



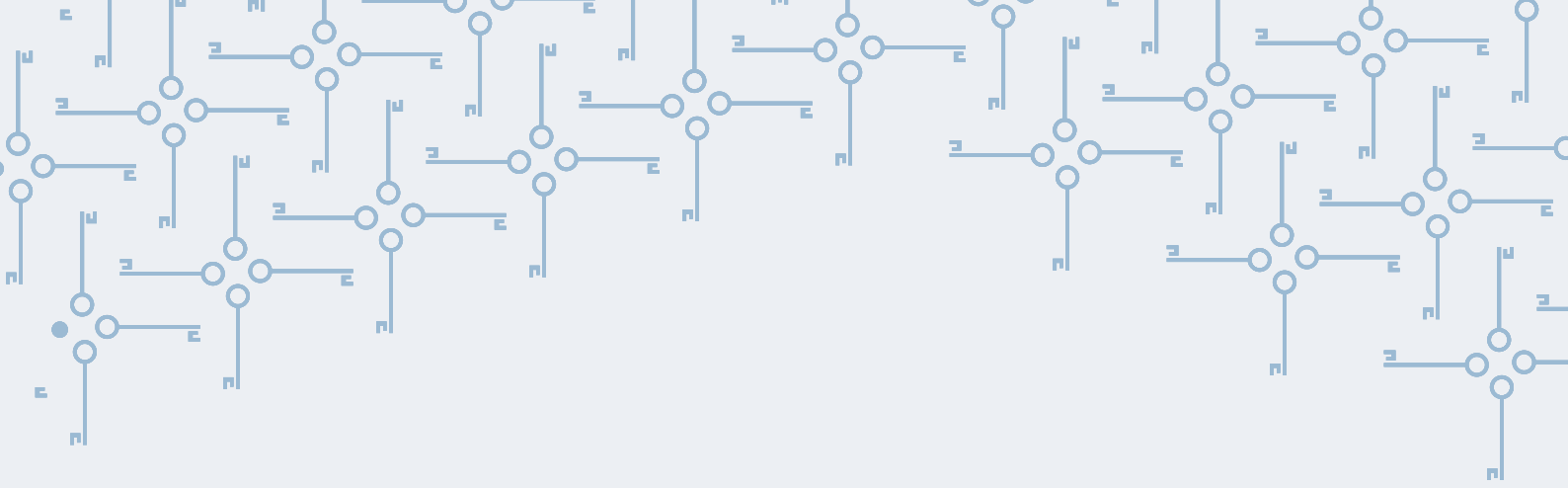
Opening Extractives

Unlocking the benefits
of ownership data

Report

Senegal: Scoping Assessment

November 2022



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Abbreviations and acronyms

AML	Anti-money laundering
AMLDD	Anti-money Laundering Directives
BO	Beneficial ownership
BODS	Beneficial Ownership Data Standard
BOT	Beneficial ownership transparency
CFT	Countering financing of terrorism
EITI	Extractive Industries Transparency Initiative
EU	European Union
FATF	Financial Action Task Force
GIABA	Inter-Governmental Action Group against Money Laundering
ITIE-SN	Senegal EITI
MER	Mutual Evaluation Report
OECD	Organisation for Economic Co-operation and Development
PD	Presidential decree
PEP	Politically exposed person
RCCM	Le Registre du Commerce et du Crédit mobilier (corporate register)
SOE	State-owned enterprise
UEMOA	West African Economic and Monetary Union

Executive summary

This report examines the current state of play of beneficial ownership in Senegal. It explores the legislative framework of beneficial ownership (BO), the system used to collect BO data, and how accessible this data is to the public. Using the Open Ownership Principles as a guide, this report provides an assessment of the measures that Senegal should take in order to introduce an economy-wide, public, BO register.

Such a register can bring real benefits to the country's economy and provide greater insight into who is investing in the economy as well as contributing to the fight against corruption, money laundering and other illicit financial activities. Senegal has already taken a number of measures on beneficial ownership transparency (BOT) including embedding a BO definition in primary legislation and implementing a BO reporting system to meet EITI requirements.

However, the country does not yet meet international best practice on BO reporting. The Financial Action Task Force (FATF) regional body, the Inter-Governmental Action Group against Money Laundering (GIABA), undertook an evaluation of Senegal's compliance with

its recommendation on beneficial ownership. It issued its mutual evaluation report (MER) in May 2018 and Senegal received ratings between low and non-compliant for its implementation of BOT.¹ The MER noted that "there is no legal and institutional mechanism in the country for identifying beneficial owners of transactions and the real owners of legal persons."²

From our desktop research and consultation sessions with key implementing agencies, this report finds that since the GIABA MER in 2018, the government has taken action regarding BOT, which include:

1. Incorporating the West African Economic and Monetary Union (UEMOA) anti-money laundering (AML) directive³ into domestic law;⁴
2. Adopting a national AML and countering financing of terrorism (CFT) strategy document for 2019-2024;
3. Implementing a presidential decree,⁵ which establishes a BO reporting system for the extractive industries, namely by requesting BO data from all companies holding or applying for extractive licenses, and collecting them in the commercial registry (RCCM); and
4. Amending the Tax Code through the 2021 Finance Law, which created a legal obligation on companies to identify and report their beneficial ownership to the Tax Authority, but this has yet to be effective.

¹ See *Anti-Money Laundering and Counter Terrorist Financing Measure, Senegal, Mutual Evaluation Report, November 2018*

² See <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/GIABA-Mutual-Evaluation-Senegal-2018.pdf>

³ Directive n° 02/2015/cm/UEMOA Relative a la Lutte Contre le Blanchiment de Capitaux et le Financement du Terrorisme dans les Etats Membres de l'Union Economique et Monetaire Ouest Africaine (UEMOA)

⁴ See <https://itie.sn/reglementation/>

⁵ Ibid

This report also reveals that:

5. In its EITI Validation, Senegal was assessed as having fully met the initial criteria with regard to implementing Requirement 2.5 on BOT;
6. There is no legal obligation on the government to create and maintain a public BO register;
7. The only public access to BO data is via the EITI reporting process, but this has some limitations including lack of complete coverage of the extractive sector;
8. There are currently three BO definitions being used within Senegal, and while these have some common elements there are also some notable differences;
9. BO information is not currently subject to robust verification; and
10. Penalties for non-compliance with BO reporting requirements are not currently enforced.

The main recommendations of this report relate to the enactment of specific legislation to create and maintain a public BO register. The government should also set up a multi-disciplinary task force to draft this legislation and advise on policy decisions. The report also makes several recommendations on the content of BO legislation.

