

For all intents and purposes, with CCJA, member states among them Senegal have Uniform law for business law, which in principle, play an important role in the settlement of certain disputes related to investment in Senegal. The Treaty puts in place two ways of settlement of disputes.

In the first place, through judiciary, there is settlement of disputes in the application of uniform acts in the first instance and appeal by national courts.

It can also play the role of annulment of decisions in place of supreme courts or appeal courts. Moreover, decisions of the CCJA have authority over the matter judged and operative legal force of each state party.

In the second place, through arbitration, the OHADA Treaty makes arbitration a major instrument for settlement of contractual disputes. Thus, even if the CCJA does not in itself judge the disputes, it appoints and confirms the arbiters. It is also informed on the on the conduct and progress of the proceeding and examines the decisions rendered, but can only propose changes of form.

Arbitration rulings delivered have the final authority of the matter judged on the territory of each member state same as the decisions delivered by courts of the state.

They can be subject to a forced execution by virtue of an enforcement decision.

Lastly unification of business laws is without doubt one of the most important points concerning investors, they should for this reason be of benefit to Senegal, mainly by consolidating and giving credibility to her policy of attraction for private investments, through promotion of contractual arbitration, one of the alternative means most appreciated by the parties in resolving business conflicts which arise between them.

B- Administrative mechanisms for protection or promotion of private foreign investments: Renewing the institutional framework for the promotion of investment

Towards the last major reform of 2004 we participated in the creation of new organs which had respectively the mission to create an incentive framework and to improve business environment. Among these organs some are specifically for investment support (1) while others are charged with the responsibility of improving business environment (2).

1- Putting in place specific organs for supporting investment

The most modern and the most visible support structures in the field of investments promotion are four (04) : A.P.I.X. (National Agency for the Promotion of investments and Major Works), A.D.E.P.M.E. (Agency for Development and Supervision of Small and

Medium Enterprises), A.S.N. (Senegalese Agency for Standardization), and lastly F.P.E (Economic Promotion Fund).

This new arrangement is more specialized and simple, to the extent where it reduces the number of existing structures and exercises all functions for investment promotion and support in conformity with the objectives sought. Moreover, the coordination of activities for these specialized is ensured by a single structure, C.G.C.D (General Consultative Committee for Development).

➤ **National agency for promotion of investment and major works (APIX)**

A.P.I.X¹⁹ is a structure created in July 2000, with the main objective of assisting the President of the Republic of Senegal in the formulation and implementation of a clear policy, first in the field of investments.

Precisely, its mission for investments promotion consist of:

- a. Promoting export activities for local products ;
- b. Promoting Senegal as an investment destination by giving incentives to companies and private investors to produce in Senegal for export ;
- c. Seeking and identifying national and foreign investors with a view to increase the volume of investments ;
- d. Following contacts and evaluating investment projects thus contributing to improvement of the image of Senegal.

However, the role played by APIX was not enough. This led to the creation of ADPME (Agency for Development and Supervision of Small and Medium Enterprises) one year later.

➤ **Agency for Development and Supervision of Small and Medium Enterprises (ADEPME)**

¹⁹ The functional organization of the Agency lies on two entities which are: *Strategic Committee for the promotion of investment* is the organ for supervision and control of the activities of the Agency in the field of investment promotion, in respect with the directions given by the President of the Republic. This is why it proposes measures susceptible to encourage investment to create an atmosphere of good management and good governance.

At the same time, it defines the operational program, budget and procedures of the agency in the field of investment promotion.

It also monitors the implementation of the activities of the agency and approves the activity report of the Director General for investment promotion. *The Head office* oversees proper implementation of the missions of the Agency. For day to day execution of its mandate, the Head office is supported by three operational directorates: Directorate of Investment Generation (D.G.I) ; Directorate of Service to Investors (D.S.I.); Directorate of Communication (D.C.O.) ; and lastly the Directorate of Major works (D.G.T.).

Recall that by the establishment by Decree No. 2001 - 1036 of November 29, 2001 of A.D.E.P.M.E ²⁰, the Senegalese Government decided to make the private sector the engine of growth.

