GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 1 Legal and Regulatory Framework

SENEGAL

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Senegal 2015

PHASE 1: LEGAL AND REGULATORY FRAMEWORK

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, and in Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary as updated in 2004. The standards have also been incorporated into the UN Model Tax Convention.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to www.oecd.org/tax/transparency and www.eoi-tax.org.

Abbreviations

BRVM	Regional stock exchange (Bourse Régionale des Valeurs Mobilières)
CIMA	Inter-African Conference on Insurance Markets
DTC	Double Tax Convention
ECOWAS	Economic Community of West African States
EIG	Economic interest grouping (*groupement d'intérêt économique*)
EOI	Exchange of information
FATF	Financial Action Task Force
GIABA	Inter-Governmental Action Group against Money Laundering in West Africa (*Groupe Intergouvernemental d'Action contre le Blanchiment d'Argent en Afrique de l'Ouest*)
NGO	Non-Governmental Organisation
NINEA	National identification number for enterprises and associations
OHADA	Organisation for Harmonisation of African Business Laws
RCCM	Trade and Personal Property Credit Register (*registre du commerce et du crédit mobilier*)
SA	Public limited companies (Société anonyme)
SARL	Limited liability companies (*Société à responsabilité limitée*)
SAS	Simplified joint-stock companies (*Société par actions simplifiée*)
SCS	Limited partnerships (*sociétés en commandite simple*)
SNC	General partnerships (*sociétés en nom collectif*)
SP	Joint ventures (*sociétés en participation*)
ToR	Terms of reference
WAEMU	West African Economic and Monetary Union

Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Senegal. The international standard, which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged on a timely basis with its exchange of information partners.

2. Senegal is a West African country with approximately 13.5 million inhabitants. The country's economy is driven by tourism, exportation of oil to landlocked neighbours, mining industry and agriculture. Senegal has a civil law system. The country undertook to apply the international transparency standard by becoming a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes in 2012.

3. Generally speaking, Senegal's legal and regulatory framework ensures the availability of ownership and identity information for companies and other entities. Companies and other legal persons are required to register with the public authorities, including the tax authorities. However, certain shortcomings were identified in the prevailing legislation. Although company law no longer allows for the creation of bearer shares, the requirement to dematerialise existing shares does not give sufficient details about the practicalities to guarantee dematerialisation of all bearer shares.

4. There are provisions in accounting and tax law which require the keeping and retention of accounting records and underlying documentation for a minimum ten-year period. Banking and anti-money laundering regulations in Senegal guarantee the availability of banking information. The Senegalese tax authorities hold a certain amount of information on the identity, ownership and accounting system of taxpayers. Otherwise, Senegalese tax law gives the tax authorities, which are the delegated competent authority, extensive powers to gather information, including banking information, which may be used for information exchange purposes without any restriction related to domestic tax interest. There is no right of notification in Senegal.

5. Senegal has a network of 18 bilateral tax conventions and two regional instruments covering 27 jurisdictions, mainly in Africa and Europe. Although some of the instruments are not recent, all allow for effective exchange of information, with the exception of banking information where the partner jurisdiction is not able to guarantee reciprocity. Senegal has never declined to conclude an information exchange agreement.

6. Generally speaking, Senegal has a legal framework in place which ensures that relevant information is available and accessible and can be exchanged in accordance with the international standard. Senegal's response to the conclusions and recommendations of this report and practical application of the legal framework will be assessed in detail in Phase 2 of the review, scheduled for the second half of 2015. In the meantime, a follow-up report on the measures taken by Senegal in response to the recommendations made in this report must be submitted to the Peer Review Group within twelve months following its adoption.

Introduction

Information and methodology used for the peer review of Senegal

7. The assessment of the legal and regulatory framework of Senegal was based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes, and was prepared using the Global Forum's Methodology for Peer Reviews and Non-Member Reviews. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 24 July 2015, Senegal's responses to the Phase 1 questionnaire and supplementary questions, other materials supplied by Senegal, and information supplied by partner jurisdictions.

8. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information, (B) access to information, and (C) exchange of information. This review assesses Senegal's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: *(i)* the element is in place, *(ii)* the element is in place but certain aspects of the legal implementation of the element need improvement, or *(iii)* the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. A summary of findings against those elements is set out at the end of this report.

9. The assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Ms Anne Stephany, Exchange of Information unit, Direct Tax Administration (Luxembourg), Mr Didier Motto, Exchange of Information unit, General Directorate of Taxes (Cameroon), and Ms Gwenaëlle Le Coustumer from the Global Forum Secretariat.

Overview of Senegal

10. Senegal is a West African country with a surface area of 196 722 square kilometres. It has borders with Mauritania to the north, Mali to the east, Guinea and Guinea Bissau to the south and Gambia to the west, and a 500-km coastline on the Atlantic Ocean. The capital of Senegal is Dakar and the country has 13.5 million inhabitants. Its official language is French; and six other languages are considered national languages.[1]

11. The main economic sectors in Senegal are services (tourism being the most important source of foreign currency; telecommunications, financial services), industry (mainly construction, extraction and peanut oil) and a decreasing agriculture (40% of the workforce). Senegal has estimated GDP of USD 14.8 billion.[2]

12. The main trading partners of Senegal are, for exports (mainly of imported oil, phosphates, gold, cement, fish and peanut oil): Africa for 46% (Mali, Côte d'Ivoire, Guinea-Bissau, Equatorial Guinea, Cameroon), Europe for 26% (France, Spain) and Asia for 17% (India, United Arab Emirates, Japan). Imports (oil, machinery, rice, flour, fat) come mainly from Europe for 48% (France, Belgium, Germany), Asia for 23% (China, India, UAE), Africa for 19% (Nigeria, Côte d'Ivoire, Morocco, Mali, Togo), and Americas for 8% (USA, Brazil). Foreign direct investments in Senegal amounted to the equivalent of 1.7% GDP in 2013.

13. The Senegalese economy is also impacted by the major role of the informal sector,[3] an unemployment rate around 20% and an important part of the population below the poverty threshold (33% of the population had less than USD 1.25 per day and inhabitant in 2013). Nearly half of the working population is employed in the non-agricultural informal sector, which accounts for 41.6% of GDP, 57.7% of non-agricultural value added and 39.8% of output. Only 8.7% of informal production units have a national identification number for enterprises and associations (NINEA), even though they are often registered in the Trade and Personal Property Credit Register (*registre du commerce et du crédit mobilier*, RCCM). The share of taxes and duties paid to the state remains relatively small, though it is increasing significantly, representing 4.2% of the sector's total value added (compared with 10.4% for the formal sector). To promote the integration of the informal sector, the

1. Information taken from the Senegalese government website www.gouv.sn.
2. World Bank: http://donnees.banquemondiale.org/pays/senegal and Situation économique du Sénégal : apprendre du passé pour un avenir meilleur, December 2014.
3. Agence nationale de la Statistique et de la Démographie : Enquête nationale sur le secteur informel au Sénégal, novembre 2013 : www.ansd.sn/ressources/rapports/Rapport-final-ENSIS.pdf.

minimum share capital for SARL was decreased in 2014 and removed in 2015. However, the informal sector is mostly made up of micro-units, since 91.8% of entrepreneurs are individuals; in addition, where businesses have more than one owner, the co-owners are mainly family members. Senegalese households make up 92% of the informal sector's customers. The Senegalese authorities therefore consider that the informal sector is not relevant for exchange of information purposes.

14. The currency is the African Financial Community franc, called the CFA franc (currency code: XOF). One euro is worth XOF 655.957. Senegal shares its currency with seven other West African countries which are members of the West African Economic and Monetary Union (WAEMU), namely Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger and Togo.

15. Senegal gained independence from France in 1960 and is a secular, democratic and social republic. It has a pluralist presidential system, elections for the presidency being held every seven years. Legislative power is exercised by Parliament, which comprises the National Assembly and the Senate. Senegal is a unitary state with 14 administrative regions.

General information on the legal system

16. Senegal has a civil law legal system, governed by national and Community laws. The order of precedence is as follows: the Constitution of 22 January 2001, international treaties and agreements, laws, regulations and other administrative decisions. Duly ratified or approved treaties and agreements take precedence over laws as of their publication, provided that they are enforced by the other Party.

17. Community law (OHADA, WAEMU, ECOWAS, CIMA) comprises all the provisions of the treaties instituting the Community organisations and the various instruments issued by their bodies: Regulations, Uniform Acts (directly enforceable), Uniform Laws (transposed as they stand), Directives, Decisions, Recommendations and Opinions. Business law, banking law, insurance law, securities law, mining law and some aspects of tax law are governed by Community law.

18. Senegal is a member of the Organisation for Harmonisation of African Business Laws (OHADA).[4] OHADA Member States have unified

4. OHADA originated in the wish of several African countries to create a single area governed by the same business law in order to promote economic development in Africa through legal and judicial security in trade matters. The Organisation was instituted by the Treaty on the Harmonisation of Business Law in Africa (OHADA Treaty), signed on 17 October 1993 at Port-Louis in Mauritius and revised in 2008. The 17 State Parties to the treaty are Benin, Burkina Faso,

their business law through legal instruments called uniform acts. Uniform acts apply in the following areas: general business law, company law, accounting law, rules on security interests and guarantees, arbitration, enforcement, insolvency procedures, contracts for the transport of goods by road and co-operatives. OHADA uniform acts are directly enforceable and are mandatory in State Parties, notwithstanding any prior or subsequent provision to the contrary in domestic law, without the need for transposition.

19. Senegal is also one of the eight members of the West African Economic and Monetary Union (WAEMU). WAEMU's regulations and directives guide the economic, tax and customs policy of its Member States. Regulations are general in scope, binding in their entirety and directly enforceable in all Member States. Directives are taken by the WAEMU Council of Ministers; outcomes are binding but Member States may decide for themselves how to achieve them. Directives therefore need to be transposed. The harmonisation of rules for the assessment and collection of taxes and duties and rules to counter money laundering and the financing of terrorism are matters for directives, whereas the elimination of double taxation and administrative assistance in tax matters between Member States are matters for regulations.

20. Senegal is one of the 15 member States of the Economic Community of West African States (ECOWAS), one of the specialised institutions of which is the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), which carries out peer evaluations of compliance of national anti-money laundering and terrorism financing systems with FATF standards.

21. The Senegalese justice system is unitary, characterised by the absence of specialised administrative law courts. Apart from the Constitutional Council, the Supreme Court and the Court of Auditors, Senegal has 5 Courts of Appeal (Dakar, Thiès, St. Louis, Ziguinchor and Kaolack), regional courts (11 functioning) and county (*département*) courts.

22. Tax matters are thus the responsibility of the ordinary courts. In application of the judicial organisation in Senegal, the regional courts have jurisdiction in the first instance. The proceeding is brought at the court of the place where the public official responsible for collection is located. The possibility of appeal is offered to the parties in the event of an unfavourable decision, and the decision of the Court of Appeal may also be subject to an appeal to the Supreme Court. The case is heard by the Administrative law Chamber of the Court.

Cameroon, the Central African Republic, Chad, the Comoros, Congo, Côte d'Ivoire, the Democratic Republic of Congo (DRC), Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Niger, Senegal, and Togo. The Treaty is open to signature by any African State.

General information about the tax system

23. Under Article 67 of the Constitution, matters relating to the assessment, payment and collection of tax are governed by statute. Senegal's tax system has recently been overhauled, with the entry into effect of a new Tax Code on 1 January 2013.

24. The main taxes are direct taxes and other similar taxes, indirect taxes and other similar taxes, registration duties and other similar duties, and customs duties. Under the aegis of the Ministry of the Economy, Finance and Planning, the General Tax Directorate is responsible for all matters relating to direct and indirect taxes and registration duties, while the General Customs Directorate is responsible for collecting duties and taxes payable on imports or exports of products and goods.

25. The tax system is declarative, the corollary being that the tax authorities have a power of subsequent audit. However, this system does not apply to taxpayers who have only salaried income, who are taxed at source. Since the 2012 reform, taxes are calculated on a progressive basis, along a set of thresholds, with tax credits depending on the family situation. Voluntary pension contributions, life assurance premiums, pensions and annuities are deductible from total income. Under Articles 47 and 48 of the Tax Code, personal income tax is levied on the income of Senegalese or foreign origin of any person, whatever their nationality, who is domiciled in Senegal or receives income of Senegalese origin.