Introduction

Senegal has the opportunity to put in place a best-in-class BO disclosure regime that makes a vital contribution to preventing and combatting money laundering, terrorist financing, corruption and other illicit financial flows. Such a regime could also contribute to building trust and a more open and competitive economy. It would allow Senegal to meet international standards including the EITI Standard 2019 and FATF's Recommendation 24.

Action to date

Since the GIABA MER in 2018, the Senegalese government has taken the following actions:

1. Incorporated UEMOA AML Directive into domestic law as Law 2018-03. This law defines a beneficial owner and a politically exposed person (PEP). However, it does not create a legal obligation on legal entities to collect or report BO information. It also does not create a legal obligation on the government to establish or maintain a BO register.
2. Adopted its national AML/CFT strategy document 2019-2024 in May 2019. The implementation of the action plan commenced with the mobilisation of stakeholders and training activities for reporting entities and supervisory authorities.
3. Issued and implemented Presidential Decree 2020-791 in respect of BO information in the extractive sector. This decree includes:
 - A definition of a beneficial owner;
 - references to the PEP definition in Law 2018-03;
 - a legal obligation on the government to establish an electronic register of BO information of companies active in the extractive sector;
 - a legal obligation for the RCCM to collect BO information electronically;
 - a legal obligation on companies in the extractive sector to collect and submit BO information; and
4. Amended article 633 of the Tax Code through the 2021 Finance Law on 5 July 2021 (published in the Official Gazette on 9 July 2021).⁶ This introduced a requirement for all legal entities to provide the Tax Authority with their BO details by 31 December 2021, which will be recorded in a register maintained by the Tax Authority. The amendments included:
 - the BO information collection form (as an annex).
 - a definition of a beneficial owner, including an ownership threshold of 25%;
 - a requirement to submit information on the identity of each beneficial owner, the nature and extent of their ownership or control and the date on which they become (and ceased to be) a beneficial owner;
 - a requirement to notify any changes within 30 days;
 - a requirement for the tax authority to retain beneficial ownership information for 10 years; and
 - a reference to Presidential Decree 2020-791.

However, the ministerial decree to implement amendments to article 633 have yet to be issued so the above provisions are yet to be operationalised.

Presidential Decree 2020-791 gives responsibility to the RCCM to collect BO information from extractive companies and make it available to the Senegal EITI (ITIE-SN). The decree states that only those with a legitimate interest may access the register, which includes a specific list of government agencies. In practice, anybody can apply to the RCCM to request access to the information and the RCCM has indicated that requests are granted automatically. Law 2018-03, PD2020-791 and 2021 Finance Law are all available on the ITIE-SN website.⁷

To capture this opportunity, Senegal will need to build on the progress made to date in promoting BOT. ITIE-SN has played an important role as an advocate for BOT

⁶ https://itie.sn/?offshore_dl=7608

⁷ Ibid

and has driven much of the above progress through implementation of Requirement 2.5 from the EITI Standard 2019.⁸ The EITI International Secretariat in its Validation Report on Senegal, dated 21 September 2021⁹ acknowledged the role ITIE-SN has played in advancing BOT: "Senegal EITI has played a role in centralising disparate information and improving the accessibility of both legal and beneficial ownership data for at least some companies included in the scope of EITI reporting, albeit with gaps."¹⁰

Overall, the Validation Report gives a holistic picture of progress towards BOT in the extractive sector. EITI uses two phases in assessing countries' progress towards meeting Requirement 2.5. The first phase in Senegal was conducted before 31 December 2021, and undertaken in accordance with the EITI validation framework.¹¹ While noting gaps in beneficial ownership reporting, the report assesses that "Senegal has fully met the requirement's objective of enabling the public to know who ultimately owns and controls the companies operating in the country's extractive industries and to help deter improper practices in the management of extractive resources." All aspects of the initial criteria for Validation of Requirement 2.5 have been addressed,¹² The next EITI Validation will assess progress against the full set of criteria in Requirement 2.5 which covers whether the BO data collected and publicly disclosed in Senegal are comprehensive and reliable. For Senegal to be positively evaluated, it has "to ensure that the beneficial ownership of all companies holding or applying for a mining, oil and gas license is comprehensively and reliably disclosed as of January 2022."¹³

In March 2020, Presidential Decree 2020-791 (PD2020-791) created an obligation on companies active in the extractive sector to report their beneficial owners to the RCCM. This information is then made available to ITIE-SN for publication in its annual EITI report. This is currently the only public BO reporting system in place in the country.

On 30 June 2022, Senegal passed another milestone on its journey towards BOT with the national launch of the Opening Extractives programme in the country.¹⁴ At the launch, the government reiterated its commitment to BOT. The launch followed the stakeholder consultation workshop which formed part of the research for this scoping report.

The importance of BOT for Senegal's economy

BOT is important in building trust and confidence in the integrity of the whole economy, for citizens, government, the private sector and providers of finance, both domestic and international. The demands for increased transparency from international investors, finance providers and other stakeholders are growing. At the same time, there is more focus on the beneficial ownership of companies and assets globally, as governments seek to build trust and clamp down on tax evasion, corruption and money laundering.

As Senegal continues to attract international investment and financing, it will want to meet these expectations of transparency. Senegal has been, and will continue to be, in competition with other countries to attract foreign investment, and countries that offer higher levels of transparency are likely to be more successful in doing so, especially in the post-Covid financial environment.

Scope

This scoping assessment report examines the implications of BOT for the whole of Senegal's economy. It considers what is required to implement an effective economy-wide BO reporting system, and to publish high-quality and usable BO data. It assesses the current measures relevant to BOT that are in place in Senegal, especially the BO reporting system established by PD2020-791 and the 2021 Finance Law. It also considers the implications of other relevant legislation such as Senegal's AML law, Law 2018-03.

Objectives

The overall objective of this scoping assessment report is to provide vital inputs into Senegal's participation in the Opening Extractives programme and provide concrete recommendations to advance the implementation of effective BOT in the country.

This scoping assessment report:

- identifies significant stakeholders;
- documenting stakeholders' perspectives on BOT;

⁸ <https://eiti.org/collections/eiti-standard>

⁹ https://eiti.org/sites/default/files/attachments/eiti_validation_of_senegal_2021_-_final_validation_report_september_2021_en.pdf

¹⁰ Validation Report, p28

¹¹ See https://eiti.org/sites/default/files/attachments/assessing_implementation_of_eitis_beneficial_ownership_requirement.pdf

¹² Validation Report p29

¹³ Validation Report p30

¹⁴ See <https://eiti.org/blog-post/launch-opening-extractives-senegal>

- delivers analysis of the policy and legal environment; and
- assesses the country's current BOT status, as well as identifies opportunities and challenges for the enhancement of Senegal's BOT regime.

