

Senegal - [English] Decree on Extractives BO Disclosure

DECREE:

Chapter 1 — Creation of a Beneficial Ownership Registry

Article 1 A Beneficial Ownership Registry (BOR) shall be set up at the Registry in charge of the Trade and Personal Property Credit Register (RCCM), under the supervision of the Judge overseeing the RCCM.

The Registry may be in electronic form.

The Registry shall be kept in accordance with regulations on personal data protection.

Article 2 — The Beneficial Ownership Registry shall be responsible for collecting information regarding the beneficial owners of companies, sole proprietorships, EIGs, entrepreneurs and other entities registered or declared in Senegal involved in the extractive sector's value chain

Stakeholders in the above-mentioned value chain carrying out activities in Senegal, even though they are neither registered nor declared in the Senegalese Trade and Personal Property Credit Register, shall file a statement on their beneficial owners with the Beneficial Ownership Registry. In such cases, their statement shall be made under the same substantive and formal conditions as those of entities registered or declared in Senegal.

Article 3 — The Beneficial Ownership Registry shall include:

- An incoming register indicating, in chronological order of filing, the date and serial number of the statements relating to beneficial owners;
- An individual file for each reporting entity, which contains the original statement.

Where applicable, the individual file shall be supplemented by amending documents and any other information or enclosures required by law or regulation.

Chapter II — Procedure for Declaring Beneficial Owners

Article 4 — The statement relating to beneficial owners shall be dated and signed by the legal representative of the company or legal entity filing it.

The statement shall be made on a form, the template of which shall be established by an order of the Minister of Justice.

This form shall include at least the following information:

- The identity of the entity registered or declared;
- The full names, nationality(ies), country(ies) of residence, national identification number(s), date of birth, home and residence addresses of the beneficial owners; and

- The date on which beneficial ownership was obtained.

The form shall also make it possible to identify any politically exposed person as provided for in Law No. 2018-03 of 23 February 2018 on the fight against money laundering and terrorism financing.

The identity of the politically exposed person shall include at least:

- The full names, date of birth, nationality, country of residence, date of acquisition of property, business address;
- The full names of the holder of the public or political office and his/her role, the date on which he/she began to hold the office, the date on which he/she ceased to hold the office; and
- The nature of the relationship between the politically exposed person who is the beneficial owner and the holder of the office, if the politically exposed person who is the beneficial owner is not the person holding the public office.

Article 5 — When completing the registration formalities or statement of activities and before issuance of the acknowledgement of registration, the Registrar shall present the applicant with the form relating to the statement of beneficial owners, drawn up in accordance with the provisions of Article 4 of this Decree, urging him/her to file the statement of beneficial owners if his/her entity is subject to it.

At the same time, he/she shall inform them of the administrative and criminal penalties applicable in case of failure to file a statement or providing inaccurate or incomplete information.

If the applicant considers that the form relating to the statement of beneficial owners of which the Registrar has informed him/her covers his/her field of activity, he/she shall complete it and submit it, either at the same time as the other documents relating to registration, or no later than 15 days from the issue of the acknowledgement of registration.

The Registrar shall present the form relating to the statement of beneficial owners to applicants during any amending or supplementary registration or in the event of deletion from the RCCM.

Article 6 — If the applicant considers that he/she is not subject to any obligation to file a statement, while the Registrar holds a contrary view, *the* latter may refer the matter to the Judge overseeing the Beneficial Ownership Registry, to obtain an order requiring the applicant to comply with the obligation to file a beneficial owners statement, subject to a fine where necessary.

Article 7 — The Judge overseeing the Beneficial Ownership Registry may, at any time, by order, either of his own motion or at the request of the Public Prosecutor, the Registrar in charge of the Beneficial Ownership Registry or any other interested party, require the director of any reporting entity to file a beneficial owner statement in accordance with the laws and regulations governing the extractive sector, subject to a time limit set by the Judge and subject to a fine.

Where the injunction has been complied with within the time limit set, compliance shall be recorded in a report drawn up by the Registrar and sent to the Judge overseeing the Beneficial Ownership Registry within five (5) days of the registration of the statement.

If the injunction is not complied with within the time limit, the Judge shall establish, based on the minutes of non-compliance drawn up by the Registrar, that the document relating to the beneficial owner has not been filed and will enforce the payment of the fine. The fine shall be recovered by the relevant departments on behalf of the Treasury.

The Judge's decision to order the filing of a beneficial owner statement and to impose a fine may be challenged within one month of notification.

The appeal shall be substantiated; it shall be made by declaration to the Registry with acknowledgement of receipt, after payment of the costs by the interested party. The Registrar shall then immediately request the opposing party, by registered letter with acknowledgement of receipt, to appear before the court within a week.

The court shall, subject to appeal, rule on the opposition within one month of notification of the judgment at the instance of the Registrar.

Once the decision of the court of appeal has been handed down, the court of appeal's Registry shall forward a copy of the appeal decision to the Registry keeping the Register.

The party concerned shall be notified of the orders made by the Judge overseeing the Registry and of the decisions made following an appeal against the said orders by registered letter with acknowledgement of receipt. The notification shall indicate the form and time limit for the appeal and the procedure for lodging it.