26. Companies and other legal persons are liable to tax on earnings in Senegal (at a 30% rate, subject to the provisions of tax treaties), or failing that to the minimum flat-rate corporate tax of 0.5% of sales. The earnings of companies operated in Senegal are deemed to be generated there. The tax on earnings is levied on companies with share capital (except one-person companies); other companies of an industrial, commercial, agricultural, craft, forestry or mining nature; limited partners of partnerships; and legal persons domiciled in another country which receive income from real estate in Senegal or capital gains from transfers of the transferable securities or corporate rights of Senegalese undertakings. Other corporate entities, such as partnerships, may irrevocably opt for this regime. The following are exempted from tax: various mutual assistance organisations, private non-profit associations and organisations and public-interest foundations and *waqfs*. The members of other partnerships and owners of on-person companies are liable to personal income tax unless the entity has opted to be taxed on earnings.

27. Senegal has carried out far-reaching reforms in order to liberalise its economy, including the creation of a system of free export companies covering agriculture in a broad sense, manufacturing and teleservices. In order to

obtain free export status, the company must prove that it has the potential to generate at least 80% of its sales from exports. Free export company status guarantees the free transfer of funds needed for investment and for commercial and financial transactions with countries outside the free zone, the free transfer of salaries for foreign employees, the free transfer of dividends for foreign shareholders and arbitration by the International Centre for Settlement of Investment Disputes (ICSID).

28. Senegal has a network of tax treaties covering 27 jurisdictions. It joined the Global Forum in 2012 and is committed to implementing international transparency standards. The competent authority for information exchange purposes is the Finance Minister.

Overview of the financial sector and the relevant professions

29. The financial sector spans banking, microfinance, capital markets and insurance.

30. The Central Bank of West African States (BCEAO) draws up the regulations applicable to banks and financial institutions and acts as their supervisory authority. Within this framework, the Banking Commission of the West African Monetary Union (WAMU), chaired by the Governor of the BCEAO, is responsible for ensuring the organisation and oversight of the banking system in the Union. At national level, technical oversight of banks and financial institutions is exercised by the BCEAO. There are 25 credit institutions in Senegal: 22 banks and 3 financial institutions. Assets in Senegalese banks amount to XOF 1 1889 billion in December 2014 (EUR 2.88 billions).

31. Microfinance refers to the provision of financial services to poor and low income population, which has little or no access to banking financial services, in order to satisfy the needs of their household or their economic and professional activities. The Senegalese authorities explain that, like in most developing countries, the sector has experienced a rapid development in Senegal over the last two decades in connection with the development of associative activities and the fight against poverty. This sector is governed by Law No. 2008-47 of 3 September 2008 on Regulation of microfinance institutions in Senegal. According to the indicators of decentralised financial systems of the BCEAO, the country has at the end of 2014, 218 microfinance institutions and 551 service points to 3.17 million customers/members. Total deposits amounted to XOF 229 billion and outstanding loans to 268 billion (EUR 350 million and 409 million respectively).

32. Senegal is also one of the 14 members of the Inter-African Conference on Insurance Markets (CIMA). Through the Council of Ministers, which is its supreme body, CIMA sets policy in the insurance sector and draws up legislation (the Single Insurance Code), which it interprets and amends. All

supervisory powers have been transferred to CIMA, and in particular to the Regional Commission for Insurance Control (CRCA), which is its regulatory body. The only powers to remain exclusively within the sphere of national competence are the supervision of insurance intermediaries and technical experts in the insurance field. CRCA exercises all the other powers generally attributed to an insurance supervisory authority, such as the authorisation of insurance companies and their senior managers and permanent solvency control, as well as disciplinary powers up to and including withdrawal of authorisation. The Council of Ministers is the only body before which decisions taken by the CRCA against insurance companies may be appealed.

33. As a WAEMU Member State, Senegal shares the same stock market as the Community's other seven members, namely the Bourse Régionale des Valeurs Mobilières (BRVM) at Abidjan in Côte d'Ivoire. At 24 July 2015, three Senegalese companies were among the 39 companies listed on the BRVM.

34. Non-financial professions and businesses subject to know-your-customer (KYC) requirements include officers of justice (55 *huissiers*), lawyers (363), chartered accountants and auditors (153 accountants, 13 certified accountants and 73 accounting firms), notaries (39), tax advisers (8 offices) and real estate agents.

Recent developments

35. OHADA law was amended in 2014 to better regulate bearer shares, including dematerialisation (see Section A.1.2).

36. A new law on the *waqf* has been passed. *Waqfs* could be classed in the same category as trusts and foundations, since they are a form of trust in Islamic law.

37. Senegal is currently preparing to become a signatory to the Convention on Mutual Administrative Assistance in Tax Matters as amended (the Multilateral Convention), which would significantly extend its treaty network. The Senegalese authorities expect to sign the convention by the end of 2015.

38. A draft Directive on the fight against money laundering and terrorism financing in the WAEMU member States, currently before by the WAEMU Council of Ministers, includes a provision allowing financial intelligence units to "share information on facts that may consist of tax fraud or fraud attempt, with the tax administration, which can use them to perform its tasks".

Compliance with the Standards

A. Availability of information

Overview

39. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other purposes. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority[5] may not be able to obtain and provide it when requested. This section of the report describes and assesses Senegal's legal and regulatory framework for availability of information.

40. Senegal has a comprehensive legal framework with regard to the availability of information about the identity of the members of partnerships and the holders of registered shares in companies with share capital.

41. Companies and partnerships are required to register in the Trade and Personal Property Credit Register (*registre du commerce et du crédit mobilier*, RCCM) by filing a copy of their articles of association. Information about the owners of partnerships and limited liability companies is available from the register and kept up to date. Information about the founders

5. The term "competent authority" means the person or government authority designated by a jurisdiction as being competent to exchange information pursuant to a double tax convention or another tax information exchange instrument.

of public limited companies and simplified joint-stock companies is also available from the register. Information about the owners of registered shares after transfer is available from the registers which public limited companies and simplified joint-stock companies are required to keep at their registered office, and to a considerable extent from the tax authorities.

42. Senegalese law permits the creation of bearer shares in public limited companies. Following an amendment to company law in January 2014, all company shares, including bearer shares, must be dematerialised by May 2016, meaning that it will be possible to obtain information about bearer shares. However, the law as it stands is unclear on the practicalities of dematerialisation, especially the status of bearer shares that have not been dematerialised on expiry of the two-year transition period.

43. Senegalese law does not permit the creation of trusts. However, there is nothing to prevent a trust from being administered from Senegal. If that is the case, members of the legal profession acting as trustees and other persons required to comply with anti-money laundering (AML) legislation must keep information about the settlors and beneficiaries of foreign trusts. Tax law was also reinforced in 2015 to add reporting obligations. Information about the ownership of other relevant entities such as economic interest groupings, non-trading companies and foundations is available in Senegal. Senegalese law recognises the *waqf*, an institution under Islamic law, but does not appear to guarantee the availability of information about a *waqf*'s stakeholders. A new law has been passed to ensure that *waqfs* are better regulated, but has not yet become fully effective as the transition period is not over.

44. All natural and legal persons liable to corporate tax, tax on the earnings of industrial, commercial and agricultural professions and tax on the earnings of non-commercial professions are required to keep accounts and retain accounting data and the related supporting documentation for at least ten years.

45. Banks and financial institutions are required to know their customers and to keep information about transactions carried out by them for the same 10-year period as any other accounting documentation.

A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

46. This section concerns the availability of ownership and identity information for companies with share capital (including foreign companies and information held by nominees), bearer shares, partnerships, trusts, foundations and all other relevant entities and arrangements. It also concerns the

implementation of effective enforcement measures to ensure the availability of such information.

47. Senegal is a party to the Treaty instituting the Organisation for Harmonisation of African Business Laws (OHADA). Business law (e.g. commercial law, company law, security interests and enforcement) in the Organisation's 17 Member States is governed by uniform acts, including:

- the Uniform Act relating to General Commercial Law (Uniform Commercial Law Act) adopted on 17 April 1997 and amended in 2010, which defines, inter alia, procedures for company registration and the operation of the companies register (RCCM);
- the Uniform Act relating to Commercial Companies and Economic Interest Groupings (Uniform Companies Act) adopted on 1 January 2000 and amended in 2014, which lays down rules relating to the different forms of commercial company.

48. Senegalese companies may be commercial (determined by their form or purpose) or non-commercial (non-trading or *civile*). The Uniform Companies Act provides for seven types of entity: three types of commercial company (see Section A.1.1), three types of partnership (see Section A.1.3) and economic interest groupings (Section A.1.5). It should be noted that the French terms "*société de capitaux*" and "*société de personnes*" do not exactly correspond to the terms "companies" and "partnerships" used in the Terms of Reference.

***Companies** (ToR **A.1.1; sociétés de capitaux**)*

49. Companies with share capital must fulfil publication and registration formalities on their formation, comply with requirements to keep and update information and file tax returns ensuring the availability of information about ownership and identity.

Types of company

50. Companies are created by two or more natural or legal persons who contract among themselves to allocate assets in cash or kind to an activity with the aim of sharing the profit or taking advantage of the savings that may arise as a result. Under OHADA law, three types of company with share capital may be created in Senegal.

- **Public limited companies** (*sociétés anonymes*, SA) are companies whose owners, called shareholders, are liable for corporate debts only up to the amount of their contribution; their rights are represented by shares (Article 385 of the Uniform Companies Act). Shares may

be in registered or bearer form (see Section A.1.2). A public limited company may have only one shareholder (a one-person SA). The minimum capital is XOF 10 million (EUR 15 244), divided into freely transferable shares, which represent contributions in cash or kind but not labour. Public limited companies may issue shares for public subscription. They are managed by a board of directors or, where there are three shareholders or fewer, a managing director. They must appoint an auditor (Article 140). There were 2 131 public limited companies in Senegal at 31 December 2014.

- **Limited liability companies (***sociétés à responsabilité limitée*, SARL) are companies whose owners, called partners or shareholders, are liable for corporate debts only up to the amount of their contribution; their rights are represented by shares (*parts sociales*) (Article 309 of the Uniform Companies Act). Act 2015-07 of 9 April 2015 on the minimum share capital of limited liability companies allows shareholders to decide on the capital (instead of a minimum XOF 1 million (EUR 1 524) in the Uniform Act), in order to reduce the informal sector. The capital is divided into equal shares, the par value of which may not be less than XOF 5 000 (EUR 7.62); shares are transferable but not tradable. An SARL is managed by one or more natural persons, who may or may not be members, appointed by the members. An auditor may also be appointed to audit the SARL's management (this is mandatory when two of the following conditions are met: the total balance exceeds XOF 125 million or sales exceed XOF 250 million or the company has more than 50 permanent employees). There were 11 328 limited liability companies in Senegal at 31 December 2014.
- **Simplified joint-stock companies** (*sociétés par actions simplifiées*, SAS) are a new form of company created by Article 853 of the amended Uniform Companies Act of 30 January 2014. They combine features of the SA and SARL. With some slight exceptions, the rules governing SASs are the same as those governing SAs. Unlike SAs, an SAS may issue shares corresponding to a contribution of labour. Likewise, the amount of share capital and the par value of shares are set in the articles of association, which also define the conditions under which the company is managed. An SAS may not issue shares for public subscription. There were 24 simplified joint-stock companies in Senegal at 31 December 2014.

Information held by the public authorities

51. The Senegalese public authorities, in particular the Trade and Personal Property Credit Register, hold information on the identity of the founders of companies with share capital which is provided to them on registration, and on the identity of the current owners of SARLs through updates of that information. The tax authorities also have information (which must also be kept by the companies themselves) about the owners of registered shares in SAs and SASs.