Methodology

The methodology consisted of:

- stakeholder engagement based on established stakeholder mapping and engagement methodology. A total of 14 stakeholders from 6 organisations were interviewed and a list is provided at Appendix 1. In addition, a stakeholder consultation workshop was held on 9 June 2022. It was attended by 26 individuals and the Opening Extractives staff;
- a desktop review of relevant documents including legislation, EITI reports, FATF reports and other third-party reports. A list of documents is provided at Appendix 2;
- the completion of Open Ownership's scoping assessment questionnaire for countries enrolled on the Opening Extractives programme.

This assessment uses the [Open Ownership Principles](#) as a framework for identifying the challenges and opportunities for Senegal in implementing a robust BO reporting system on an economy-wide basis. There are nine principles which cover all aspects of a BO reporting system, from defining beneficial ownership, to ensuring data is available in a structured format, to sanctions and enforcement.

The beneficial ownership state of play in Senegal

Below is a short analysis of how Senegal's disclosure regime compares against the nine topics within the OO Principles.

Principle one Robust definitions

Principle

- Beneficial ownership should be clearly and robustly defined in law, with sufficiently low thresholds set to ensure all relevant ownership and control interests are disclosed.

Elements of Principle

- A robust BO definition should make clear that a beneficial owner can only be a natural person and should expressly cover direct and indirect ownership and control.
- There should be a single and unified definition that is set out in primary legislation and applies in all circumstances.
- As indirect ownership and control can take many forms, the definition should include a non-exhaustive list of examples but also a catch-all clause to minimise any loopholes.
- The definition should also include a threshold that is low enough to capture all material ownership or control but not so low that it creates an undue compliance and administrative burden.
- It should also make clear that intermediaries, nominees, agents and other similar persons are not beneficial ownership.

Assessment

GIABA's Mutual Evaluation Report (MER) of Senegal published in May 2018 noted that the term "beneficial ownership" did not appear in Senegalese law, and that this lack of definition obstructed access to BO information. The MER stated that "[t]he extant Senegalese law literally omits the term "beneficial ownership", which means there is no mechanism for collecting such information. Consequently, information on beneficial ownership of companies at a designated place in the country and the possibility of obtaining such information in a timely manner by any competent authority have not been communicated by Senegal."¹⁵

However, three months prior to this, in February 2018, Senegal transposed UEMOA Directive 02/2015 on AML and CFTs into domestic law as Law 2018-03. This Directive (and therefore Senegalese law) did have a BO definition from that point onwards. The research behind the MER statement almost certainly occurred in late 2017 before the transposition of the Directive. Furthermore on 19 March 2020, the government enacted PD2020-791 on registering beneficial ownership, and amended the Tax Code in the July 2021 Finance Law. Both the decree and the Finance Law contain differing beneficial ownership definitions.

¹⁵ See p149, <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/GIABA-Mutual-Evaluation-Senegal-2018.pdf>

Senegal therefore currently has three BO definitions set out in law. Two definitions are set out in primary legislation: Law 2018-03 and the 2021 Finance Law, while the third is contained in a presidential decree, PD2020-791.

The three definitions have several important elements in common. These include making clear that a beneficial owner is a natural person, and reference to both direct and indirect ownership and control. They also use a cascade approach to identifying beneficial owners. The definition of control is designed to capture any form of control. The definitions also make clear that nominees cannot be considered beneficial owners.

The definition in PD2020-791 sets a threshold of 2%, while Law 2018-03 and the 2021 Finance Law have a threshold of 25%, but the latter provides an exception for the extractive industries where it maintains the 2% threshold. Law 2018-03 also provides a definition of PEPs, which includes domestic and foreign public officials, relevant categories of types of officials and their family members and close associates, as well as others deemed PEPs by a competent authority. PD2020-791 refers to this definition. The 2021 Finance Law in turn refers to PD2020-791. For ease of understanding, the three definitions are laid out in *Table 1* below.

Table 1. Examining the definitions of BO in Senegal

Elements of the definition	Definition in Law 2018-03	Definition in PD2020-791	Definition in 2021 Finance Law
Natural person	Yes	Yes	Yes
Ownership and control interests	Yes	Yes	Yes
Indirect and direct interests	Yes	Yes	Yes
Disclosure threshold	25%	2%	25%
Forms of economic or control interest	Refers to “par tout autre moyen” (i.e. by all other means) and includes non-exhaustive list of examples including voting rights, control over management or the Board	Refers to control “par d’autres moyens” (i.e. by other means) and gives examples including voting rights, control over management or the Board	Refers to “par tout autre moyen” (i.e. by all other means) and includes non-exhaustive list of examples including voting rights, control over management or the Board
Mechanisms of holding interest	Includes share capital, voting rights, control over management, Board	Includes share capital, voting rights, control over management, Board	Includes share capital, voting rights, control over management, Board

Recommendations

- The government should adopt a single unified BO definition that is used for all purposes in the country. This should be based on the definition in Law 2018-03, which is more detailed than the PD2020-791 and the 2021 Finance Law definitions, and is already set in primary legislation. The single unified definition should also take into account relevant recommendations given in this report.
- The single unified definition should set a general threshold less than 25% but higher than 2%, in order to be in line with international emerging good practice which is moving towards lower thresholds. A low threshold should be applied in cases where a beneficial owner is a PEP. A 2% threshold would probably cause undue administrative and compliance burden if implemented on an economy-wide basis. Beneficial ownership should be disclosed when

an individual's aggregate control of, or economic benefit from, a company reaches or exceeds 5%. The government should take a risk-based approach to setting the threshold. This may include setting different thresholds for beneficial owners from

different economic sectors (e.g. a lower threshold for the extractive sector) and for different types of beneficial owners (e.g. PEPs). This practice has already been adopted in Ghana and Armenia.

Principle two

Comprehensive coverage

Principle

- Data should comprehensively cover all relevant types of legal entities and natural persons.

Elements of Principle

- All types of entities and arrangements through which ownership and control can be exercised (including, for example, state-owned enterprises (SOEs) and publicly listed companies (PLCs)) and all types of beneficial owners (including non-residents) should be included in declarations, unless reasonably exempt.
- Any exemptions from full declaration requirements should be clearly defined and justified, and reassessed on an ongoing basis.

