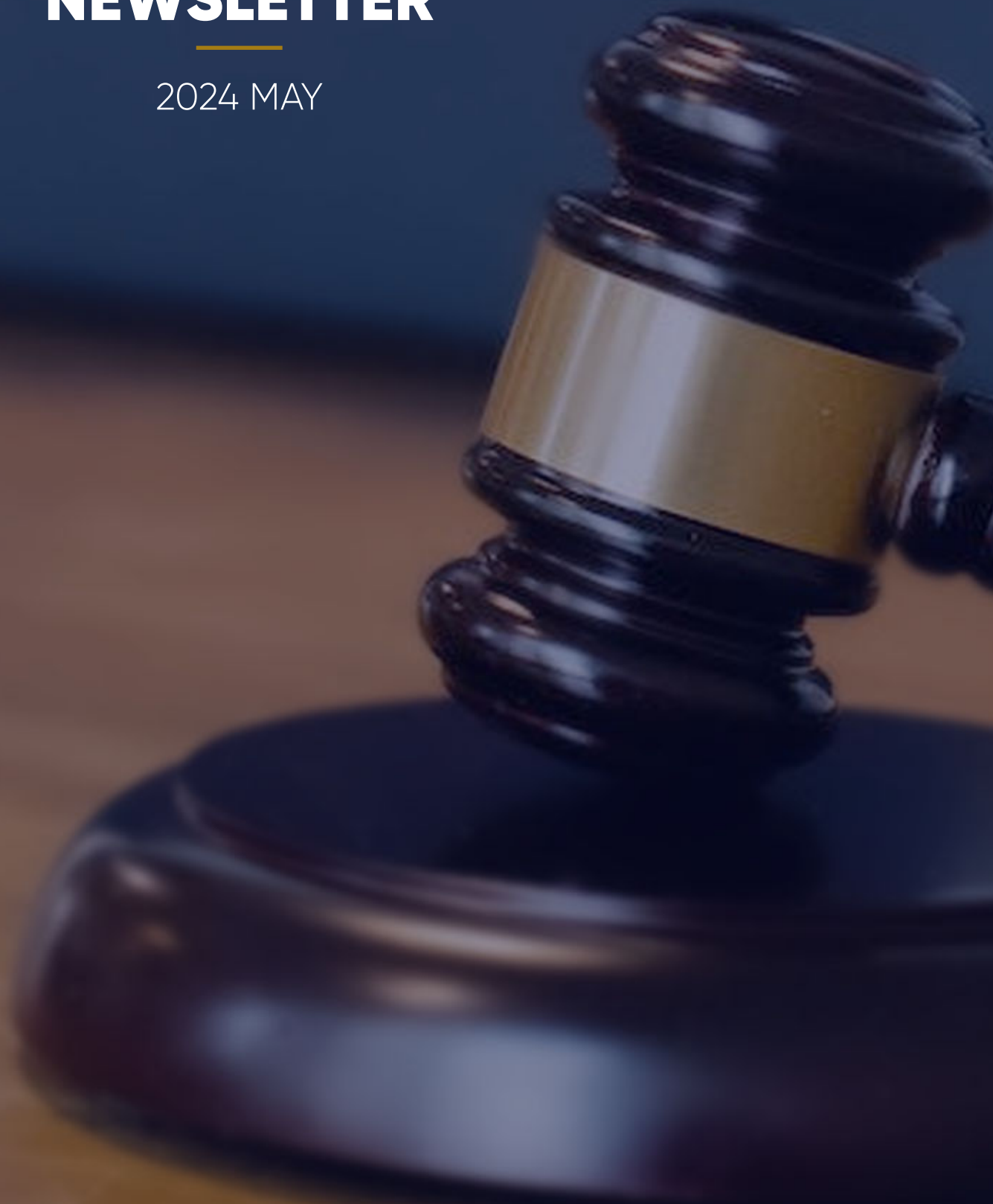


NEWSLETTER

2024 MAY



**MAME ADAMA
GUEYE & PARTNERS**

EXPERIENCE
AND KNOW-HOW,
OUR ADDED VALUE
TO YOUR ACTIVITIES.

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EDITORIAL

Dear readers,

We are pleased to share with you this first issue of the year of our Newsletter, devoted mainly to two major legislative reforms that marked the last months of 2023 and the beginning of 2024.