Trade and Personal Property Credit Register

52. The formation of companies with share capital is governed by the Uniform Companies Act and the Uniform Commercial Law Act and, under Article 97 of the Uniform Companies Act, is conditional on registration in the Trade and Personal Property Credit Register (*Registre du commerce et du crédit mobilier*, RCCM), kept at the registry of the regional court of the place where the company has its registered office. Senegal has 11 registers.

53. The information contained in each RCCM is centralised in a national database in Dakar (and partially online on the website Seninfogreffe). The information contained in each national database is centralised in a regional database kept by the OHADA Common Court of Justice and Arbitration (Article 36 of the Uniform Commercial Law Act).

54. Under Article 46 of the Uniform Commercial Law Act, companies must apply for registration within 30 days of their creation. Under Article 60, the company does not acquire legal personality until it has been registered and given a unique registration number. Under Article 46, the registration form includes the identity of the company's managers, the address of the registered office and, where applicable, of its principal place of business and any other establishments. Under Article 52, an amending or supplementing application must be filed within 30 days of any change to information contained in the register. Under Article 58, a company which is dissolved or liquidated must ask to be deleted from the Register. Under Article 47, the registration form must be accompanied by supporting documentation, including a certified copy of the articles of association.

55. A National Identification Number for Enterprises and Associations (NINEA) is then allocated to the entity, which must appear on documents issued by the company, such as invoices (Decree no. 95.364 on national identification number).

56. The company's articles of association, which must be filed in the Register, may be drawn up in a notarised deed or by private deed (i.e. without

a notary present but filed with a notary). Under Article 13 of the Uniform Companies Act, the articles of association must indicate:

- the form of the company, its name (which may not be the same as that of an existing registered company), the nature and area of its activity, which constitute its corporate purpose, and its registered office;
- the identity of founders, and: when they contribute in cash including, for each one, the amount of the contribution; when the y contribute in kind or labour, the details of such contributions;
- the number and value of the shares issued in consideration of each contribution;
- the amount of the share capital and the number and value of the shares issued, drawing a distinction where applicable between the different classes of share created.

57. The identity of a company's founders is therefore mentioned in the articles of association, which in turn are filed with the RCCM. However, not all companies are required to amend their articles of association when there is a change of ownership. That requirement applies only to SARLs: transfers of shares must be registered in the RCCM within the next 30 days (Art. 52 of the Uniform Companies Act) and may be relied on against third parties only after the articles of association have been amended and the amendment has been published in the RCCM (Articles 61 and 317 of the Uniform Companies Act), and against the company only after it has been notified of them (see above).

58. SAs and SASs are not required to amend their articles of association when shares are transferred, and are therefore not obliged to inform the RCCM of changes of ownership, though information on the owners is available from the company (see below).

Tax authorities

59. The Senegalese Tax Code contains a number of filing requirements which provide the tax authorities with information about all or some of the owners of companies. Under Article 633, all taxpayers must submit a declaration of existence within 20 days of opening an establishment or starting operations. The declaration must include the articles of association and a certificate of registration in the RCCM (see above for the contents of the articles of association). Thus, the identity of founders of companies is known to the tax authorities.

60. The Tax Code also contains some obligations for companies to periodically submit ownership information to the tax authorities. For instance, under Article 98, Senegal companies in which transfers of ownership have

taken place during a given year are required to submit a declaration stating the identity and address of the transferor and transferee, as well as the number, form and value of the shares. The declaration must be filed with the relevant tax department within one month of the date of the shareholders' meeting called to approve the financial statements for the previous year. As all companies are required to keep a register of registered shares under the Uniform Companies Act (see below), the tax authorities therefore possess a list of all owners of registered shares of companies with share capital (on an annual basis) as well as of the owners of bearer shares who have been in contact with the company (see Section A.1.2 on bearer shares).

Information held by companies and third parties

61. Under Article 317 of the Uniform Companies Act, the articles of association of SARLs, kept at the registered office, must state the identity of members, and share transfers *inter vivos* must be recorded in writing and notified to the SARL in order to be relied on against it.

62. Under Article 746-1 of the Uniform Companies Act, the updated identity of shareholders of SAs and SASs is kept in the register of shareholders that such companies are required to keep, though the requirement applies only to registered shares (this obligation is cross-referenced in Article 636 of the Tax Code). The register is kept by each company or by a person it authorises for the purpose. Nothing specifies that such person should be in Senegal, but this is compensated by the obligation to report changes of shareholding to the tax authorities. The register contains information about transfers, conversions, pledges and escrow of shares, including the date of the transaction, the name, first names and domicile of the former and new holder of the shares, in the event of transfer; and the name, first names and domicile of the shareholder, in the event of conversion of bearer shares into registered shares. For transfers, the name of the former holder may be replaced by an order number from which the name may be found in the register.

63. All entries in the register must be signed by the company's legal representative or his/her delegate. The auditor's report to the annual shareholders' meeting ascertains the register's existence and gives an opinion on whether it has been properly kept (for all SAs and SASs). Under Article 746-2 of the Uniform Companies Act, a certificate from the managers attesting that the register has been properly kept must be attached to the audit report.

64. AML laws do not strengthen the rules under tax or company law, since KYC requirements are restricted to information about the company and its managers and do not include any requirement to provide information about the owners of customers who are legal persons.

Conclusion

65. For SARLs, information about the identity of owners is available from the RCCM and the tax authorities, both on creation of an SARL and on transfers of shares. For SAs and SASs, only the identity of the founders is available from the RCCM. On the opposite, the tax authorities maintain full ownership information on identity of owners of SA and SAS since they receive information on the founders and all changes of owners of registered shares on an annual basis. Identity of owners of registered shares is also available from the companies in their register of shareholders, which such companies are required to keep up-to-date.

Foreign companies

66. It is the responsibility of the jurisdiction under whose laws companies or bodies corporate are formed to ensure that ownership information is available. In addition, where a company or body corporate has a sufficient nexus to another jurisdiction, including being resident there for tax purposes (for example by having its effective management or administration there), that other jurisdiction must also ensure that ownership information is available.

67. In Senegal, the "sufficient nexus" cannot be based on a tax residence criterion, as Senegal has a territorial system for corporate taxation. Under Article 3 of the Tax Code, income tax is payable on the earnings of companies operated in Senegal.[6] The concept of tax residence has therefore no impact in Senegal. Under Article 96, companies and partnerships which carry on business liable to tax in Senegal without having their registered office there must state in their declaration of existence (set in art. 633 of the Tax Code) their principal place of business and the name, first names and address of their representative in Senegal. Branches must be registered in the RCCM (article 119 of the Uniform Companies Act and article 48 of the Uniform Commercial Law Act) and have a NINEA (decree no. 95-364, s. 2) but do not have to provide the identity of the owners of the company, and are not considered as tax resident in Senegal.

68. The Senegalese authorities explain that Article 98 CGI on return on ownership transfers applies to any Senegalese companies and covers companies with headquarters in Senegal on the basis of Article 24 of the Uniform Companies Act (which defines the headquarters as the principal place of business of the company or the place of its central administrative

6. Legal persons domiciled in a foreign country are also liable to income tax where they generate income from property in Senegal, or capital gains on the sale of buildings in Senegal or rights relating thereto, or capital gains following the sale of transferable securities or corporate rights in Senegalese undertakings (Article 4).

and financial management, the choice being given to members when drafting the articles of association). Thus, the companies are considered Senegalese because their headquarters are in Senegal, or they are considered as branches. In the second case, the law provides that once the foreign company gains sufficient nexus to Senegal, namely a presence in the territory reaching two years, it must transform its branch into a local company. Otherwise, the entity must be closed.

69. Hence, OHADA law establishes a standard of "sufficient nexus" dependent on the duration of economic activity of the foreign company in Senegal. If it exceeds two years, the sufficient nexus is established and the foreign company must set up a subsidiary, which implies in particular an obligation to maintain information on the ownership of the company.

Information held by nominees

70. There are no specific provisions in Senegalese law relating to the common law concept of "nominee". Securities issued by companies with share capital registered in Senegal are held by their owners in their own name. In contrast, OHADA law uses the term "*mandataire*" (authorised person), which is a civil law concept. In certain specific cases, a company's shareholders may be represented for various purposes by authorised persons who declare their status and act according to the powers conferred upon them, not covertly (e.g. Articles 126, 288, 306 and 315 of the Uniform Companies Act).

Bearer shares *(ToR A.1.2)*

71. Bearer shares exist in Senegal. Article 745 of the Uniform Companies Act states that transferable securities may be in bearer or registered form. It also states that provisions of the Uniform Act or the company's articles of association may require them to be issued in registered form only. All SAs and SASs can issue bearer shares, but not to SARLs, which may only issue registered shares. The significance of bearer shares in Senegal is not known, since neither the number of issuers of bearer shares nor the number or value of such shares are known.

72. This option is further restricted under Article 748-1, introduced in 2014, whereby only shares admitted for trading on a stock exchange or for the operations of a central depositary may be in bearer form.

73. Before the Uniform Companies Act was amended in 2014, Articles 745 and 764 did not provide any requirement that would enable the company or third parties to know the identity of owners of bearer shares. At most, there were some provisions that may have provided some information

on the identity of owners of bearer shares, especially the first subscribers. Tax law also allows identifying the owners when dividends are distributed. Following amendment of the Act on 14 January 2014, information about the identity of owners of bearer shares should be available, at least from 2016, because companies are now required to enter all existing or newly created securities in an account in the name of their true owner (i.e. dematerialised).

Before amendment of the Uniform Companies Act

74. Before 2014, Senegal did not have any comprehensive system for identifying the owners of bearer shares. Under Article 764, the bearer of the share was deemed to be its owner and shares could be transferred by hand. However, there are some provisions which provide information about some owners before the dematerialisation of bearer shares, due to take place in 2016 at the latest.

75. First, under Articles 390 to 392 and 601 to 603, when new bearer shares are issued (on creation of the company or on a capital increase) the subscriber's name is stated on the subscription form, an original copy of which is kept by the company.

76. Other provisions make it possible to know the identity of current owners of bearer shares, but only if they attend shareholders' meetings, since they must sign the attendance sheet after depositing their shares (Articles 519, 532 and 541). This requirement does not make it possible to know the identity of the owners of all bearer shares, since shareholders are not obliged to attend shareholders' meetings.

77. In addition, companies making public offerings had the option of dematerialising their shares, i.e. registering their shares (including bearer shares) in an account opened in the owner's name and kept either by the issuer or by an approved financial intermediary, transmission then being effected from account to account (former Article 764).

78. The Senegalese tax law allows identifying owners of bearer shares who receive dividends, as Article 97-2(a) of the Tax Code provides that companies must annex to their tax return a nominative list stating the amounts distributed to each member (interest, dividends, and other income from stocks and shares) with an indication of their residence or domicile. Again, the Senegalese authorities indicate that the term member must be understood in the broad sense covering SARL members and shareholders of SA and SAS, and therefore the owners of bearer shares (who must also declare the income). However, this provision applies only to owners claiming their right to income.

79. Finally, under WAEMU stock exchange regulations, which apply in Senegal, the bearer shares of listed companies have been dematerialised since

1997. Under Article 111 of the General Regulation on the organisation, operation and supervision of the regional financial market of the WAEMU, adopted on 29 November 1997, "as of application of this Regulation, all new issues and securities listed on the Bourse Régionale des Valeurs Mobilières must be dematerialised and kept with the Central Depositary/Bank of Settlement". The three Senegalese companies currently listed were all floated after the Regulation came into force, which means that all the listed shares are already dematerialised.

80. In conclusion, it was not possible under the Uniform Companies Act before it was revised in 2014 to know the identity of the owners of all bearer shares in unlisted Senegalese companies with share capital.

Since 2014

81. Under Article 744-1 as amended, "transferable securities, whatever their form, must be registered in an account in the name of their owner. They are transmitted by transfer from account to account. Transfer of title to transferable securities results from the registration of the transferable securities in the acquirer's securities account". Thus, bearer shares, like registered shares, are now dematerialised and their owners are identifiable. In addition, Article 748-1 states that only shares admitted for trading on a stock exchange or for the operations of a central depositary may be in bearer form (but dematerialised). Other bearer shares must be converted into registered shares. All the conditions are therefore met for the identity of all shareholders, including those who hold bearer shares, to be known to the company or to a central depositary.