Assessment

A BO reporting regime should cover all types of legal entities that operate in a country, including foreign entities and subsidiaries of foreign-owned entities. This should include limited liability companies, joint stock companies, partnerships, co-operatives and entities that are not for profit. There should be a minimal number of exemptions and a system for justifying and periodically reviewing such exemptions. There may also be a need to set specific reporting requirements for some types of entities that do not readily lend themselves to reporting natural persons as beneficial owners, e.g. companies listed on a stock exchange and state-owned enterprises.

The Senegalese economy attracts investment from a wide range of countries and types of commercial vehicles, including privately-held companies, publicly-listed companies and state-owned enterprises. Therefore, it is likely that there will be a wide variation in the types and complexity of ownership and control structures for companies operating in the country. These structures

may include types of legal entities that are not currently recognised in Senegalese law, e.g. trusts. Nevertheless, all the BO definitions currently in place contain a catch-all clause that should capture any form of legal entity, including foreign-owned entities.

The only operational system for collecting and publicly reporting beneficial ownership is that established by PD2020-791 for the extractive sector. This only covers the companies that are within the scope for EITI reporting, i.e. those who apply for or hold licences for the exploration or extraction of oil, gas and minerals. Following the enactment of this decree, ITIE-SN published BO information from the extractive sector in its report for FY2019, published in December 2020, and the report for FY2020, published December 2021.¹⁶

Table 2 provides a summary of the level of coverage in both reports. For the FY2020 report, 13 of the companies have been reclassified as listed companies. For these companies, the percentage of shares listed on a stock exchange and a link to the relevant stock exchange web page is given. In both reports, the BO information is attached to the report as Annex 3.

¹⁶ Both reports can be found at: <https://eiti.org/countries/senegal>

Table 2. Summary of beneficial ownership information collection and compliance, 2019 and 2020

Level of coverage and compliance	2019	2020
Companies which provided complete BO information	16	7
Companies which provided incomplete BO information	1	1
Companies which provided no BO information	7	3
State-owned companies	2	2
Listed companies	0	13
Total	26	26

Source: ITIE-SN EITI 2019 and 2020 reports

It is worth noting that the “state-owned companies” and “listed companies” rows in the table above are described in the EITI reports as “Companies which are not required to report information on Ultimate Beneficial Owners”.¹⁷ The definition of beneficial ownership in use in Senegal is silent on listed companies, but they appear to be treated as exempt from reporting. However, the

government’s data collection form has fields related to publicly-listed companies but not for SOEs.

At the Opening Extractives stakeholder workshop on 9 June 2022, the RCCM representative reported that details of 118 beneficial owners of extractive companies had been submitted. However, it is not clear how many companies this relates to.

Recommendations

- Senegal should enact specific, stand-alone legislation to create and maintain an economy-wide BO reporting system that meets the Open Ownership Principles and is in line with international best practice.
- The government should establish a multi-disciplinary taskforce, under the remit of the Ministry of Justice and chaired by a senior official or minister, to undertake the design of the BO reporting system, advise the government, draft the necessary legislation, undertake stakeholder engagement and navigate the draft law through the legislative system. This taskforce should include representatives of the Tax Authority, Ministries of Mines, Oil and Gas as well as any other relevant government agencies.
- ITIE-SN should clarify the reporting requirements for SOEs and companies with shares listed on a stock exchange and provide additional guidance. Where exemptions exist, they should only be applied where the stock exchange has adequate ownership disclosure requirements, i.e. disclosure requirements relating to the acquisition and disposal of significant shareholdings and voting rights.¹⁸

¹⁷ For example see p14 of 2020 report

¹⁸ Jack Lord and Kadie Armstrong, “Beneficial Ownership Transparency for Listed Companies”, September 2020

Principle three

Sufficient detail

Principle

- Beneficial ownership declarations should collect sufficient detail to allow users to understand and use the data.

Elements of Principle

- Information should be collected about the beneficial owner, the declaring company, and the means through which ownership or control is held.
- Information should be collected in online forms with clear guidance that facilitates compliance.
- Information collected should be limited to what is necessary to achieve the policy objective.
- Where beneficial ownership is held indirectly through multiple legal entities or legal arrangements, or ownership or control are exerted formally or informally through another natural person, sufficient information should be collected to understand full ownership chains.

Assessment

This principle recommends that the information collected on beneficial ownership should be sufficient to uniquely identify each beneficial owner, the reporting company and the nature and extent of their ownership or control over that company. This should include the exact percentage share of ownership or control and details of intermediate levels of ownership or control where relevant. For example, the EU's 4th AMLD states that the following information should be available on each beneficial owner:

- Name
- Month and year of birth
- Nationality
- Country of residence
- Nature of control
- Size interest

The EITI Standard 2019 Requirement 2.5 on beneficial ownership states that information about the identity of the beneficial owner should include the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any PEPs. It is also

recommended that the national identity number, date of birth, residential or service address, and means of contact are disclosed.

The extractive industry BO reporting system in Senegal collects and makes available the following information on each beneficial owner:¹⁹

- Full name
- Date of birth
- National identity card number (for Senegalese citizens)
- Nationality
- Country of residence
- Address
- Level of ownership
- PEP status

This data is provided in ITIE-SN's annual reports and makes clear which company is reporting the BO information. It provides sufficient detail to uniquely identify each individual beneficial owner. However, there is currently no information collected or reported on intermediate ownership and control structures.

As noted above, the 2021 Finance Law does not specify the details to be collected on each beneficial owner in order to identify them. Therefore, it is unclear whether sufficient detail on each beneficial owner will be collected. The 2021 Finance Law does require however that the nature and extent of owners

¹⁹ Ministerial ruling no. 001598, 5 February 2021, concerning the form for the declaration of beneficial owners.

Recommendations

- When the Senegalese government legislates for an economy-wide BO reporting system, it should ensure that legislation and implementing regulations allow for the collection of the information listed in *Table 3* below, and are based on the guidance provided by Open Ownership and the EITI.²⁰

Table 3. Information to be collected

Reporting company	Each beneficial owner	Nature and extent of ownership or control
<ul style="list-style-type: none"> Name of reporting entity Registration number of reporting entity Address of reporting entity Type of reporting entity 	<ul style="list-style-type: none"> Full name Date of birth Unique identifier number (e.g. national identity card number or passport number) Nationality Residential address Contact address PEP status If PEP, nature of PEP status (e.g. public office, family member), date became PEP 	<ul style="list-style-type: none"> Percentage of ownership or control How ownership or control exercised (e.g. shares, voting rights) Date became beneficial owner Date ceased to be beneficial owner

- Legislation for an economy-wide BO reporting system should also include specific reporting requirements for SOEs and companies with shares listed on a stock exchange. These requirements should include collection of the information listed in *Table 4* below. For example, Ghana's planned BO regulation contains specific reporting requirements on companies listed on the stock exchange, and SOEs.