At the community level, this involves the adoption of the new Uniform Act Organizing Simplified Collection Procedures and Enforcement Measures, published in the OHADA Official Journal on November 15, 2023, and came into force on February 16, 2024.

At the national level, 2023 was marked by adopting the law abolishing the Court for the Repression of Illicit Enrichment (CREI) and replacing it with the Judicial and Financial Pool (PFJ) to improve the fight against economic and financial crime.

Our editors, whose litigation practice is influenced by these reforms, will introduce you to the Financial Judicial Pool through two articles and offer you the first in a series dedicated to the new Uniform Act Organizing Simplified Collection Procedures and Enforcement Measures.

To round off this issue, we have included our traditional introduction to the past year's primary legislative and regulatory texts.

We hope you enjoy reading this latest issue of our newsletter and that you find the topics covered applicable.



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The injunction to pay (OIP), in light of the new uniform act on the organization of simplified collection procedures and enforcement measures

The new OHADA Uniform Act Organizing Simplified Collection Procedures and Enforcement Measures was published in the Official Journal of OHADA on November 15, 2023.

The new text came into force on February 16, 2024, per Article 9 of the OHADA Treaty and its transitional and final provisions.

This first article devoted to this reform briefly outlines the main changes and innovations relating to the injunction to pay (OIP) procedure.

It should be noted that the provisions relating to opening the OIP, the claim criteria, or the application for an order for payment have not changed.

The following innovations are particularly noteworthy:

1. TIME LIMIT FOR ISSUING A PAYMENT ORDER

The President of the competent court has **three (3) days** from the date of referral to issue his order (article 5).

2. SERVICE OF THE PAYMENT ORDER

If the writ of service is annulled, **the creditor can resume this formality**, provided the OIP has not yet lapsed (article 8-1).

3. OPPOSITION : ORDINARY RE-COURSE AGAINST THE OIP

- The time limit for objecting to the OIP is **reduced to ten (10) days** (article 10).
- Under penalty of forfeiture, **the writ of execution must also be served on the bailiff or enforcement authority** (article 11).

4. CONCILIATION

The court hearing the opposition appoints a **judge to attempt conciliation**.

The designated judge proceeds, in chambers, with the conciliation attempt within **fifteen (15) days** of the referral.

If the conciliation attempt is unsuccessful, the judge records this and refers the matter to the next public hearing.

The court rules on the claim for recovery within **two months of the first hearing** (article 12).

5. APPEALING AGAINST A DECISION ON OPPRESSION

The time limit for appealing against an opposition decision is **reduced to fifteen (15) days** after the decision is handed down.

The clerk of the court who handed down the decision forwarded the case file, together with all the exhibits, to the court of appeal.

jurisdiction of appeal within **ten (10) days** of being served with the notice of appeal.

The appeal court shall rule within two (02) months of the first hearing, which may not be held more than one month after receipt of the file (article 15).

6. THE CONSEQUENCES OF AN ORDER FOR PAYMENT : AFFIXING THE EXECUTORY CLAUSE IN THE ABSENCE OF OPPOSITION

When the executory clause is affixed, while the opposition may still be filed, the debtor filing the opposition may apply to the court hearing the opposition to discontinue the proceedings. The court shall decide within **fifteen (15) days** from the first hearing date.

The bailiff or enforcement authority who carries out the enforcement is implicated in the proceedings.

There is no right of appeal against a decision on a request for discontinuation (article 16).

“

future issues, we'll present other innovations in the new Uniform Act Organizing Simplified Collection Procedures and Enforcement Measures.

”



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7. OTHER CASES WHERE THE EXECUTORY CLAUSE IS AFFIXED

The executory formula is affixed to the OIP when by a decision not subject to suspensive appeal:

- The opposition is declared inadmissible;
- The act of opposition is declared null and void;
- The court seized of the opposition has declared itself incompetent or has been declared incompetent (article 16-1).

8. DISPUTES CONCERNING THE EXECUTION FORMULA

Suppose the court clerk refuses a request to affix the executory formula. In that case, the claimant may apply to the president of the competent court for an injunction. His order is not subject to appeal.