82. Under Article 919, companies have two years as of its entry into force on 5 May 2014 to bring their articles of association into line with the new rules. Thus, bearer shares created before that date may remain in paper form until 5 May 2016 at the latest, at which point they must have been either dematerialised or converted into registered shares.

83. However, the Uniform Companies Act does not provide for any specific penalties against issuers or holders of bearer shares that have not regularised their situation on expiry of the transition period (see Section A.1.6). There do not seem to be any provisions in Senegalese law which could remedy that shortcoming. It is recommended that the Senegalese authorities take appropriate measures to ensure the dematerialisation of all bearer shares on expiry of the two-year transitional period allowed to companies for that purpose.

*Partnerships (ToR **A.1.3; sociétés de personnes)***

84. Under the Uniform Companies Act the following types of partnership exist, the common feature of which is that their capital is divided into shares (*parts sociales*) which are not freely transferable:

- **General partnerships** (*sociétés en nom collectif*, SNC), of which all the partners are traders and indefinitely and jointly liable for corporate debts (Article 270 of the Uniform Companies Act).
- **Limited partnerships** (*sociétés en commandite simple*, SCS), which have two classes of partners: managing partners, who are indefinitely and jointly liable for the partnership's debts, and limited partners, who are liable for the partnership's debts only up to the amount of their contribution (Article 293 of the Uniform Companies Act).
- **Joint ventures** (*sociétés en participation*, SP), where the partners agree that the company will not be registered in the RCCM and will not have legal personality. Joint ventures are not subject to a publication formality. Under Article 854 of the Uniform Companies Act, the existence of a joint venture may be proved by all means. Unless otherwise provided, relations between partners are governed by the provisions applicable to general partnerships (Article 862 of the Uniform Companies Act). It is difficult to know how many joint ventures have been created in Senegal, since they are not registered in the RCCM.

85. There are 532 partnerships registered in Senegal. Information about the owners of partnerships is available from the RCCM and the tax authorities.

Publication and registration formalities

86. General and limited partnerships are required to register in the RCCM and deposit their articles of association in the same way as companies. Under Articles 46 and 52 of the Uniform Commercial Law Act, the following information is kept in the RCCM and must be updated in the event of any amendment:

- the name, first names and personal domicile of partners who are indefinitely and personally liable for corporate debts, together with their date and place of birth and nationality;
- the name, first names, date and place of birth and domicile of managers, executives, directors or partners with a general power to commit the legal person or grouping;
- shareholdings;

- the address of the registered office and, where applicable, the principal place of business and each other establishment.

87. These provisions ensure that the names of all partners of SNCs and managing partners of SCSs are registered in the RCCM and updated, though the identity of current limited partners of SCSs is not registered if different from the founders (mentioned in the articles of association; see below).

88. Shares of SNCs may be transferred only with the unanimous consent of all the partners, but Article 274 of the Uniform Companies Act allows that the articles of association provide for a buyout procedure so that a member can withdraw. Transfers of shares must be ascertained in writing. They may be relied on against the partnership only after one of the following formalities has been accomplished: service of notice on the partnership by an officer of justice; acceptance of the transfer by the partnership in a notarised deed; filing of an original copy of the transfer deed at the registered office in return for a certificate of receipt from the manager. In addition, the transfer of shares may be relied on against third parties only after it has been made public in the RCCM.

89. The articles of association of SCSs must state the share of each managing or limited partner and the amount or value of their contributions. Transfers of shares must be ascertained in writing. They may be relied on against the company and third parties under the same conditions as transfers of shares in SNCs. Under Article 296 of the Uniform Companies Act, shares may be transferred only with the consent of all the partners except where otherwise provided.[7]

90. Because joint ventures do not have to be registered, they do not appear in the RCCM. However, their managers are required to register in the RCCM and each partner remains the owner of the assets they make available to the enterprise. Likewise, information about the identity of the partners should be available from the enterprise. Unless otherwise provided, under Article 856 of the Uniform Companies Act relations between the partners of joint ventures are governed by the rules applicable to general partnerships.

7. The articles of association may stipulate that limited partners' shares are freely transferable between partners; that limited partners' shares may be transferred to third parties outside the partnership with the consent of all the managing partners and a majority in number and capital of the limited partners; that a managing partner may transfer some of his/her shares to a limited partner or a third party outside the partnership with the consent of all the managing partners and a majority in number and capital of the limited partners.

Tax requirements

91. The Tax Code sets several disclosure requirements which provide the tax authorities with information about the owners of partnerships.

92. Firstly, Article 633 on the obligation to notify the tax administration of the existence of an entity applies to all taxpayers, including partnerships. The articles of association and a certificate of registration at the RCCM should be annexed to the return (cf. above on the content of the articles of association).

93. Senegalese and foreign partnerships are liable to corporate income tax only if they elect to be. If not, limited partners of limited partnerships are liable to corporate income tax on their share of benefits (Article 4 of the Tax Code, see Section A.1.1 above). Otherwise, under Articles 51 and 119 partners are liable to personal income tax on industrial and commercial benefits, on the share of the partnership's profits corresponding to their rights in it. Thus, they must declare their income from shares in the partnership in their annual tax return. This tax applies to income of Senegalese and/or foreign source (Article 47) as well as to natural persons who are tax resident outside Senegal but receiving income in Senegal (Article 53).

94. The managers of partnerships must also provide information to the tax authorities. Under Article 257, the managers of general partnerships are required to include with their annual declaration of the partnership's profits a statement giving the name, first names, domicile and NINEA of the partners and the share of the profits of the period or of periods closed during the previous year corresponding to each partner's rights.

95. Under Article 84, the earnings distributed by limited partnerships and joint ventures are treated as securities income. As such, under Article 95 a return must be filed with the relevant tax department within one month of their final recognition including, inter alia, information about the number and form of the shares and the identity of the managers and partners. Under Article 95(II), any change must be notified within one month, including changes of partners.

96. In conclusion, information about the owners of partnerships is available in Senegal, from the RCCM, the tax authorities and the partnerships themselves.

Trusts *(ToR A.1.4)*

97. There is no law on trusts or *fiducies* in Senegal and the country is not a signatory of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. However, there is nothing in Senegalese law

to prevent a resident from acting as trustee of a foreign trust or to prevent a foreign trust from owning assets in Senegal.

98. There is a requirement since 31 March 2015 to register with the tax administration foreign trusts administered in Senegal or one of whose trustees is resident in Senegal, and a reporting requirement regarding information about the settlors, trustees or beneficiaries of such trusts. In addition, AML laws also ensure that information about the identity of persons associated with certain trusts is available.

Tax law

99. First, general provisions of the Tax Code apply to trusts and the Senegalese authorities indicate that the settlors, trustees and beneficiaries are taxable under the general tax rules, in relation to income tax and registration obligations. Similarly, the provisions of Article 633.I on the declaration of existence being very broad, the Senegalese authorities consider that if a trust was managed in Senegal, the trustee would have to declare its existence and provide the trust deed, understood as "documentary evidence".

100. In addition, reporting obligations specific to trusts have been introduced in 2015 under Articles 633.IV and 637 (fine) of the Tax Code:

> 633.IV. Administrators, beneficiaries or trustees resident in Senegal related to a trust located abroad are required to file with the Head of the tax office of its fiscal domicile, within twenty (20) days of his/her appointment, a statement indicating the identity and addresses of the members or beneficiaries of trusts or *fiducies* located abroad. The trust or fiducie deed must be attached to the declaration.
>
> This obligation applies to the administrators, trustees or beneficiaries residing abroad of trusts or *fiducies* with property, rights or interests in Senegal.
>
> They must also inform the tax authorities of any changes in the allocation of profits or contract, of any change of beneficiaries and any transfer of ownership, within one month.

101. The Senegalese authorities state that "trusts located abroad" are in fact trusts created under foreign law, i.e. all trusts; the term "member" of the trust covers the settlor. The Senegalese authorities confirm that the obligation applies to pre-existing trusts that meet the criteria. This new provision ensures that the Senegalese tax authorities have information, regularly updated, that identifies the settlor, the trustee and the beneficiaries of express trusts administered in the jurisdiction or where a trustee is resident there, information that should be regularly updated.

Anti-money laundering legislation

102. Act 2004-09 of 6 February 2004 on the prevention of money laundering in Senegal (the AML Act) ensures that information about certain trusts is available. Under Article 5, "members of independent legal professions, when they represent or assist clients outside any judicial proceedings, especially in connection with […] the constitution, management or direction of companies, *fiducies* or similar structures and the performance of other financial transactions" must comply with KYC, disclosure and document retention requirements (documents must be kept for 10 years after the end of the relationship). Trusts are similar to *fiducies*. Such persons are thus required, in the same way as other persons covered by the same rules (e.g. banks), to identify their customers and keep documents. Likewise, under Article 7 financial organisations must identify managers, employees and nominees acting on another person's behalf and, if the customer is not acting on his/her own behalf, use all means to satisfy themselves of the identity of the person on whose behalf he is acting, i.e. the beneficial owner (Article 9). These provisions could cover accounts opened for a trust.

103. The AML Act transposes a WAEMU Council of Ministers Directive into Senegalese law. In addition, under Article 11 of BCEAO Instruction no. 1/2007/RB of 2 July 2007 on the prevention of money laundering, persons governed by its provisions are required to inform the financial intelligence unit of transactions performed for own account or on another's behalf with natural or legal persons, including their subsidiaries or establishments, acting under the form or on behalf of trust funds or any other special-purpose trust management instrument, the identity of whose settlors or beneficiaries is not known.

104. The identity of a natural person (settlor, trustee or beneficiary) is verified by the presentation of a valid national identity card or any equivalent original official document, a copy of which must be taken. The business address and domicile is verified by the presentation of any document which constitutes proof. The identity of a legal person or branch is verified by the production of an original or certified true copy of any instrument or excerpt from the commercial register certifying its legal form, registered office and the powers of persons acting on its behalf. Verification of identity includes verifying the real address of managers, employees and nominees acting on another person's behalf, who must produce documents certifying the delegation of power or power of attorney granted to them and the identity and address of the beneficial owner (Article 7). These provisions apply to trusts having a relationship with a person subject to AML rules or the trustee of which is a person subject to AML rules.

105. Finally, according to the Senegalese authorities, however, the likelihood of appointing non-professional trustees or fiduciaries in Senegal is

virtually nil, and the tax administration has never encountered a trust. The Financial Intelligence Unit (CENTIF) also has no practical experience of a trustee of a foreign trust being present in the territory. The GIABA AML evaluation[8] reached the same conclusion in 2008. This matter will be examined in detail in Phase 2 of the review.

Foundations (ToR A.1.5)

106. Senegalese law makes no provision for private-interest foundations. Senegalese foundations, governed by Act 95-11 of 7 April 1995, arise from the irrevocable allocation of assets to a general-interest work for a non-profit purpose (Articles 1 and 42). Under Article 2, surpluses generated by the foundation's activities must be allocated exclusively to its corporate purpose. The public-interest nature of foundations is recognised by a decree of the Finance Minister issued after consulting the Council of State. They are subject to administrative supervision (the decree may state whether one or more government representatives should be voting members of the foundation's board and their accounts must be submitted to the Finance Ministry) and to technical supervision by the ministry within whose ambit their corporate purpose falls (Articles 3 and 11). These entities are therefore not relevant within the meaning of the Terms of Reference.

Other relevant entities

Non-trading companies

107. Non-trading companies are defined by what they are not, namely legal persons which are non-commercial in form (unlike companies with share capital and partnerships). Companies which are non-commercial in form but commercial in purpose are governed by OHADA law and must comply with the same registration requirements as commercial companies. Otherwise, Senegalese non-trading companies are governed by Book 6, Chapter 1 of the Code of Civil and Commercial Obligations. A non-trading company is defined as a contract whereby two or more persons (the members) pool contributed assets and form a legal person in order to use them and share the profits or losses that may arise therefrom (according to their shares in the entity). The contract does not need to be written in order to be valid. Transfers of shares must be approved by a majority of the members and may be freely proved, meaning that there is no requirement for a written record here either.