Article 8 — The Registrar overseeing the Beneficial Ownership Registry shall ensure that the beneficial owners statement submitted to him/her complies with the regulatory provisions in force.

If the Registrar finds any inaccuracies or encounters any difficulties in carrying out his duties, he/she may obtain any explanations and additional documents from the applicant or the reporting entity.

If the applicant insists on filing a statement whose content appears to him/her to be obviously inaccurate or non-compliant with the regulations, the Registrar shall inform the Judge overseeing the Beneficial Ownership Registry and the Public Prosecutor for their assessment.

If the Judge overseeing the Beneficial Ownership Registry fails to reply within 10 days of the matter being referred to him/her by the Registrar, *the* latter shall complete the formality as per the terms formulated by the applicant.

Article 9 — Any fact or act making it necessary to rectify, amend or supplement the information contained in the statement relating to the beneficial owners of an entity or

natural person or legal entity registered with the RCCM must result in the filing of an amending, rectifying or supplementary statement within one month of the occurrence of the act or fact, failing which the administrative and criminal penalties provided for by the laws in force shall be applied.

Article 10 — Any entry made by the Registrar which contains a clerical error may be withdrawn by the Registrar by order of the Judge overseeing the Beneficial Ownership Registry.

The creation, modification or deletion of data as well as consultations of the Beneficial Ownership Registry are recorded, including the identifier of the person who created the data as well as the date, time and purpose of the operation. The information shall be kept for a period of five (5) years.

Chapter III — Identification of Beneficial Owners

Article 11 — The term “*beneficial owner*” refers to the natural person or persons who directly or indirectly own or control the registered legal entity or natural person reporting its activity. In no instance shall it be a legal entity.

The following shall be declared as beneficial owners:

- All individuals who directly or indirectly hold at least 2% of the capital or voting rights of the reporting company; and
- All individuals who exercise, by any other means, a power of control over the management, administration or executive bodies of the reporting company or over the general meeting of its members or shareholders.

If they cannot be identified based on the above two criteria, beneficial owners shall be the natural persons who directly or indirectly, through one or more legal persons, hold the position of legal representative of the reporting company.

Chapter IV — Access to the Beneficial Ownership Registry

Article 12 — Information contained in the Beneficial Ownership Registry shall only be accessed by natural or legal persons who submit a request to the Judge overseeing the Beneficial Ownership Registry, with proof a legitimate interest.

The Judge's refusal decision may be appealed against under the conditions set out in Paragraphs 5 to 9 of Article 7 of this Decree.

Article 13 — Information relating to beneficial owners statements shall be forwarded, without delay and free of charge, to the following authorities at their request:

- Magistrates and Judicial Police Officers within the scope of their duties;
- The Director General of Public Accounts and the Treasury; the Director General in charge of the Budget;
- The Director in charge of Mines
- The Director in charge of Hydrocarbons;
- The Director General of Customs
- The Director General of Taxes and Domains;
- The Chairperson of the National Committee of the Extractive Industries Transparency Initiative;
- The Chairperson of the Anti-Fraud entity;
- The Chairperson of the entity responsible for processing financial information.

The authorities designated in the previous paragraph shall forward their request directly to the competent Registry, which shall forward them a copy of the beneficial owner statement after informing the Judge overseeing the Beneficial Ownership Registry.

Any administrative authority, who is not one of those listed in this article, may, in the exercise of his/her duties, address its request for information to the Judge overseeing the Beneficial Ownership Registry, under the conditions and in the form laid down by Article 12 of this Decree.

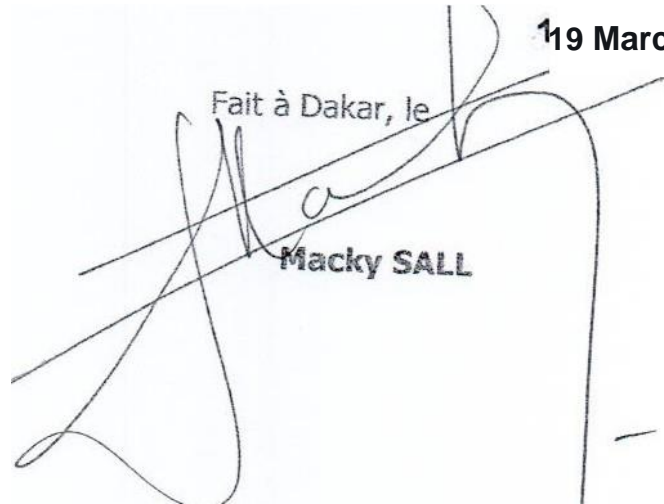
Chapter V—Transitional and Final Provisions

Article 14 — Companies subject to the beneficial owner statement requirement shall have 6 months from the date of entry into force of this decree to provide a statement on their beneficial owners. Failure to comply with this obligation will result in the application of the relevant administrative and penal sanctions.

Article 15 — The terms and conditions for the application of this Decree shall be laid down by order of the Keeper of Seals, the Minister of Justice.

Article 16 — The Minister in charge of Finance, the Keeper of the Seals, Minister of Justice, the Minister in charge of Hydrocarbons and the Minister in charge of Mines shall, each in their own area of responsibility, enforce this decree, which will be published in the Official Gazette.

Fait à Dakar, le 19 March 2020



Macky SALL