The Financial Judicial Pool Prosecutor's Office

The development of organized crime phenomena, now observed almost everywhere in the world, has prompted Senegalese lawmakers to rethink how the justice system operates, particularly the organization of investigations. In this context, the Financial Public Prosecutor's Office was established by **law no. 2023-14 of July 27, 2023**.

Amending **law no. 65-61 of July 21, 1965** Code of Criminal Procedure.

The Financial Public Prosecutor's Office is headed by the Financial Public Prosecutor, who reports to the Dakar Court of Appeal Public Prosecutor. He is appointed by decree, by the statutory rules, from among magistrates of the courts and tribunals who have reached the senior rank.

It has the same powers as the Public Prosecutor in matters falling within its remit.

In performing his duties, the Financial Public Prosecutor is assisted by a Deputy Financial Public Prosecutor and at least three Deputy Financial Public Prosecutors. His deputy and his substitutes are appointed by decree, according to the statutory rules, from among the magistrates of the courts and tribunals who have reached at least the 1st group of the 1st grade and the 2nd group of the 1st grade, respectively.

A denunciation, complaint, or any other means provided by the legislation in force may refer the matter to the Financial Public Prosecutor.

It can also act as an ex officio on its initiative. When he decides to initiate proceedings, the Financial Public Prosecutor conducts a preliminary investigation by issuing written instructions to

A-level civil servants or judicial police officers work individually or as part of specialized brigades under conditions specified by decree.

Under the new law, it is privileged to be informed of any proceedings brought before the ordinary courts for offenses against public funds, corruption, and similar practices.

To increase the effectiveness of the Financial Public Prosecutor's action against offenses for which he has exclusive jurisdiction, the Public Prosecutor is required, when a «reserved» offense is referred to him, to forward the entire case file to him within **seventy-two (72) hours** of the referral. This principle is tempered somewhat by the fact that, when circumstances so require, the Public Prosecutor, already seized of a case, is empowered to take urgent action, subject to reporting to the Financial Public Prosecutor.

In proceedings against a person enjoying immunity or jurisdictional privilege, the Financial Public Prosecutor must forward the case file to the competent authority for prosecution through the appropriate legal channels.

The new text specifies that the Financial Public Prosecutor must serve the formal notice in the specific case of public prosecution for illicit enrichment.

When the preliminary investigation is closed, and there is evidence of illicit enrichment, the Financial Public Prosecutor summons the respondent, informing him/her that in the event of prosecution, the case file documents will be made available to him/her (for communication), forty-eight (48) hours in advance.

He must also inform the employee of his right to be assisted by counsel of his choice in advance to his secretary's office.

On the appointed day, the Financial Public Prosecutor hears the person concerned and informs them of the investigation's results regarding the amount of their known resources compared with the details of their

assets or lifestyle. From that point onwards, it gives the respondent formal notice within **one (1) month** to justify the items' lawful origin. Minutes are taken of the hearing.

There are two (2) possible scenarios:

- a dismissal of the case without further action when the accused presents sufficient justification ;
- the opinion of a judicial investigation by the Collège of Financial Investigating Judges of the Judicial Financial Pool, when the respondent fails to appear or to provide any justification within the allotted timeframe, or when the justification provided is deemed insufficient.

However, it should be pointed out that opening an investigation is not mandatory for all offenses. It is optional when the facts reported involve fraud or breach of trust.

In the event of an investigation, the Financial Public Prosecutor is obliged to request the opinion of the President of the Financial Judgment Chamber; it is only after this opinion that the judge(s) in charge of the investigation will be appointed, taking into account the complexity of the offense and the charges.

In addition, where there is a conflict of jurisdiction between a Public Prosecutor and the Financial Public Prosecutor, the matter is settled by the Public Prosecutor of the Dakar Court of Appeal at the request of either of these two magistrates.

Finally, it should be noted that as a transitional measure, proceedings initiated by the Special Public Prosecutor at the CREI before the investigating committee of the court above are, as from the date of entry into force of **Act no. 2023-14 of July 27, 2023**, amending the CREI's Code of Criminal Procedure, subject to the same conditions.

Act no. 65-61 of July 21, 1965, on the Code of Criminal Procedure, was prosecuted ex officio, without a formal referral, by the Financial Public Prosecutor of the Dakar High Court.