²⁰ Open Ownership Form Guidance can be found here - <https://openownershiporgprod-1b54.kxcdn.com/media/documents/oo-guidance-bo-declaration-forms-guide-for-regulators-and-designers-2021-03.pdf> and <https://eiti.org/guidance-notes/beneficial-ownership-model-declaration-form>

Table 4. Information to be collected on SOEs and publicly listed companies

State-owned enterprises	Companies with shares listed on a stock exchange
<ul style="list-style-type: none"> • The percentage of ownership of each government agency • The name and address of each government agency that is a beneficial owner • The nationality of each government agency • Country of incorporation of the SOE, if different from nationality given above • Notarised copy of proof of ownership such as extract from the relevant corporate register • Details of each government official who exercises control including: <ul style="list-style-type: none"> a. Full name and any former name b. Position and date appointed c. Nationality d. Method by which control is exercised 	<ul style="list-style-type: none"> • Name of the stock exchange • Stock exchange jurisdiction • Identifying information for the listed equity securities • A link to the stock exchange(s) website page(s) that gives details of the company's listing • Basic information about the listed company itself (name, registered office address, company registration number, etc) • Any identifiers that can be used to locate both the legal entity and any related stock exchange filings.

Principle four Central register

Principle

- Data should be collated in a central register

Elements of Principle

- To facilitate rapid and efficient access to BO data, BO disclosures should be collated and held within a central register

Assessment

In March 2022, FATF issued an updated version of Recommendation 24 which includes strong guidance that BO information should be collected in a central register. Previously, FATF had not been prescriptive on the mechanism that jurisdictions should use to collect and make available BO information. A central register was one of three mechanisms that jurisdictions could use. The other two are companies making the information available on request, and using existing information. The updated FATF guidance is moving closer to other international practices. The EU AMLD requires a

central register, and the EITI encourages implementing countries to maintain a central BO register. A central register has several advantages over other mechanisms: it allows law enforcement and other competent authorities to access BO information without alerting companies or individuals under investigation, allows the analysis of suspicious trends, facilitates the efficient collection, verification and availability of BO information and facilitates the collection and storage of BO information in a standardised and machine-readable format.

Senegal currently has one BO register with the prospect of a second. PD2020-791 created the legal basis for a register for the extractive sector which is maintained by RCCM. Information from the register is accessible on request (see below) and is made available to ITIE-SN for its annual report. Under the General Tax Code and the 2021 Finance Law, the Tax Authority will also maintain a register of BO information on all entities registered for tax purposes.²¹

²¹ Both laws can be found at: <https://itie.sn/reglementation/>

Recommendations

- The government should legislate to create a single unified central BO register which captures data in a standardised and structured format and is interoperable with databases maintained by other government agencies e.g. the Tax Authority, as well as BO registers maintained by other countries.

Principle five Public access

Principle

- Sufficient data about the beneficial owner should be freely accessible to the public.

Elements of Principle

- The public should have access to BO data, at a minimum to a subset that is sufficient for users to understand and use the data.
- The data should be free of charge and should be available as open data: published under a specified licence which allows anyone to access, use, and share it without barriers such as identification, registration requirements, or the collection of data about users.
- A legal basis for the publication of data should be established, in line with privacy and data protection legislation and potential negative effects of the publication of data should be understood and mitigated for.
- Where information about certain classes of persons (e.g. minors) is exempt from publication, the exemption should be clearly defined, justified, and narrowly interpreted.

Assessment

There is a strong case for public access to BO information. Publicly-accessible data can be used to hold the government and companies to account, contributes to risk management and due diligence by organisations and individuals, and allows government and citizens to understand who is benefiting from economic activity in the country. There is an international trend towards public access to BO information. While FATF does not require public access, other international benchmarks do. The EU AMLD requires that BO information is made publicly available. EITI encourages implementing

countries to maintain a public BO register. The EITI standard states that publicly accessible BO information should be free to access i.e. not require payment of a fee (where possible) or registration. Users should also be able to download the information in bulk for analysis and assessment.

In Senegal, BO information is not currently available to the public as a matter of course. Access is only for those who can demonstrate a legitimate interest. Where access is granted, there is a fee of XOF2,500 (approximately €4) per company. The 2021 EITI Validation Report notes that stakeholders believed this was a reasonable fee. ITIE-SN's publication of BO information in its annual reports is the only operational mechanism for public access to BO information at present. This information is made available for free and can be downloaded as an Excel spreadsheet. There is no other method for the public to gain access to any BO information.

Recommendations

- When the Senegalese government legislates for an economy-wide BO reporting system, this should include the right for the public to access certain BO information for free and to be able to download certain BO information in bulk. The government should strike a balance between granting access to BO information and protecting the privacy of beneficial owners, e.g. certain personal information such as full date of birth and national identity card number should not be publicly available. The full data set should only be available to government agencies such as law enforcement.
- Legislation for an economy-wide BO register should also ensure that only information that is strictly necessary for identifying beneficial owners and the nature and extent of their ownership is collected.

Principle six Structured data

Principle

- Data should be structured and interoperable.

Elements of Principle

- BO data should be available as structured data, with declarations conforming to a specified data model or template.
- BO data should be available digitally, including in a machine-readable format.
- BO data should be available in bulk, as well as on a per record basis, free of charge.

Assessment

The usefulness of BO information is enhanced when the data is available in a standardised structured format. It makes a contribution to verification efforts (see below) by ensuring that the information collected is high-quality

and can support more automatic and manual check processes. It also facilitates the use and analysis of BO information by a wider variety of users. Open Ownership has developed the [Beneficial Ownership Data Standard \(BODS\)](#) as a guide for the collection and sharing of BO data in a structured format. A collection of [free, open source tools for reviewing, visualising and using BODS](#) data are also available from Open Ownership.

A tripartite Memorandum of Understanding between ITIE-SN, the Ministry of Justice and the technical service provider Gaindé 2000 governs RCCM's collection and processing of BO data. Companies which fall which are required to make a declaration provide their BO information to RCCM, which then processes the information. The information is then transmitted to ITIE-SN for publication in the EITI report, after extraction from the database. The data is not collected, stored or made available in a structured format that is consistent with BODS.