8. Inter-Governmental Action Group Against Money Laundering in West Africa (GIABA): Senegal, Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism, 7 May 2008.

108. Professional companies (Chapter 1 bis) and real-estate companies are sub-categories or non-trading companies. The former are instituted between natural persons pursuing the same profession, such as physicians or lawyers, or holding a public office, such as notaries. Natural persons may belong to only one professional company, and in such case may carry on their profession only on an individual basis.

109. From a tax standpoint, non-trading companies may opt for either corporate income tax or the system for the taxation of the income of partners in partnerships. In the former case, a declaration must be filed with the tax department within one month of the final recognition of earnings, containing information about the number and form of shares and the identity of the managers and partners. Under Article 95 of the Tax Code, any amendment must be notified within one month. In the latter case, under Articles 71 and 72 the managers must provide the following information every year: name, first names, domicile and NINEA of the members and the number of shares in the company owned by each one and their share of the net earnings or deficit. In both cases, the tax authorities receive a list of members every year.

Economic interest groupings

110. Article 869 of the Uniform Companies Act defines an economic interest grouping as one whose sole purpose is to implement for a defined period all means likely to facilitate or develop the economic activity of its members or to improve or increase the results of that activity; the activity must be linked to the economic activity of its members and may only be ancillary to it. There are 532 EIGs in Senegal.

111. Under Articles 870 and 873, an economic interest grouping (EIG) may be constituted by two or more natural or legal persons, including persons carrying on a profession. It has legal personality but may be constituted without capital and is not intended per se to generate profits to be shared. Members' rights may not be represented by transferable securities and members are liable for the grouping's debts on their own assets.

112. Information about the identity of a grouping's members is available from the RCCM. EIGs must be registered in the RCCM under the same conditions as all companies, including a copy of the founding contract. Under Article 876, the contract must include the EIG's name and address and the name or company name, legal form, address of the domicile or registered office and, where applicable, the RCCM registration number of each of its members. The identity of an EIG's members is therefore available from the RCCM. All amendments to the founding contract (including its signatories) must be drawn up and made public under the same conditions as the contract

itself. They may not be relied on against third parties until they have been made public.

113. The tax treatment of an EIG is similar to that of a partnership: the entity is fiscally transparent unless it has opted for corporate income tax.

Waqfs

114. A *waqf* is an Islamic law structure similar to a trust or foundation; waqfs were not known in Senegal before the adoption of a law in 2015. A law on *waqfs* was passed in Senegal in April 2015 to promote and facilitate the creation of charity waqfs, which can have a direct impact on the economic development and wellbeing of the population. It defines waqfs as any asset of which bare ownership is immobilised indefinitely or for a defined term, and the usufruct of which is devoted to a private of public charity (s. 1).

115. The law distinguishes five types of waqfs: public waqfs created by decree and managed by a public authority; waqfs of public interest managed by a private person but recognised of public interest by the authorities; private or family waqfs; and mixed waqfs (private/public or private/of public interest).

116. The modification of assets into a waqf must be performed by notarial deed or by private deed filed with a notary, who shall transmit copies to the High Authority of Waqfs (art. 8 and 9). The settlor identified in the deed, cannot be the beneficiary of the waqf; the waqf is otherwise nullified (art. 13).

117. Public waqfs (and the public part of mixed waqfs) are managed directly by the High Authority of Waqfs, which also receives the financial statements of waqfs of public interest. They are not considered relevant entity within the Terms of Reference.

118. The beneficiaries of a private waqf must also be identified (by name or quality) in the deed. Otherwise, the Waqf is considered a public waqf (art. 15). When the beneficiary's right expires, for example when the beneficiary dies or renounces his/her right, the right is transfers to the next level beneficiary named in the constitution if any, or otherwise goes back to the settlor or his/her heirs. Private or family waqfs (and the non-public part of mixed waqfs) are controlled and supervised by the High Authority of Waqfs, which oversees the protection and conservation of the assets in waqf. The beneficiaries are clearly identified. The law does not provide that a manager should be appointed – private waqfs can be directly managed by the beneficiary or by a third party administrator nominated by the settlor. In this, the private waqf may approach a dismemberment of ownership rights rather than an entity, but the practice should be monitoring in Phase 2 of the review process to see how the concept evolves.

119. The waqfs that existed prior to the entry into force of the law have one year to comply with the law. Orders and decrees under the Act have not yet been published, nor sanctions introduced for breach of the law. It is thus recommended that the Senegalese authorities ensure that the 2015 law on waqfs is correctly implemented in practice.

Other entities

120. Senegal also knows the Non-Governmental Organisations (NGOs), which are associations or private non-profit entities dedicated to providing support to the development of Senegal, and certified as such by the government. The provisions in force provide for the identification of the founders and members of the NGO. Decree No. 2015-145 of 4 February 2015 regulating the activities of NGOs reinforces the legal framework for monitoring their activities and controlling the origin of the funds. It provides for controls on the origin or destination of the funds of these entities and penalties in case of irregularities.[9]

Enforcement provisions to ensure availability of information *(ToR A.1.6)*

121. Jurisdictions must have appropriate measures in place to ensure that rules relating to the identification of the owners of relevant entities are enforced effectively. This section of the report assesses whether penalties apply in the event of non-compliance with legal provisions relating to the identification of the owners of relevant entities, either with the public authorities or within the entities concerned.

Penalties for failure to register or identify owners

122. Under Article 60 of the Uniform Commercial Law Act, a company that fails to register in the RCCM is denied legal personality. Under Article 101 of the Uniform Companies Act, its existence may not be asserted against third parties. Under Articles 114 and 115, the company will be considered a de facto company.

123. In addition, under Articles 68 and 69 of the Uniform Commercial Law Act any person who is required to accomplish one of the prescribed formalities and fails to do so (for example, notifying a change of member), or who fraudulently accomplishes any such formality, is liable to the penalties provided for by domestic general or special criminal law. Where applicable,

9. GIABA, Mutual Evaluation Report, Anti-money laundering and combating the financing of terrorism,, May 2008, and seventh follow-up report, May 2015.

the convicting jurisdiction orders rectification of the inaccurate information and entries. However, there is no specific penalty in Senegalese law for non-compliance with the requirements of the Uniform Commercial Law Act.

124. Although the Uniform Companies Act contains an obligation for companies with share capital to keep a register of registered shares, failure to do so is not included in the types of conduct liable to criminal penalties listed at Article 886 et seq.[10] However, persons responsible for any offence relating to the keeping of documents required by law may incur civil liability vis-à-vis the injured shareholders, although that means that shareholders must consider themselves to have been injured.

125. In addition, fines are imposed for non-compliance with tax requirements, including the retention of a shareholders register under Article 636 and the tax returns on transfers of shares under Article 98. Under Article 667 of the Tax Code, any failure to comply with obligations under the code is punishable by a fine of XOF 200 000 (EUR 305), where it is not the subject of a specific fine. Where non-compliance concerns documents or information to be provided, the fine is payable as many times as there are documents or information requested but not provided, or if the information or documents is or are incomplete or inaccurate. However, the amount of the fine recorded in an official report may not exceed XOF 1 000 000 (EUR 1 525). While such amounts may be regarded as substantial for a small business, they do not seem dissuasive for a company with international operations. This question will be considered in Phase 2 of the review.

126. The breach of the tax obligation under Article 633 of the Tax Code to maintain information on trusts is punishable by a fine of XOF 200 000 (EUR 305), under Article 667 of the Tax Code.

Bearer shares

127. The Uniform Companies Act does not provide any specific penalties for issuers or holders of bearer shares that have not been dematerialised on expiry of the transition period in May 2016. Consequently, bearer shares could still remain in circulation after the two-year transition period without it being possible to know how many there are or who owns them. Although it seems logical that shares which have not been converted or dematerialised should lose their value, this is not specified in the Uniform Companies Act or in Senegalese law.

10. Penalties are otherwise provided for by Law No. 98-22 of 26 March 1998 on Criminal sanctions applicable to offences set in the Uniform Companies Act.

128. The amplitude of this flaw in practice is not known, since neither the number of issuers of bearer shares nor the number or value of such shares are known.

Anti-money laundering legislation

129. Under Article 40 of the AML Act, persons governed by the Act who infringe KYC or document retention rules are liable to a fine of XOF 50 000 to 750 000 (EUR 76 to 1 143). These penalties apply in particular to members of the legal profession acting as trustees in Senegal and to financial institutions having a trustee as one of their customers.

130. The effectiveness of the enforcement provisions which are in place in Senegal will be considered as part of the Phase 2 Peer Review.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
The new OHADA Uniform Act on commercial companies and economic interest groupings provides for the dematerialisation of securities and allows companies a two-year period in which to comply. However, it does not precisely define the status of bearer shares which are not dematerialised on expiry of the transition period and there is no other provision in Senegalese law clarifying the terms and conditions of dematerialisation.	The Senegalese authorities should take appropriate measures to ensure the dematerialisation of all bearer shares on expiry of the two-year transitional period allowed to companies for that purpose.
Senegal recently passed a law on waqfs. Whereas the law seems to clearly frame these entities and allow for the identification of all relevant persons, the transition period is ongoing and all the implementation regulations have not been published yet.	The Senegalese authorities should ensure that the 2015 law on waqfs is correctly implemented in practice.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

131. The Terms of Reference set out the standards for the maintenance of reliable accounting records for all relevant entities and arrangements. To be reliable, accounting records should: *(i)* correctly explain all transactions; *(ii)* enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time; and *(iii)* allow financial statements to be prepared. Accounting records should further include underlying documentation, such as invoices, contracts, etc. Accounting records need to be kept for a minimum of five years.

132. Companies are required to keep accounting records under OHADA accounting law, company law (the Uniform Companies Act) and tax law. These transparency requirements comply with international standards as regards formal requirements for account-keeping, the documents which must be kept and the length of time for which they must be retained.

General requirements *(ToR A.2.1)*

Commercial and accounting law

133. Under Articles 13 and 15 of the OHADA Uniform Commercial Law Act, all traders, including companies with share capital (SA, SAS, SARL), partnerships (SNC, SCS, joint ventures and de facto partnerships) and economic interest groupings must keep all commercial records in compliance with the provisions of the Uniform Act organising and harmonising business accounting systems (Uniform Accounting Act). Under Article 2 of the Uniform Accounting Act, the following entities are also required to have a general accounting system: state-owned corporations, parastatal organisations and semi-public enterprises, co-operatives and, more generally, entities that produce marketable or non-marketable goods and services if they are habitually engaged in a principal or ancillary economic activity irrespective of whether or not financial gain is derived from that activity, which includes non-trading companies. According to the Senegalese authorities, companies and professional persons acting in Senegal as trustees for foreign trusts are required, as traders, to comply with OHADA accounting law.

134. Under Article 1 of the Uniform Accounting Act, all undertakings must establish an accounting system to provide information for both internal and external use. To that end, the accounts must correctly record all transactions. The undertaking must:

- collect, classify and record in its accounts all transactions that entail value movements which are carried out with third parties or are recognised or executed as part of its internal administration;
- after suitable processing of such transactions, prepare and file the financial statements which it is required to draw up by law or pursuant to its articles of association, along with other information that meets the requirements of various users.

135. The compulsory account books and supporting documents are:

- the day book, in which transactions during the period are recorded in compliance with the double-entry method;
- the ledger, made up of all the undertaking's accounts, in which the different transactions of the period are entered or posted simultaneously from journals, account by account;
- the general trial balance which, at the end of the period, shows for each account the debit or credit balance at the start of the period, the aggregate of debit and credit movements since the start of the period and the debit or credit balance at the date in question;
- the annual accounts book, in which the balance sheet, income statement and summary of closing inventories for each accounting period are transcribed.

136. Under Article 15, the accounting system must ensure timely and complete recording of basic information on a day-to-day basis, processing of the recorded data at the appropriate time and delivery of mandatory reports to users within the specified legal time limits. Under Article 3, it must meet the requirements of accuracy, reliability and transparency (including use of the country's official language and currency).