On the other hand, procedures initiated by public prosecutors before this law's entry into force are pursued to their conclusion per the procedural rules of ordinary law.



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The Specialized Judicial Pool of the Dakar High Court and Court of Appeal

Senegal has just launched an organizational reform reflecting the legislature's determination to combat financial delinquency. Financial delinquency through the adoption of **law no. 2023-14 of July 27, 2023**, amending **law no. 65-61 of July 21, 1965**, on the Code of Criminal Procedure.

The main aim of this new law was to reform the judicial institutions dealing with economic and financial litigation, specializing them and making them more effective in fighting this type of offense.

To achieve this objective, the legislator first abolished **Act 81-54 of 10 July 1981**, creating the Court for the Repression of Illicit Enrichment (CREI) and then set up a Judicial Pool specializing in the repression of economic or financial crimes and offenses, known as the Financial Judicial Pool (PJF), at the Dakar High Court and the Dakar Court of Appeal.

The Financial Judicial Pool, which has national jurisdiction, includes :

- a financial prosecutor's office ;
- a College of Financial Investigating Judges ;
- a Financial Judgment Chamber ;
- a Financial Indictment Chamber ;
- a Financial Appeals Chamber ; and
- specialized legal assistants.

It has concurrent jurisdiction with the ordinary courts in the prosecution, investigation, and adjudication of economic or financial offenses that are highly complex, due in particular to a large number of perpetrators, accomplices, or victims, the extent of the loss or the geographical area covered.

The PJF has concurrent jurisdiction to prosecute, investigate, and try corruption and related practices, such as embezzlement, fraud, misappropriation of public funds, counterfeit currency offenses, and money laundering. Tax offenses ; customs offenses; trafficking in narcotics, psychotropic substances, and precursors information and communication technology offenses and other electronic payment instruments and processes, as well as offenses of an economic or financial nature for which it is empowered by special law. It has exclusive jurisdiction over the prosecution, investigation, and adjudication of offenses relating to public procurement regulations, maritime piracy terrorist financing, migrant smuggling, illicit enrichment offenses related to banking regulations; stock market offenses on the financial market; fraud and breach of trust, where the loss is greater than or equal to fifty million (50,000.000) CFA francs when the acts involve several perpetrators, accomplices or victims or extend over more than one jurisdiction of a Tribunal de Grande Instance; offenses for which it has concurrent jurisdiction, provided that the loss is equal to or greater than fifty million (50.000,000 CFA francs ; and offenses for which it has concurrent jurisdiction, when these have at least one foreign element, except offenses related to information and communication technologies.

In all cases, the PJF also deals with related offenses.

Lastly, registry functions are performed by clerks seconded to the PJF by the registry administrator of the Dakar Court of Appeal and by his counterpart at the Dakar Special Court of First Instance.



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Informations

QUELQUES TEXTES LEGISLATIFS ET REGLEMENTAIRES PUBLIES AU JOURNAL OFFICIEL AU COURS DE L'ANNEE DE 2023 ET DEBUT 2024

EMPLOYMENT LAW :

- National collective agreement for the Oil and Gas Sector of August 02, 2019 (**JO no. 7614 of April 1, 2023**) ;
- Ministerial order no. 014112 of April 27, 2023, extending the national collective agreement for the oil and gas sector to all employers and workers in the said sector (**JO no. 7643 of July 22, 2023**) ;
- Decree n°2023-1710 of August 07, 2023, setting the guaranteed interprofessional minimum wage (SMIG) and the guaranteed agricultural minimum wage (SMAG) (**JO no. 7653 of August 19, 2023**).

OIL AND GAS :

- Ministerial order n°027176 of August 16, 2023, repealing order n°031029 of September 21, 2021, appointing the members of the oil contract review and negotiation commission (**JO no. 7656 of September 05, 2023, special issue**) ;
- Decree n ° 2023-1712 of August 07, 2023, on the organization of the Ministry of Petroleum and Energy (**JO no. 7662 dated September 23, 2023**) ;
- Decree no. 2023-849 of April 07, 2023, setting the terms and conditions for activities in the intermediate and downstream segments of the gas sector (**JO no. 7617 dated April 14, 2023, special issue**);
- Decree n ° 2023-850 of 07 April 2023 setting the conditions for connection to the gas system and the conditions for third-party access to the transformation, transmission, distribution, and storage infrastructures (**JO no. 7616 of April 13, 2023, special issue**) ;`
- Decree n°2023-851 of April 07, 2023, setting the terms and conditions for determining and revising tariffs for the use of gas infrastructures and the transfer price of natural gas from local production (**JO no. 7616 of April 13, 2023, special issue**).