Recommendations

- The government adopts BODS when it implements an economy-wide BO reporting system.
- RCCM works with other government agencies to ensure there is a single portal through which companies submit information, RCCM staff verify the information, and it is made available to ITIE-SN and other users.

Principle seven

Verification

Principle

- Measures should be taken to verify the data.

Elements of Principle

- When data is submitted, measures should be taken to verify the beneficial owner, entity, ownership or control relationship between the beneficial owner and the entity, and the person making the declaration.
- After data has been submitted, it should be pro-actively checked to identify potential errors, inconsistencies, and outdated entries, using a risk-based approach where appropriate, requiring updates to the data where necessary.
- Mechanisms should be in place to raise red flags, both by requiring entities dealing with BO data to report discrepancies and by setting up systems to detect suspicious patterns based on experience and evidence.

Assessment

Information submitted to a BO register should be subject to verification, including verifying the identity of each beneficial owner and the nature and extent of their ownership or control. Verification should ensure that data is accurate and meets expected patterns (e.g. birth dates are in a reasonable range) and is cross-checked against other reliable databases (e.g. the national identity card database and lists of sanctioned individuals). As well as confirming the accuracy and precision of information submitted, verification should also include identifying suspicious patterns or potential criminal activity. Certain types of ownership, e.g. bearer shares (anonymous shares that confer ownership on whoever physically holds the share certificate), should be outlawed.

Access to reliable information is a vital part of a BO reporting system, and a robust verification system is essential to achieving an accurate and reliable BO registry. However, effective verification has proven to be the one of the most challenging aspects of establishing and administering a BO register. Globally, none of the currently operating public BO registers has a fully effective verification process in place. Verification is not a one-off process and does not occur at regular intervals. It is a continuous process that occurs at all stages of the BO reporting process including, data collection, data update, administration of the register and enforcement.

Senegal also faces the challenge of putting in place a robust verification process. The existing BO reporting system for extractive sector companies has only limited levels of verification. Reporting companies are required to supply documentary evidence of the identity of their beneficial owners, such as copies of national identity cards or passports. RCCM compares the consistency of the information declared with this documentary evidence. Companies reporting data are also required to declare that the information provided is accurate.

The factors that make verification challenging in Senegal include: lack of familiarity with the concept of beneficial ownership in many companies. For companies outside of the extractive sector, many will not be familiar with collecting and reporting their beneficial ownership information. The experience in other countries is that this creates difficulties in ensuring compliance with a reporting regime and collecting accurate data.), The implementation of an economy-wide BO register in Senegal will require the need to collect a large volume of data and the verification evidence from multiple sources. This will include verifying information on complex ownership and control structures. As noted above, requiring data entry and storage in a standardised and structured format makes an important contribution to verification. Ensuring that BO data is collected in a standardised and structured format will make a considerable contribution to Senegal's verification process. Public access also plays a crucial role as public scrutiny of the data contributes to identifying errors, discrepancies and suspicious data patterns.

Recommendations

- The government should implement a robust verification process as part of the implementation of an economy-wide BO reporting system. As well as implementing the recommendations above on collecting and storing data in a standardised and structured format, this should include checks on the format and accuracy of data, cross checking the data with other government databases, a system

for identifying and resolving red flags, random checks on the data, and the ability for users to report discrepancies (e.g. where a member of the public identifies an error in the BO details for a company), and for some users (e.g. banks and lawyers), an obligation to report discrepancies (e.g. where the information they are given by a client differs from that in the register).

Principle eight Up-to-date and auditable data

Principle

- Data should be kept up-to-date and historical records maintained

Elements of Principle

- Initial registration and subsequent changes to beneficial ownership should be legally required to be submitted in a timely manner, with information updated within a short, defined time period after changes occur.
- Data should be confirmed as correct on at least an annual basis and all changes in beneficial ownership should be reported.
- An auditable record of the beneficial ownership of companies should be available by dating declarations, and storing and publishing historical records, including for dormant and dissolved companies.

Assessment

As well as being accurate, the other important feature of BO information is that it is up to date. There are two important elements to ensuring up to date BO information: a requirement to report any changes within a specified time and a requirement to reconfirm on an annual basis that the BO information in the register remains accurate and up to date. Also of importance, is that the register's administrator maintains a record of changes in information and stores historical information. This information should be retained for potential use in future investigations. Open Ownership has recently issued technical guidance for implementers called [Building an auditable record of beneficial ownership](#).

PD2020-791 includes a provision requiring that changes in BO information are notified within one month of becoming effective. There is also a requirement for an annual reconfirmation that BO information remains accurate and up to date.

The 2021 Finance Law requires that changes are notified within 15 days. It also includes a provision that data is retained for 10 years by legal entities.

Recommendations

- The legislation creating an economy-wide BO register should include provisions requiring reporting companies to notify the relevant government agency of any changes in their BO information within at most one month, and to provide annual confirmation that their information in the BO register remains accurate and up-to-date.
- The legislation should also include provisions that allow for the retention of historical information, in line with existing government information retention policies.

Principle nine

Sanctions and enforcement

Principle

- Adequate sanctions and enforcement should exist for noncompliance.

Elements of Principle

- Effective, proportionate, dissuasive, and enforceable sanctions should exist for noncompliance with disclosure requirements, including for non-submission, late submission, incomplete submission, or false submission.
- Sanctions that cover the person making the declaration, the beneficial owner, registered officers of the company, and the declaring company should be considered.
- Sanctions should include both monetary and non-monetary penalties.

Assessment

Enforcement of BO reporting requirements and sanctioning non-compliance are crucial for underpinning trust in the reliability and accuracy of information in a BO register. Open Ownership has recently published a policy briefing on this topic, laying out best practice:

Designing sanctions and their enforcement for beneficial ownership disclosure.

Enforcement should be consistent, and sanctions should be proportionate and dissuasive. Also, sanctions should consist of both financial and non-financial penalties. Non-financial penalties can include measures such as cancellation of company registration, licences or contracts, barring of directors, ban on public procurement and in the most serious cases, imprisonment of individuals. Potential offences can range from minor errors in submitting information to deliberate concealment of the real owners for the purpose of corruption, money laundering or other criminal activity.