In the same manner it was decided to support SMEs which cannot be overlooked in the economic development of the country.

It is all within the meaning of the Strategy Document for Development of the Private Sector (D.S.D.S.P), developed within the framework of a partnership between the State, the Private sector and the donors.

A new structure came to enhance the policy of A.D.E.P.M.E, that is to expand to the concepts of quality.

➤ **Senegalese Agency for Standardization (ASN)**

Senegalese Agency for Standardization is a non-profit making association whose objective is to promote quality, productivity and standardization.

It is mainly responsible for:

- Putting in place a system for information and measures (standardization, certification, metrology, productivity indicators) ;
- Inventory of production and productivity development challenges and inventory of standardization needs ;
- Awareness of all players on the necessity to raise the level of productivity and quality ;
- Comparative analysis of different costs for adoption of standards truly adapted to working conditions of different sectors ;

²⁰After its creation by the Decree n° 2001-1036 of 29th November 2001 and its incorporation in the Ministry of SME, ADEPME . is in charge of ensuring :

- development for creation of companies through stimulation of entrepreneurial initiative ;
- assistance to putting an environment favorable for growth of companies ;
- putting in place and driving of a national and international support system in company advice and techniques ;
- support creation of employers and professional organizations by assisting them in the enhancement of their permanent expertise, diversification of their sources of incomes, increment in the number of their members and satisfactorily meet their expectations, putting in place reliable data bases, providing information necessary for creation of companies; carrying out feasibility studies ;redefining and setting up projects ;focusing on products, searching for partners, research-development and innovation; technological choices ; audit and reorganization; legal an fiscal assistance; provision of administrative services; miscellaneous studies ; management and lastly facilitation of joint-ventures.

- Putting in place a permanent system for detection of overcharges and non quality ;
- Study and prospective of new production techniques ;
- Comparative study for productivity levels and inter-company, inter branch and inter-states remuneration levels ;
- Assessment of cost for administrative services and the impact of its mode of operation on the total productivity ;
- Availability of diagnosis and study techniques and tools ;
- Providing consultancy services to companies ;
- lastly, training of players and service providers

On the other hand, we are used to saying, « banks only lend to the rich ». consequently even if ASN assists small scale enterprises to develop, it should be noted that it should also be assisted by another structure which will a special mission of facilitating access to funding of these category of enterprises, since any production or distribution activity seems unimaginable without credit.

2- *Through putting in place organs for improvement of business environment*

Among these very many organs, we chose **C.P.I.** (Presidential Council for Investments) and **CNLNTCC** (National Commission for the Fight Against non Transparency, Corruption and Embezzlement).

➤ Presidential Council for Investments (CPI)²¹

Instituted in November 2002, CPI is a consultation and reflection framework on reforms to be initiated in order to improve business environment and attract investors.

Under its impetus, a big number of them are already effective in Senegal. The fourth session of CPI held on 10th May 2004 was an occasion to go further. It also enabled progress in the preparation for Strategy for Accelerated Growth (S.C.A).

In other terms, the Presidential Council for Investments (CPI) was put in place to conquer the private sector. This council, in charge of eradicating obstacles which block investments, proposes to assist Senegal to draw priorities in her reform programs.

²¹ CPI is a small size structure, composed of 28 Heads of companies, according to the following plan :
 - a third of Senegalese investors, a third of foreign investors established in Senegal
 - and a third of foreign investors not established in Senegal.

It is a consultative organ whose main objective is to enhance dialogue between Government and investors so as to accelerate the process of identifying and implementing reforms favorable for improving business environment; it is therefore «a powerful tool to stimulate investment ».

The members of the council committed themselves freely to consult with the President of the Republic of Senegal every six months.

Thus, within two years of operations, the Presidential Council for Investment enabled Senegal to put in place a very expansive program of economic reforms since the devaluation of CFA Franc in 1994, mainly in the fields of the tax system, administrative barriers, regulatory framework of infrastructural projects and employment legislation.