MINING SECTOR :

- Decree no. 2023-281 of February 07, 2023, amending decree no. 2020-1711 of September 10, 2020, setting the terms and conditions for the supply, operation, and functioning of the mining sector fund (FASM) (**JO no. 7603 of February 25, 2023**) ;
- Decree no. 2023-990 of May 4, 2023, on the organization and operation of the National Committee for Monitoring Local Content in the Hydrocarbons and Mining Sector (**JO no. 7630 of May 27, 2023**) ;

- Decree n° 2023-991 of May 4, 2023, setting the terms and conditions for the funding and operation of the Support Fund for the Development of Local Content in the hydrocarbons and mining sectors (FADCL) (**JO no. 7630 of May 27, 2023**).

ELECTRICITY :

- Decree n°2023-269 of February 03, 2023, setting the conditions and procedures for issuing, amending, renewing, and withdrawing electricity sector licenses (**JO no. 7632 of June 03, 2023**) ;
- Decree no; 2023-285 of February 07, 2023, relating to decentralized rural electrification projects (**JO no. 7671 dated November 04, 2023**) ;
- Decree n°2023-444 of 28 February 2023 laying down the procedures for awarding licenses for regulated activities in the electricity sector (**JO no. 7620 of April 20, 2023 (special issue)**) ;
- Decree n°2023-286 of February 07, 2023, relating to the activity of self-generation of electrical energy (**JO no. 7671 of November 04, 2023**).

PUBLIC PROCUREMENT LAW & PUBLIC-PRIVATE PARTNERSHIP (PPP) :

- Joint decree n°31.077 of September 15, 2023, setting the rules for the procurement of essential supplies, medicines, and pharmaceutical products, in derogation of decree n°2022-2295 of December 28, 2022, on the Public Procurement Code (**JO no. 7671 dated November 04, 2023**) ;
- Ministerial order n°009562 of April 03, 2023, setting the amount of the deposit for contentious appeals in the context of the award of public-private partnership contracts (**JO no. 7619 of April 17, 2023, special issue**) ;
- Ministerial order n° 24658 of September 06, 2022, appointing the Administrator of the Support Fund for Public-Private Partnerships (FAPP) (**JO no. 7599 of February 14, 2023**) ;
- Ministerial decree n°00675 of January 12, 2022, setting the missions, composition, and operation of the monitoring committee for public-private partnership contracts (**JO no. 7599 of February 14, 2023**) ;
- Ministerial order n°000676 appointing the Chairman of the Strategic Committee of the Support Fund for Public-Private Partnerships (FAPP) (**JO no. 7599 of February 14, 2023**) ;
- Ministerial decree no. 031885 of September 15, 2023, on the functionalities and minimum requirements for the dematerialization platform for public-private partnership contract award procedures (**Journal no. 7670, dated October 28, 2023**).

IMMIGRATION LAW :

- Decree n ° 2023-463 of 06 March 2023 amending decree n ° 71-860 of 28 July 1971 relating to the conditions of admission, residence, and establishment of foreigners (**JO no. 7632 of 03 June 2023**) ;

- Decree n° 2023-1319 of July 12, 2023, on the organization and operation of the National Commission for the Management of Refugees and Stateless Persons (CNGRA) **(JO no. 7655 of September 2, 2023)**.

LAND LAW :

- Decree no. 2022-2307 of December 30, 2022, amending decree no. 72-1288 of October 27, 1972, on the conditions for allocating and withdrawing land from the national domain **(JO no. 7587 of January 05, 2023)**.

TRANSPORT :

- Decree no. 2023-740 of March 27, 2023, laying down the rules governing the organization and operation of the bodies of the Executive Council for Sustainable Urban Transport (CETUD) **(JO no. 7618 of April 15, 2023)**.