In Senegal, non-compliance with the BO reporting requirements in PD2020-791 carry financial and non-financial penalties, such as fines and exclusion from tender processes. While the information in *Table 2* above suggests some level of non-compliance is already occurring, no penalties have yet been imposed. Instead, ITIE-SN and the RCCM have focussed on persuasion, building awareness of the need to report, and educating reporting entities on how to comply with the BO reporting requirements. The 2021 Finance Law provides for financial penalties for non-compliance with BO obligations which will be accordingly applied once the BO provisions are operationalised.

Recommendations

- The government should introduce a range of financial and non-financial penalties for non-compliance as part of legislation to introduce an economy-wide BO register.

Synopsis of Findings

Robust Definitions

1. The definition in the PD2020-791 applies to the extractives sector while the definitions in Law 2018-03 and the 2021 Finance Law apply to the whole economy. Although the definitions are not the same, they all define a beneficial owner as a natural person who can have direct and indirect ownership and control. A non-exhaustive list of forms of control is provided and other relevant forms of ownership and control are covered through a catch all clause. PD2020-791 sets a threshold of 2% while Law 2018-03 and the 2021 Finance Law set a threshold of 25%.

Comprehensive Coverage

2. BO declarations include scope to include information on publicly listed companies and SOEs. BO declarations apply to domestic and foreign beneficial owners equally. There are no exemptions.

Sufficient Detail

3. Under PD2020-791, the RCCM collects BO Information on extractive companies that is sufficient to uniquely identify each beneficial owner, declaring the company and the nature and extent of ownership or control. However, information on intermediaries is not collected. The 2021 Finance Law does not specify the detail of information to be collected on each beneficial owner. For example, while it requires collection of information on the identity of each beneficial owner, it does not specify the exact details such as name, date of birth and unique identifying number. Law 2018-03 does not create a requirement to declare BO.

Central Register

4. RCCM collects the BO information of extractive industries in a central register. The Tax Authority will also collect information on BO in its own central register, when the implementing regulations are effective.

Public Access

5. Extractive sector BO data is made public through the annual EITI report which is free of charge. However, accessing BO information through a report that is published annually does not facilitate the rapid and efficient access to BO information. There is also a facility to request extractive industry BO information from the RCCM, which is granted automatically.

Structured Data

6. The BO Data is not available in structured format. The BO data published through the EITI reports is available as an excel spreadsheet.

Verification

7. The existing BO reporting system for extractive sector companies has only a limited level of verification. This verification only authenticates the identity of the beneficial owner.

Data should be up-to-date and auditable

8. Changes to extractive sector BO data need to be reported within one month. A reporting company is required to, reconfirm its BO data on an annual basis. The 2021 Finance Law will set a 15-day deadline for the reporting of changes when the BO provisions are effective.

Sanctions and Enforcement

9. Both financial and non-financial sanctions are in place for disclosure requirements under PD2020-791. Sanctions cover the person making the declaration, the beneficial owner, registered officers of the company, and the declaring company.

Synopsis of Recommendations

General

1. The government should establish a multi-disciplinary taskforce, under the remit of the Ministry of Justice and chaired by a senior official or minister, to undertake the design of the BO reporting system, advise the government, draft the necessary legislation, undertake stakeholder engagement and navigate the draft law through the legislative system. Senegal should enact specific, stand-alone legislation to create and maintain an economy-wide BO reporting system that meets OO Principles and is in line with international best practice.

Robust Definitions

2. The government should adopt a single unified BO definition that is used for all purposes in the country. This should be based on the definition in Law 2018-03, which is more detailed than the PD2020-791 and the 2021 Finance Law definitions, and is already set in primary legislation. The single unified definition should also take into account relevant recommendations given in this report.
3. The single unified definition should set a general threshold less than 25% but higher than 2%, in order to be in line with international emerging good practice which is moving towards lower thresholds. A low threshold should be applied in cases where a beneficial owner is a PEP. A 2% threshold would probably cause undue administrative and compliance burden if implemented on an economy-wide basis. Beneficial ownership should be disclosed when an individual's aggregate control of, or economic benefit from, a company reaches or exceeds 5%. The government should take a risk-based approach to setting the threshold. This may include setting different thresholds for beneficial owners from different economic sectors (e.g. a lower threshold for the extractive sector) and for different types of beneficial owners (e.g. PEPs). This practice has already been adopted in Ghana and Armenia.

Sufficient Detail

4. When the Senegalese government legislates for an economy-wide BO reporting system, it should ensure that legislation and implementing regulations allow for the collection of the information as set out in *Table 3* of this report.
5. Legislation for an economy-wide BO reporting system should also include specific reporting requirements for SOEs and companies with shares listed on a stock exchange. These requirements should include collection of the information listed in *Table 4* of this report. For example, Ghana's BO regulations contain specific reporting requirements on stock exchange listed companies and SOEs.

Comprehensive Coverage

6. ITIE-SN should clarify the reporting requirements for SOEs and companies with shares listed on a stock exchange and provide additional guidance.

Central Register

7. The government should legislate to create a single unified central BO register which captures data in a standardised and structured format and is interoperable with databases maintained by other government agencies e.g. the Tax Authority as well as BO registers maintained by other countries.

Public Access

8. When the Senegalese government legislates for an economy-wide BO reporting system, this should include the right for the public to access certain BO information for free and to be able to download certain BO information in bulk. The government should strike a balance between granting access to BO information and protecting an individual's privacy, e.g. certain personal information such as full date of birth and national identity card number should not be publicly available. The full data set should only be available to government agencies such as law enforcement.

9. Legislation for an economy-wide BO register should also ensure that only information that is strictly necessary for identifying beneficial owners and the nature and extent of their ownership is collected.

Structured Data

10. The government adopts BODS when it implements an economy-wide BO reporting system.
11. RCCM works with other government agencies to ensure there is a single portal for companies to submit information, RCCM staff verify the information and make it available to ITIE-SN and other users.

Verification

12. The government should implement a robust verification process as part of the implementation of an economy-wide BO reporting system. This should include the ability for users to report discrepancies and for some users (e.g. banks and lawyers) an obligation to report discrepancies, for example as required by the UK's register.

Data should be up to date and auditable

13. The legislation creating an economy-wide BO register should include provisions requiring reporting companies to notify the relevant government agency of any changes in their BO information within at most one month, and to provide annual confirmation that their information in the BO register remains accurate and up-to-date.
14. The legislation should also include provisions that allow for retention of historical information, in line with existing government information retention policies.

Sanctions and Enforcement

15. The government should introduce a range of financial and non-financial penalties for non-compliance as part of legislation to introduce an economy-wide BO register.