137. The double-entry bookkeeping method must be used (which means that entries are posted in at least two accounts, one being debited and the other credited; when a transaction is recorded, the total of the sums entered on the debit side must be equal to the total of the sums entered on the credit side) and transactions must be recorded chronologically.

138. Under Article 68, a company may not rely on improperly kept accounts as evidence in court. Fines for the non-keeping of books of accounts or for non-reliable accounts are provided for under tax law (see Tax law below).

139. Under Article 8, financial statements collating accounting information must be prepared at least once a year in accordance with the given models. Under Article 29, they comprise the balance sheet (which describes the assets and liabilities that make up the undertaking's net worth and shows

shareholders' equity separately), the income statement (which summarises the revenue and expenses which determine the net profit or loss for the accounting period), the table of source and application of funds (which presents the financial flows and application flows throughout the accounting period) and notes to the accounts (which supplement and clarify the information given in the annual financial statements).

140. Under Articles 7 and 8, these documents are mandatory, in full or in part, according to the undertaking's sales. The normal system applies to undertakings with sales in excess of XOF 100 million (EUR 152 449); a simplified system applies to undertakings with sales of under XOF 100 million (EUR 152 449); and a minimal cash-basis system applies to very small undertakings with sales of under XOF 30 million (EUR 45 734) for trading companies, XOF 20 million (EUR 30 489) for craft undertakings and XOF 10 million (EUR 15 244) for companies providing services (Articles 13 and 26 to 28). The minimal system therefore applies to small businesses, which are less likely to be asked for information.

141. Under Article 8, the financial statements form an indivisible whole and should faithfully and accurately represent the events, transactions and state of affairs throughout the accounting period and thus give a true and fair view of the undertaking's assets, financial position and results. Under Article 9, the correctness and accuracy of the information set out in the financial statements should arise from an adequate, fair, clear, precise and complete description of the events, transactions and state of affairs during the accounting period. Under Article 10, any undertaking which correctly applies the OHADA Accounting System (SYSCOA) is deemed to provide, through its financial statements, a true and fair view of its position and its transactions.

142. Under Article 69, undertakings must also define internal control and external auditing procedures. An auditor must be appointed to audit SAs, SASs and certain SARLs (cf. §50 above). The auditor must certify that the financial statements give a true and fair view of the undertaking's assets, liabilities, financial position and results. Under Article 31 of the Tax Code, the financial statements must be made public and, for entities liable to corporate income tax, filed with the tax authorities.

143. Article 111 of the Uniform Accounting Act institutes penalties for company managers if they fail, for each accounting period, to draw up annual financial statements and, where applicable, a management report and social audit or knowingly draw up and disclose financial statements which do not give a true and fair view of the assets and liabilities, financial situation and results for the period. The Senegalese authorities indicated that penalties are available under tax law (see below).

144. Under Article 890 of the Uniform Companies Act, managers who, on expiry of each accounting period, knowingly publish or present to shareholders or members summary financial statements which do not give a true and fair view of the company's transactions, financial situation, assets and liabilities for the period are liable to criminal penalties. Law No. 98-22 provides that the offence under section 890 is punished by imprisonment for one to five years in prison and a fine of XOF 100 000 to 5 million (EUR 152 to 7 622).

Tax law

145. The Tax Code reinforces and complements OHADA law. It includes a requirement to keep regular accounts. Under Article 635, taxpayers are required to comply with the rules in force in Senegal governing their civil and commercial obligations, including the Uniform Accounting Act. Article 638 institutes specific documentary requirements relating to transfer pricing.

146. Under Article 617, the tax authorities may make a discretionary assessment of taxpayers who have not kept accounts, or who have not kept them properly. Under Article 668, failure to keep accounts in compliance with the prevailing standards in Senegal or the absence of accounting documents is punishable by a fine of XOF 5 million (EUR 7 622). Penalties are more severe if fraud is identified: Under Article 682, the penalties for tax fraud (a fine of XOF 5 to 25 million (EUR 7 622 to 38 112) and imprisonment for 2 to 5 years) also apply to accounting fraud, against "any person who keeps improper accounts, either by keeping books and records that are not numbered and initialled in accordance with the regulations or by knowingly failing to enter or causing others to enter all or some of the required entries, or by not causing others to enter or by knowingly entering inaccurate or fictitious entries, or by not keeping the documents that must be kept or by destroying them before the legal time limit, or by any other process, in particular by significantly reducing the amounts to declare". Thus, tax penalties compensate for the absence of penalties for infringements of OHADA law.

147. Under Article 31 of the Tax Code, taxpayers are required to provide various accounting documents to the tax authorities together with their annual tax return according to their tax regime and, under Article 32, to provide the contact details of the chartered accountants responsible for keeping their accounts if they are not employees. Taxpayers are also required to provide tax officials upon request with all accounting documents, inventories, copies of letters and vouchers for revenue and expenditure, such as to justify the accuracy of the results stated in the tax return. Otherwise, a fine of XOF 200 000 applies for each document or information not provided, incomplete or inaccurate, up to XOF 1 million fine (EUR 305 à 1 525) (art. CGI 667, see A.1.6).

Underlying documentation *(ToR A.2.2)*

148. Article 17 of the Uniform Accounting Act states that the accounting system must comply with reliability requirements such that entries are supported by dated receipts which are classified and filed in an order stipulated in the document describing the accounting system and procedures; they must bear references to corresponding supporting documents and are deemed to have probative value. Supporting documents may be purchase or sale invoices, contracts and other documents.

149. Article 637 of the Tax Code also sets an obligation to maintain and keep documents: books, registers, tax returns, receipts, contracts, documents or original vouchers in respect of which the tax authorities may exercise its rights of information, investigation or audit must be kept for ten years. The fine of Article 667 applies to infringements of Article 637 and the fine of Article 668 applies in case of the absence of accounting documents related to registered transactions (cf. above).

5-year retention standard *(ToR A.2.3)*

150. Senegalese law ensures that accounting records are kept for at least five years. Under Article 24 of the Uniform Accounting Act, accounting records or documents that serve the same purpose must be kept for ten years. Likewise, Article 637 of the Tax Code states that the ten years retention starts from the date of the last transaction mentioned in such books or registers or the date at which such documents or other items were drawn up or established. These obligations do not set exceptions for dissolved companies but it is not clear who is responsible to maintain their documents; the issue will therefore be followed-up in Phase 2.

151. OHADA law makes no specific provision regarding the place where documents must be kept, but Article 640 of the Tax Code states that invoices issued by taxpayers or by a customer or third party in their name and on their behalf and all invoices they receive must be stored in Senegal in order to guarantee that they can be produced upon request. For the rest, no specific provision is made for the case where documents are not immediately available, for example because they are kept in another country. However, under Article 641, books, registers, contracts and vouchers must be produced upon request, and the non-presentation of documents is subject to sanctions (see the subsection on *Tax Law* above). These provisions suggest that accounting documents should be kept at the entity's registered office. The Senegalese authorities confirm that the provisions on audit in general and on spot inspections in particular automatically require that accounting books and records be kept at the headquarters of the entity.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

A.3. Banking information

Banking information should be available for all account-holders.

152. Access to banking information is of interest to the tax authorities only if the bank has useful and reliable information on its customers' identity and the nature and amount of financial transactions. Senegalese banks are governed by domestic regulations and those of the Central Bank of West African States (BCEAO), whose headquarters are in Dakar and which acts as central bank for Senegal and the seven other West African Monetary Union countries.

153. Banking activity in Senegal is governed by Act 2008-26 of 28 July 2008 (the Banking Act). Under Article 1, it applies to credit institutions operating in Senegal, whatever their legal status or the place of their registered office or principal place of business in the West African Monetary Union. Under Articles 2 and 5, credit institutions are defined as legal persons that perform banking operations as their regular business, i.e. the receipt of funds from the public (funds that a person collects from a third party, in particular in the form of deposits, with the right to dispose of them for own account but under an obligation to return them), credit operations and the provision of overdraft facilities, and management of means of payment.

Record-keeping requirements (ToR A.3.1)

154. Banks are required to keep accounting records in the same way as any other commercial company. All the accounting requirements examined in Section A.2 of this report apply to them.

Banking regulations

155. The Banking Act states that credit institutions must keep specific accounting records of the transactions they perform in Senegal at their registered office, principal place of business or main branch. Their accounts must be closed at 31 December of each year and submitted to the Central Bank and the Banking Commission by 30 June of the following year at the latest. The accounts must be certified by one or more auditors. Under Article 51, the Banking Commission must approve the choice of auditor. The audit concerns

compliance with all the legal requirements. The Banking Commission may impose penalties on banks and their senior managers in the event of non-compliance. Penalties include imprisonment, fines, penalty interest and other administrative sanctions up to and including withdrawal of authorisation.

Anti-money laundering regulations

156. The AML Act (Act 2004-09 of 6 February 2004) contains KYC and document retention requirements. Under Article 7, financial organisations must satisfy themselves of the identity and address of their customers before opening an account for them, taking custody, in particular of securities or certificates, allocating a safe-deposit box or establishing business relations of any kind with them. Under Article 8, occasional customers must also be identified for any transaction involving cash amounts of XOF 5 million or more (EUR 7 622). The identity of a natural person is verified by the production of any original official document which includes a photograph (national identity card, passport, etc.). The business address and domicile is verified by the presentation of any document which constitutes proof, such as a utility bill. The identity of a legal person or branch is verified by the production of an original or certified true copy of any instrument or excerpt from the RCCM certifying its legal form and registered office. Persons acting on its behalf must produce their powers of attorney and their identity must be verified. Under Article 9, if customers do not act on their own behalf, the financial organisation must take all steps to ascertain the identity of the person for whom they act.

157. Under Articles 11 and 12, financial organisations must retain supporting documents or copies for ten years as of the closure of customers' accounts or cessation of business relations with them. They must also retain documents relating to transactions they have performed for ten years as of the end of the period during which the transactions were carried out. It must be possible from these documents to reconstitute all the transactions performed by a natural or legal person linked to a transaction that has been reported as suspicious. The Anti-Terrorist Financing Act (Act 2009-16 of 2 March 2009) contains similar requirements. Under Article 40, failure to comply with KYC and document retention obligations is punishable by a fine of XOF 50 000 to 750 000 (EUR 76 to 1 143).

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B. Access to information

Overview

158. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Senegal's legal and regulatory framework gives the authorities access powers that cover all relevant persons and information and whether rights and safeguards would be compatible with effective exchange of information.

159. The Senegalese tax authorities have a certain amount of information on taxpayers' identity, ownership and accounts. They can use their domestic tax powers to gather information they do not maintain, in order to meet a request from a foreign competent authority. The Tax Code gives them extensive powers of access to accounting, banking and ownership information. Information requests may be addressed to the person concerned or to third parties.

160. Coercive measures are available if a person refuses to provide the information requested. Personal rights and safeguards in Senegal are compatible with effective information exchange. The Senegalese tax authorities are not under any statutory obligation to inform the taxpayers concerned of information requests received from foreign authorities.

B.1. Competent Authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

161. Under the tax conventions signed by Senegal, the competent authority to respond to information requests is the finance minister or a duly appointed representative.

162. The power to exchange information derives from the international agreements in force in Senegal, which take precedence over domestic laws (Article 91 of the Constitution; see also the Introduction and Section C.1). For that purpose, the tax authorities use their powers under the Tax Code to obtain and provide ownership and identity information and accounting information held by both taxpayers and third parties.

Ownership and identity information *(ToR B.1.1)*

163. The Senegalese tax authorities already have extensive information about the ownership of Senegalese legal persons in their databases (see Section A.1). However, if they wish to ensure that the information is true, or obtain more recent information, the Tax Code gives them various powers to obtain all the ownership and identity information they need to respond to information requests. The primary power is the right to information (*droit de communication*).

164. The right to information is based on Articles 571 to 575 of the Tax Code. It is the most extensive means for the tax authorities to obtain information and documents held by any natural or legal person, including administrative agencies and third parties.

165. The right to information allows the tax authorities to obtain all deeds, books, registers and ancillary documents and any other document which may be useful for tax audit purposes where there is a requirement to retain them, i.e. for ten years after the document concerned was drawn up.