REAL ESTATE :

- Decree n°2023-382 of February 24, 2023, amending law n°2014-03 of January 22, 2014, lowering rents that have not been calculated according to the corrected surface area **(JO no. 7605 of February 28, 2023)** ;
- Decree n ° 2023-446 of 1st March 2023 creating and setting the rules for the organization and operation of the National Commission for the Regulation of Residential Rents **(JO no. 7610 of 20th March 2023)**.

BANKING & FINANCE LAW :

- Decree no. 2023-125 of January 10, 2023, authorizing banking financial institutions to receive deposits from the public **(JO no. 7606 of March 4, 2023)**.

CONSTRUCTION LAW :

- Law no. 2023-21 of December 29, 2023, on the building code **(JO no. 7695 of January 18, 2024)** ;
- Law n°2023-12 of June 21, 2023, on the control of testing and design laboratories in the building and public works (BTP) sector **(JO no. 7649 dated August 05, 2023)**.

JUDICIAL ORGANIZATION :

- Decree n°2023-677 of March 22, 2023, on the organization of the judiciary **(JO no. 7625 of May 06, 2023)** ;
- Decree no. 2023-679 of March 23, 2023, on the organization of the Ministry of Justice **(JO no. 7625 of May 06, 2023)**.

HEALTH LAW :

- Law no. 2023-06 of June 13, 2023, on medicines, other health products, and pharmacy **(Journal no. 7642 dated July 15, 2023)** ;

- Joint decree n°31.077 of September 15, 2023, setting the rules for the procurement of essential supplies, medicines, and pharmaceutical products, in derogation of decree n°2022-2295 of December 28, 2022, on the Public Procurement Code (**JO no. 7671 dated November 04, 2023**).

CRIMINAL LAW :

- Law no. 2023-14 of August 02, 2023, amending law no. 65-61 of July 21, 1965, on the Code of Criminal Procedure (**JO no. 7647 of August 02, 2023**).

TAX LAW :

- Joint order no. 032007 of September 25, 2023, amending joint order no. 0002870 of February 02, 2023, fixing the scale of provisions on registration and stamp duties and the fees for issuing judicial documents in civil and commercial matters (**JO no. 7670 dated October 28, 2023**) ;
- Law n°2023-18 of December 15, 2023, on the Finance Act for the year 2024 (**JO no. 7687 of December 26, 2023**).

ENVIRONMENTAL LAW :

- Law n°2023-15 of August 02, 2023, on the Environmental Code (JO no. 7660 dated September 16, 2023).

INTERNATIONAL LAW & COOPERATION :

- Act n°2023-09 of June 20, 2023, authorizing the President of the Republic to ratify the Convention on mutual legal assistance in civil and commercial matters between the Republic of Senegal and the Islamic Republic of Mauritania, signed in Nouakchott on July 12, 2021 (**JO no. 7659 of September 09, 2023**) ;
- Law n°2023-10 of June 20, 2023, authorizing the President of the Republic to ratify the African Charter on Road Safety, adopted by the member states of the African Union on January 31, 2016, in Addis Ababa (**JO no. 7659 of September 09, 2023**) ;
- Act n°2023-11 of June 20, 2023, authorizing the President of the Republic to ratify the Convention on legal and judicial cooperation in civil and commercial matters between the Government of the Republic of Senegal and the Government of the State of the United Arab Emirates, signed in Abu Dhabi on October 14, 2021 (**JO no. 7649 dated August 05, 2023**).

OTHER :

- Decree no. 2022-2308 of December 30, 2022, on the implementation of financial sanctions and the proliferation of weapons of mass destruction (**JO no. 7587 of January 05, 2023**) ;
- Decree no. 2022-1777 of September 17, 2022, on the distribution of State services and the control of public establishments, national companies, and companies with public shareholdings between the Presidency of the Republic, the Prime Minister's Office and the ministries (**JO no. 7591 of January 27, 2023**) ;

- Decree nr 2023-1712 of August 07, 2023, on the organization of the Ministry of Petroleum and Energy (**JO no. 7662 dated September 23, 2023**) ;
- Decree no. 2023-2112 of October 18, 2023, amending decree no. 2016-1008 of July 26, 2016, implementing law no. 2014-14 of March 28, 2014, on tobacco manufacture, packaging, labeling, sale, and use (**JO no. 7676 of November 28, 2023**).



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