In the same dynamics of improving business environment, the National Commission for the Fight Against Non Transparency, Corruption and Embezzlement, with a view to clean and give credibility to the image of the host legal framework for investments was established.

➤ **National Commission for the Fight Against Non Transparency, Corruption and Embezzlement (CNLNTCC)**

The National Commission for the Fight Against Non-Transparency, Corruption and Embezzlement is an autonomous structure as compared to public authorities, guaranteeing her total independence. It is supposed to:

In the first place, to identify structural causes of corruption and incriminations related to this offence.

Secondly, to propose any legislative reforms, regulatory or administrative for promotion of good governance, including in international transactions.

Thirdly, to receive physical or legal claims on corruption or related offenses.

And finally, to initiate useful diligences on the merits of these claims by enabling the persons or organizations questioned to be aware of the facts alleged and present observations on the facts denied, and by taking statements from any person susceptible to establish the facts in question.

The Commission exercises its duties without prejudice to court activities. When it deems that it has indications which can justify opening of legal proceedings, it shall forward a circumstantial note and recommendations to the President of the Republic by stating the people susceptible of being committed to legal proceedings.

The Commission, from the point of its composition, has ten (10) members who are:

- Chairperson ;
- Three (3) representatives of the administration ;
- Three (3) representatives of the civil society ;
- Three (3) representatives of the private sector and socio-professional organizations.

All said and done, the renewal of the institutional framework for the promotion of investments is not simply limited to structural reforms of support for growth of productivity and competitiveness of national or foreign companies, or putting in place organs for improving business environment.

This is why in it's dynamic of revitalizing the climate for private investments, Senegal developed a new institutional framework reserved for infrastructure, known for its sensitivity for attracting capital.

Conclusion:

The last major reform undertaken by the State is materialized by efforts for adaptation of preexisting legal tools and by creation of new structures favorable for establishment of a favorable climate for private, national or foreign investments. This reform has its forces by virtue of legal advantages it consent to private investors. It also offers multiple and varied legal possibilities to enlarge the spectrum of choice for investors both from the point of view of the pieces of legislation and the accompanying organic device. This is the basis of its attractiveness.

It is therefore for these reasons that it is possible to affirm that the entire Senegalese legislation is very attractive to foreign private investors.

However, there is need to reveal some constraints which can be analyzed as obstacles to investment and entrepreneurship spirit of which the most spectacular are the informal sector and corruption

- Senegal is characterized by a very well developed informal sector as attested by the survey « 1-2-3 » carried out by Ansd²² in 2003²³. According to this study, the informal sector occupies a very important position in developing countries like ours. The contribution of the said sector is evaluated at 605 of the Gross Domestic Product (GDP) in Senegal. The players of the sector are however up to now reluctant to any normal payment of taxes, even within the

²² National Agency for statistics and demography

²³ The survey revealed that in one region of Dakar, the informal sector produced in 2002, 50.8 Billion de FCFA of goods and services and created 356.3 Billion FCFA of value added, i.e.10,7% of Gross Domestic Product (GDP).

framework of single overall contribution (CGU)²⁴ at the time when companies in the formal sector are forced to pay taxes. This statement makes the informal sector, which is constantly changing, to remain a true competitor of the formal sector.

- Corruption, which falls somewhere in the operation of the justice system, can also slow down the arrival of foreign investors who will fear for the security of their capital.

Corruption is generalized and affects all the components of justice; judges, court clerks and elements of judicial police including advocates²⁵.

Thus, if we want to improve the position of Senegal as a target destination for foreign investors we only need to fill these two gaps: further clean up of our administration not only by eradicating corruption but also by trying to accompany the informal sector towards a process of formalization.

²⁴ Source : Sud quotidien newspaper dated 24th November 2008, Taxation of the informal sector in Senegal : the biggest fraudster

²⁵ In the specific case advocates, the following testimony is illustrative enough : « going round advocates' firms on 31st December, you will see wrapped gifts meant for judges ; ties, perfumes etc, this is corruption ».