166. The right to information may apply to a Senegalese taxpayer or to a third party. Article 571 gives a non-exhaustive list of persons from whom such information may be requested: public office holders, public agencies and similar organisations, undertakings, establishments or organisations under administrative supervision, private undertakings, companies, whatever their form, banks and similar institutions, insurers, representatives, brokers and intermediaries. The provision is thus sufficiently broad to cover any person

acting as a proxy or nominee, including agents and trustees. Article 575 also covers civil status registers and notaries.

167. With regard to information about the identity of owners of entities, Article 572 states that the right to information extends to "share and bond transfer registers and the minutes and attendance sheets of shareholders' meetings".

168. Under Article 568(I), information must be provided within 30 days of receipt of the tax authorities' request or notification. The right to information can be used to answer an EOI request even when the person concerned has already been subject to a tax audit for the same period.

169. Article 569 provides for another power, called information request. The tax authorities may ask a taxpayer, orally or in writing, for all information, justifications or clarifications it deems appropriate. Taxpayers have 20 days in which to respond. The Senegalese authorities explain that the difference between the right to information and an information request is essentially a practical one: the first will focus rather on holders of information outside of any audit, while the second will focus rather on the taxpayer during an audit; but both can be used to respond to an EOI request.

170. If the necessary information is not obtained through an information request or the right to information, the tax authorities may use more coercive measures, such as the right of search, and impose penalties (see Section B.1.4).

Accounting records (ToR B.1.2)

171. As with identity and ownership information, the Tax Code gives the tax authorities various powers to obtain all information in order to respond to information requests. The right to information also applies to accounting records, since Article 571 explicitly refers to "revenue, expenditure and accounting documents" (see Section B.1.1).

172. The Tax Code also contains specific provisions, starting with audits of accounts (Article 582). Tax officials may perform an on-site inspection of accounts and documents held by taxpayers in order to assess and audit taxes, etc. As this measure is more coercive, it is also more tightly regulated. Under Article 603, the tax authorities must issue an audit notice stating the nature of the audit at least five days before commencing it, but the notice does not need to indicate that it derives from an EOI request. Under Article 589, material operations to audit accounts may not last for longer than 12 months as of the date of the first on-site visit as stated in the audit notice; this period is reduced to 4 months if the entity's sales are less than XOF 1 billion (EUR 15.2 million). Although it is possible for these deadlines to be extended

if the Senegalese authorities request information from foreign authorities, the reverse is not the case.

173. Under Article 595, once an audit of the accounts for a given period has been completed, the tax authorities may not perform a new on-site audit relating to the same period and the taxes, duties or fees which were the subject of the completed audit. Thus, if a company has already been audited for domestic purposes, it cannot be audited again in order to respond to an information request, and vice versa, but the right to information remains available.

174. Under Article 569, tax officials may ask for information or evidence during an audit, in which case the taxpayer has eight days in which to respond. Under Article 570, they may also request information and documents relating to transfer pricing.

175. Under Article 581, the tax authorities may conduct a spot inspection of physical elements of the business and the existence or state of accounting records.

176. Under Article 641, taxpayers' obligations include the requirement to provide tax officials upon request with all books, registers, declarations, receipts, contracts, documents and vouchers that they are required to keep and retain.

177. These rules ensure that the competent authority, through the Senegalese tax authorities, is empowered to obtain and communicate accounting information for all relevant entities and arrangements.

Use of information gathering measures absent domestic tax interest (ToR B.1.3)

178. The concept of "domestic tax interest" describes situations in which a competent authority can only provide information to another competent authority if it has an interest in gathering such information for its own needs.

179. There is no provision in Senegalese law restricting the use of information-gathering powers to the sole needs of the Senegalese tax authorities. Although there is no explicit provision stating that the tax authorities may use their powers for information exchange purposes, the Tax Code provides that tax secrecy does not apply to exchanges of information (Article 604(II), see Section C.3). Article 579 provides for the possibility of simultaneous or joint audits with foreign tax authorities under double taxation treaties. Article 569 on information requests refers to all information that the tax authorities may deem useful, without necessarily linking it to the audit of a domestic tax. Article 571 on the right to information explicitly refers to audit and assessment of the base for taxes, duties and fees, without stating that it is restricted to Senegalese taxes.

180. Under Article 91 of the Constitution, duly ratified or approved treaties and agreements take precedence as of their publication over domestic laws. This means that the competent authority is required to enforce the provisions of tax treaties or information exchange agreements which require it to provide the information requested by the other contracting jurisdiction. It may use all the means provided by tax law in order to do so.

Compulsory powers *(ToR B.1.4)*

181. Jurisdictions must have effective coercive measures in place to require the production of information. Senegalese law includes both penalties for refusal to provide requested information and enforcement measures.

Right of search

182. The Tax Code provides for a right of search and seizure in order to identify and ascertain tax offences. This applies only if an infringement of Senegalese law is suspected, which will be the case only if the information request arouses suspicion of such an infringement. The court can authorise the search in cases of EOI requests: the refusal to answer a right to information request is considered as an offence for which a search could be requested. The authorities may search all places, including private places, where items, documents, objects or goods relating to such infringements and goods and assets deriving directly or indirectly therefrom may be held. During a search, the tax authorities may seize items and documents on whatever medium. Under Article 576(I), tax officials must be accompanied by a criminal police officer. Under Article 576(II), each search must be authorised by an order of the President of the regional court within whose jurisdiction the premises to be searched are located. The Senegalese authorities explain that the control of the judge relates to the formal aspects of the procedure, without considering the substance of it.

Penalties

183. Under Article 667, non-compliance with obligations under the Tax Code is punishable by a tax fine of XOF 200 000 (EUR 305). The Senegalese authorities state that where non-compliance concerns documents or information to be provided, the fine is payable as many times as requested items of information or documents are not produced or are incomplete or inaccurate. However, the amount of a fine recorded in an official report may not exceed XOF 1 million (EUR 1 525). Under Article 668, opposition to a tax audit is punishable by a fine of XOF 5 million (EUR 7 622). Under Article 666, such fines are recorded in an official report.

184. Non-co-operation with the tax authorities may also entail prosecution and criminal penalties. Under Article 686, any person who refuses to obey the orders of tax officials responsible for assessing or auditing taxes is liable to a fine of XOF 500 000 to 5 million (EUR 762 to 7622). In the event of repeated offences, the courts may prohibit persons from carrying on their business or profession in Senegal for one to five years. Persons who fail comply with the ban are liable to a fine of XOF 1 to 2 million (EUR 1 524 to 3 048) and imprisonment for one to two years.

Secrecy provisions *(ToR B.1.5)*

185. Jurisdictions should not refuse to respond to an information request made under information exchange arrangements on the grounds of secrecy rules (e.g. banking or business secrecy). There are several rules on secrecy and confidentiality in Senegalese law.

Banking secrecy

186. Article 30 of the Banking Act states that "persons who participate in the direction, administration, management, supervision or operation of credit institutions are bound by professional secrecy", subject to the provisions of Article 53, whereby professional secrecy may not be invoked against the Banking Commission or the Central Bank or the judicial authorities acting in criminal proceedings. This rule does not require the provision of information to the tax authorities.

187. Likewise, Article 12 of the AML Act states that persons governed by the Act must provide information collected by banks relating to the identity of their customers and their transactions on request to the judicial authorities, government officials responsible for detecting and prosecuting offences related to money laundering acting with a warrant, the supervisory authorities and CENTIF (the Senegalese FIU). This rule does not require the provision of information to the tax authorities. In addition, under Article 40 it is a criminal offence to provide such information to other persons.

188. The Penal Code provides in Article 363 that any breach of confidentiality is punishable by imprisonment of one to six months and a fine of XOF 50 000 to 300 000 (EUR 76-457) "except the case where the law requires or allows them to report". Article 571 of the Tax Code expressly states that the right to information applies not only to persons governed by its provisions but also to third parties, especially "banks and similar institutions, insurers, representatives, brokers and intermediaries". The Senegalese authorities have stated that banking secrecy may not be invoked against the tax authorities, and that the right to information has never been restricted in banking matters in practice.

Other professional secrecy requirements

189. Article 574 of the Tax Code states that a private undertaking, a central government agency or other public authority, an undertaking conceded or controlled by such public authorities or an establishment or organisation subject to supervision by an administrative authority may not invoke professional secrecy against tax officials who, in carrying out their duties, ask them to provide documents, books, registers or information in their possession.

190. This provision does not apply to lawyers. The legal profession in Senegal is governed by Act 84-09 of 4 January 1984 as amended in 2009 creating the Bar Council. The Act does not contain any provision defining client-attorney privilege. At most, one article states in passing that attorneys are bound by the rules of their profession relating to confidentiality, ethics and compatibility. Likewise, Article 44 of Regulation no. 5/CM/UEMOA on harmonisation of the rules governing the legal profession in the WAEMU area states that "attorneys, in all matters, must not make any disclosure contravening professional secrecy. In particular, they must respect the confidentiality of investigations." Professional secrecy is not defined.

191. In addition, Article 22 of the Bar Rules of Procedure states that lawyers are strictly bound by professional secrecy. This article also stipulates that they are also bound to secrecy of criminal investigations and that the correspondence between lawyers cannot be produced in court "when confidential", as well as conciliation negotiations between lawyers. These provisions show that the secrecy obligation is not absolute.

192. The Senegalese authorities explain that the rules of procedure which apply to legal proceedings in Senegal do not allow the authorities access to communications between attorneys and their clients; information held by attorneys about their clients is confidential. Attorneys can communicate documents given to them by their clients only to the parties to the proceedings.

193. The Senegalese authorities explain that lawyers acting on behalf of their clients in extra-judicial operations are subject to the Tax Administration right to information: attorney-client privilege is not an obstacle to the exchange of information where attorneys act not in their client's defence but as the custodian of a contract or agent in legal instruments, outside any court of law or act of counsel.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place

B.2. Notification requirements and rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

Not unduly prevent or delay exchange of information *(ToR B.2.1)*

194. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

195. Senegalese law guarantees the respect of taxpayers' rights in their relations with the tax authorities, especially in information-gathering procedures. However, there is no right of appeal in Senegalese tax law against information requests from the tax authorities using its right to information, except for the general right to challenge any administrative act. The Senegalese authorities consider that as answering an information request does not adversely affects rights (unless this is done in the context of a domestic tax audit); appeal is therefore not possible.

196. The tax authorities are under no obligation to inform the person concerned by an information request that the request has been made, or to inform a person who receives an information request that it stems from a foreign competent authority. Thus, where the right to information is exercised with regard to a third party holding information, the person who is the subject of the information request in Senegal is not told about it: there is no procedure for the prior or subsequent notification of the person who is the subject of an information request.

197. Taxpayer safeguards relating to the right of investigation (access to exclusively residential premises is precluded) and the right of search (a court order is required unless there is blatant evidence of an offence) may not unduly hinder or delay the effective exchange of information. It is an essential safeguard for the respect of privacy and protection of a person's private domicile, under judicial control limited to verification of the legal conditions.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place

C. Exchanging information

Overview

198. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Senegal, the legal authority to exchange information is derived from double taxation conventions (DTCs) and regional instruments. This section of the report examines whether Senegal has a network of information exchange that would allow it to achieve effective exchange of information in practice.

199. Senegal has a network of 18 bilateral tax conventions and two regional instruments (within WAEMU in particular) including provisions on the exchange of information for tax purposes. The network covers 27 jurisdictions, mainly in Africa and Europe, though also in Asia and North America. Although some of the instruments are not recent, all allow for effective exchange of information, with the exception of banking information where the partner jurisdiction is not able to guarantee reciprocity. Senegal has never declined to conclude an information exchange agreement.

200. All information exchange mechanisms include confidentiality provisions and Senegal's domestic law also contains rules on that subject. These provisions apply equally to the information and documents concerned by the request received by the Senegalese competent authority and to the answers provided to the treaty partner.

201. Each of the treaties concluded by Senegal ensures that the authorities will not be required to disclose information relating to an industrial, trade or business secret or information subject to attorney-client privilege or information contrary to public policy.