Conclusions

Senegal has laid a good foundation for the implementation of an economy-wide beneficial ownership reporting regime that is aligned with international best practice. It has embedded a robust definition in primary legislation. The collection and reporting of BO information for the purposes of EITI reporting provides a pilot project which has given the country experience, albeit with a limited number of companies and in just one economic sector.

The reality of implementing EITI reporting has shown the difficulty in ensuring compliance, as there are gaps in the information submitted. It also shows the importance of having a system in place for companies listed on the stock exchange, foreign listed companies and state-owned enterprises. The pilot also shows the importance of setting a reporting threshold at a level that balances risk with practicality. Furthermore, the EITI reporting system is limited, not only in coverage but also in the availability of the data. The data is only accessible to the public through the annual EITI report or through a formal application to RCCM.

For Senegal to implement an economy-wide BO reporting system, it will need to enact stand-alone legislation that creates a legal obligation on all legal entities to identify their beneficial owners, record that information and submit it (along with documentary evidence) to a duly-mandated authority (possibly the RCCM). The legislation should also create a legal obligation on the government to collect BO information in a structured and standardised format, verify the information and make that available both to government agencies and the public through a central register. The legislation should additionally reflect all the recommendations made in this report.

In drafting, enacting and implementing the legislation, the government will have to make a series of policy and tactical decisions. In order to support this decision-making process, the government should establish a multi-disciplinary taskforce that has representatives of relevant government agencies and is chaired by an appropriate ministry (probably the Ministry of Justice). The taskforce could gather evidence and provide recommendations on policy, strategy and tactics. The

agencies represented should include the Tax Authority, RCCM, and the Ministries of Mines, Oil and Gas.

The benefits to Senegal of implementing an economy-wide BO register go beyond meeting international obligations. They include building trust in the economy, and making the economy more attractive to both domestic and foreign investors. BOT can contribute to creating a more open and competitive business environment, and access to reliable BO information provides greater clarity on who is investing in the economy and benefiting from the profits. Senegal also has an opportunity to demonstrate regional and global leadership in implementing a robust BO reporting regime. It would be among the first West African francophone countries to implement a public BO register and one of the few in Africa.

Appendix

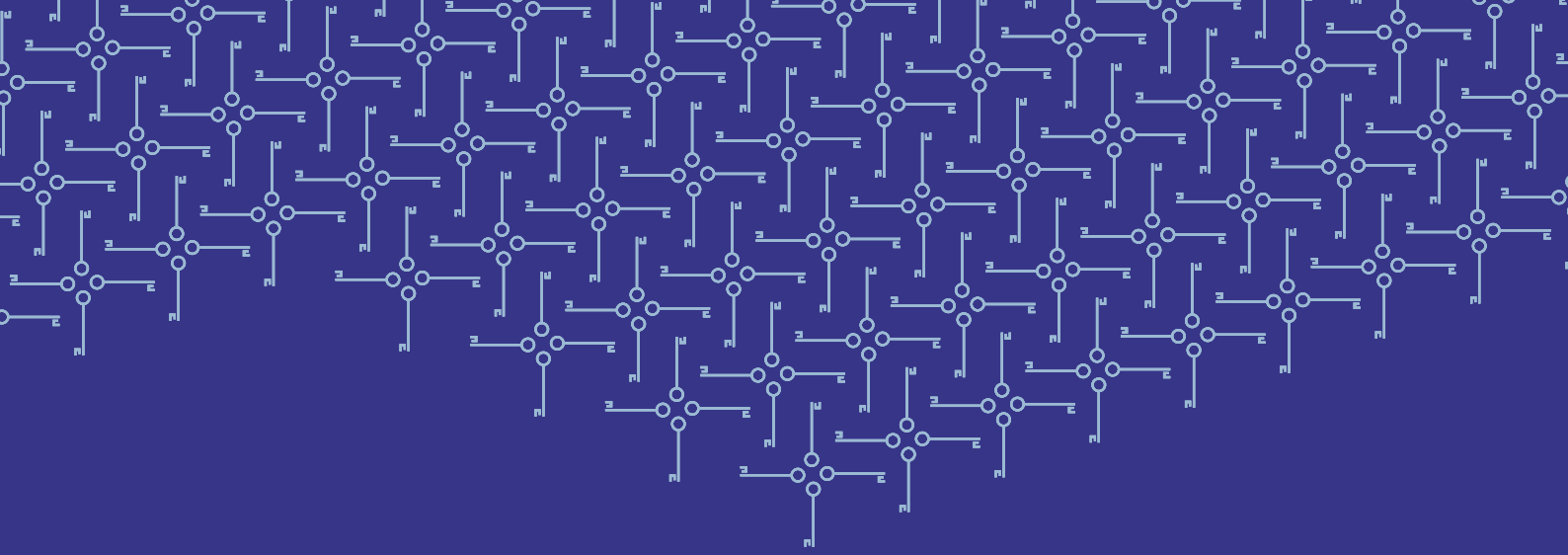
Appendix 1. List of stakeholder interviewees

Interviews were conducted with representatives of the following organisations:

- Ministry of Justice
- Le Registre du Commerce et du Crédit mobilier (RCCM)
- EITI Senegal (ITIE-SN)
- Ministry of Mines
- Ministry of Oil & Gas
- GAINDE 2000

Appendix 2. List of documents consulted

- Open Ownership, *Principles for Effective Beneficial Ownership Disclosure*, July 2021
- Open Ownership, *Divulgence des informations sur les bénéficiaires effectifs: Assistance technique à la mise en œuvre*, January 2022
- Open Ownership, *Rendre publics les registres centraux des bénéficiaires effectifs: Note d'orientation politique*, January 2022
- Open Ownership, *La Propriété effective en droit : Définitions et seuils: Note d'orientation politique*, January 2022
- *Anti-Money Laundering and Counter Terrorist Financing Measure*, Senegal, Mutual Evaluation Report, November 2018
- Directive n° 02/2015/cm/UEMOA Relative a la Lutte Contre le Blanchiment de Capitaux et le Financement du Terrorisme dans les Etats Membres de l'Union Economique et Monetaire Ouest Africaine (UEMOA)
- Law 2018-03
- Presidential Decree 2020-791
- 2021 Finance Law
- AML/CFT strategy document 2019-2024, May 2019
- Senegal EITI Report FY2019
- Senegal EITI Report FY2020
- Etude de Cadrage sur la Divulgence de la Propriete Reelle, ITIE-SN, May 2017
- Manuel de Formation: Module de Gestion Informatique du Registre des Beneficiares Effectifs, Gainde2000, March 2021



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