202. Lastly, and although this element will be examined during the Phase 2 review, there is no restriction in Senegalese domestic law that would limit the country's capacity to exchange information within the 90-day period set by international standards or that would prevent the country's competent authority from informing its partners of the state of progress of their requests.

C.1. Exchange of information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

203. Senegal has a network of 18 bilateral double tax conventions including provisions on the exchange of information.[11]

204. Senegal is also a Party to two regional instruments including provisions on the exchange of information:

- Regulation 08/CM/UEMOA to prevent double taxation in the Community and to institute mutual tax assistance, in force in eight jurisdictions: Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo;
- the General Convention on Tax Co-operation between the Member States of the Common Organisation of African States, Madagascar and Mauritius (OCAM) of 29 July 1971, in force in four jurisdictions. Although OCAM has been dissolved, Congo, Côte d'Ivoire, Gabon and Senegal continue to apply the tax convention which arose from it. The WAEMU Regulation prevails in the exchange with Côte d'Ivoire, in application of its Article 43.

205. Senegal has not concluded any tax information exchange agreements to date. It is in the process of signing the Convention on Mutual Administrative Assistance in Tax Matters as amended (the Multilateral Convention).

206. In addition to information exchange on request, Senegal's international instruments also provide for the possibility of automatic and spontaneous exchange. Certain treaties as well as domestic law also provide for the possibility of joint or simultaneous tax audits.

Foreseeably relevant standard (ToR C.1.1)

207. The international standard for exchange of information envisages information exchange upon request to the widest possible extent, but does not allow "fishing expeditions," i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 26(1) of the OECD Model Tax Convention and Article 1 of the OECD Model TIEA.

11. Belgium, Canada, Chinese Taipei, France, Iran, Italy, Kuwait, Lebanon, Malaysia, Mauritania, Mauritius, Morocco, Norway, Portugal, Qatar, Spain, Tunisia and the United Kingdom.

> The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

208. Only two of the most recent bilateral treaties (with Portugal and Spain) use the term "foreseeably relevant" information. The other treaties and the WAEMU instrument generally refer to "relevant", "necessary" or "useful" information. The terms "necessary" and "relevant" are considered in the commentary on Article 26 of the OECD Model Convention as being equivalent in effect to "foreseeably relevant" with regard to the exchange of information. The Senegalese authorities confirm that they agree with this interpretation, which they extend to the term "useful information" used in some treaties.

209. The conventions with Belgium, France and Mauritania and the OCAM Convention mention information relating to tax which the tax authorities "have at their disposal and which is useful" in order to assess and collect the taxes covered by the convention and for the enforcement, with regard to those taxes, of legal rules relating to the prevention of tax fraud. The Senegalese authorities consider that the "information at their disposal" is the one they maintain as well as the one they can access to, using their legal access powers.[12]

In respect of all persons *(ToR C.1.2)*

210. For exchange of information to be effective it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason, the international standard envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

211. Most of the instruments to which Senegal is a party explicitly allow for information exchange in respect of any person, resident or not. Some treaties (Chinese Taipei, France, Kuwait, Mauritania, OCAM) do not contain any

12. France and Mauritania confirmed in their peer reviews that they supported this interpretation. See Peer Review Report – Combined Phase 1 and Phase 2 Report – France, paragraph 214; Phase 1 Report – Mauritania, paragraph 218.

specific provision. The article on information exchange applies notwithstanding to residents and non-residents of the contracting states, since it applies to "the provisions of this Convention, or those of the domestic law of the contracting states relating to the taxes concerned by the Convention, insofar as the taxation thereunder is not contrary to the Convention". These treaties do not therefore restrict information exchange to residents only, since the contracting states' domestic tax law applies to all taxpayers (and third parties for access to information), whether resident or not (for example, corporate income tax applies to non-residents' income of domestic origin). Under the terms of these treaties, information exchange is therefore possible in respect of any person. The Senegalese authorities confirm that they agree with this interpretation.

Obligation to exchange all types of information *(ToR C.1.3)*

212. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. The OECD Model Tax Convention, Article 26(5), stipulates that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

Bank information

213. Only some recent treaties (with Malaysia, Portugal, Spain and the United Kingdom) contain a specific provision similar to the one in the Model Convention and the WAEMU Regulation. However, the fact that this paragraph does not appear in a convention does not systematically restrict the exchange of information. The Commentary on the Model Convention states that whilst paragraph 5 represents a change in the structure of Article 26, it should not be interpreted as suggesting that the previous version of the Article did not authorise exchanges of banking information or information held by financial institutions, nominees or persons acting in an agency or fiduciary capacity. Reference should therefore be made to domestic law in order to see whether it contains restrictions on access to banking information.

214. Under Senegalese law, the competent authority is allowed to gather then exchange information held by banks, other financial institutions, nominees and persons acting in an agency or fiduciary capacity (see Section B.1.5). The domestic law of most of Senegal's partners also allows for the exchange of such information, with the exception of Lebanon (banking secrecy) and Morocco (information held by notaries and auditors). Information is not available for jurisdictions which have not yet been the subject of a Global Forum review (Chinese Taipei, Congo, Côte d'Ivoire, Gabon, Iran and Kuwait).

Absence of domestic tax interest (ToR C.1.4)

215. The concept of domestic tax interest describes situations in which a competent authority can only provide information to another competent authority if it has an interest in obtaining the desired information for its own tax purposes. Inability to provide information which is based on any such domestic tax interest does not comply with the international standard. The competent authorities should use domestic information-gathering powers, even if they are used solely for the purpose of obtaining and providing information for the other competent authority (cf. Model Convention, paragraph 4).

216. Only some treaties (with Canada, Lebanon, Malaysia, Portugal, Spain and the United Kingdom) contain a provision similar to the one in the Model Convention and the WAEMU Regulation.

217. Most of the treaties concluded by Senegal are less recent and do not contain any specific provision to that effect. However, the addition of this paragraph to the Model Convention in 2005 was intended to make explicit an obligation which already existed in practice. Reference should therefore be made to domestic legislation to see whether it prevents the competent authority from using its information-gathering powers solely for information exchange purposes. That is not the case in Senegal or in the law of its treaty partners which have been reviewed.

218. However, certain treaties concluded by Senegal refer to the exchange of "information relating to tax which the tax authorities have at their disposal". This may be interpreted in various ways: either the exchange concerns only information contained in the tax authorities' databases (and there is a domestic tax interest), or it covers all information to which the tax authorities have access. The Senegalese authorities favour the second interpretation (see Section C.1.1).

Absence of dual criminality principles (ToR C.1.5)

219. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested jurisdiction if it had occurred in the requested jurisdiction. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

220. None of the information exchange mechanisms established by Senegal provide for the application of the dual criminality principle.

Exchange of information in both civil and criminal tax matters (ToR C.1.6)

221. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters").

222. The information exchange mechanisms established by Senegal provide for the exchange of information for both criminal and civil matters, since they provide for the exchange of information necessary to enforce the provisions of the convention "and those of the domestic laws" of the contracting jurisdictions relating to the taxes concerned. As the provisions of domestic laws also include criminal measures to sanction fraudulent behaviour in connection with tax, these mechanisms allow for the exchange of information in both civil and criminal tax matters. Some treaties also explicitly refer to the prevention of tax fraud and tax evasion.

Provide information in specific form requested (ToR C.1.7)

223. In some cases, a contracting party may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such formats may include depositions of witnesses and authenticated copies of original records. Contracting parties should endeavour as far as possible to accommodate such requests. The requested party may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

224. The information exchange mechanisms established by Senegal do not expressly provide for the provision of information in the specific form requested by a foreign competent authority, though nor do they contain restrictions which would prevent that. The Senegalese authorities state that there is nothing to prevent them from providing information in the form requested, provided that it is consistent with their administrative practice.

In force (ToR C.1.8)

225. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. The international standard requires that jurisdictions must take all steps necessary to bring agreements that have been signed into force expeditiously.

226. Most of the treaties concluded by Senegal are in force. Only the last five[13] treaties signed are not in force. A treaty concluded with Malaysia in 2010 was ratified in 2012 (s well as by Malaysia). A draft Bill of ratification of the DTC signed with Portugal in June 2014 has been approved by the Council of Ministers in June 2015. The latest DTC was signed with the United Kingdom in February 2015, less than six months ago. In the past, two to three years elapsed on average between the signing of the treaties and their ratification, and the Senegalese authorities are invited to reduce this lapse of time for new instruments.

227. Under Articles 88 and 89 of the Senegalese Constitution, treaties which engage State finances, and hence tax treaties, may be ratified by the President of the Republic only by statute.

Be given effect through domestic law (ToR C.1.9)

228. For exchange of information to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement.

229. Once information exchange instruments are in force, Senegal does not need to take additional measures in order for them to be effective.

230. Under Article 91 of the Senegalese Constitution, treaties or agreements that have been duly ratified or approved take precedence as of their publication over domestic laws. Senegal's legal system does not require the adoption of a specific law in order for an international convention to take effect once it has been ratified by both parties.

231. WAEMU Regulations are immediately enforceable in all Member States without any need for transposition. Under the provisions of Article 24 of the WAEMU Treaty, the WAEMU Commission alone is authorised to issue the implementing regulations needed to apply a Regulation. For Regulation 08/CM/UEMOA, implementing regulation 005/2010/COM/UEMOA was adopted on 17 November 2010 and is applicable in all Member States, including Senegal.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

13. The treaties with Iran and Kuwait are suspended for reasons not related to EOI.

C.2. Exchange of information mechanisms with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

232. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

233. Senegal is bound to 27 partners by either a bilateral instrument (tax treaty) or a regional instrument (WAEMU and OCAM Conventions). Senegal's treaty network spans 13 African jurisdictions, including its main trading partners covered by regional instruments, and its North African neighbours; seven European jurisdictions, including France, Senegal's customary information exchange partner; two Middle Eastern jurisdictions; two Asian jurisdictions and one North American jurisdiction.

234. Senegal has also officially asked to be invited to sign the Convention on Mutual Administrative Assistance in Tax Matters, which already has over 60 signatories and for which 15 or so territorial extensions have been made. The procedure is at a relatively advanced state and the convention could be signed in 2015.

235. No member of the Global Forum has said that it has approached Senegal with a view to negotiating EOI instrument and received no answer or a negative answer.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	Senegal should continue to develop its EOI network with all relevant partners.

C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

236. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

International instruments

237. Provisions relating to confidentiality are based on Article 26 (2) of the OECD Model Convention (in its successive versions depending on when the treaty concerned was signed).

238. The oldest conventions (France, Mauritania and OCAM) simply provide that "information exchanged in this way, which remains secret, may not be disclosed to persons other than those responsible for the assessment and collection of the taxes covered by the present convention". This wording is stricter than the current model with regard to the persons to whom exchanged information may be disclosed, but does not stipulate that information may be used only for that purpose.

239. The three treaties most recently concluded by Senegal (with Portugal, Spain and the United Kingdom) also permit the use of information received for other purposes when that is possible under the laws of both jurisdictions and the competent authority providing the information authorises such use.

240. The WAEMU Regulation does not contain any provisions relating to confidentiality, even though it is the most important information exchange mechanism established by Senegal to date since it allows for the exchange of information with seven partners. However, Article 14 of implementing regulation 005/2010/COM/UEMOA states that "information received by a Member State shall be kept secret in the same way as information obtained under that Member State's own domestic law". This supplements Regulation 08/CM/UEMOA and is binding on Member States in the same way as the Regulation (Article 24 of the WAEMU Treaty, see Section C.1.9).

Senegal law

241. Senegalese tax officials are bound by a professional secrecy obligation under Article 604 of the Tax Code, which states that tax officials involved in the assessment, audit or collection of taxes, duties and fees are required under Article 363 of the Penal Code to keep secret information of any kind whatsoever gathered in performance of their duties. More generally, Article 14 of Senegal's civil service regulations also institutes a duty of professional discretion.

242. Article 363 of the Penal Code states that any infringement of this obligation is punishable by imprisonment for one to six months and a fine of XOF 50 000 to 300 000 (EUR 76 to 458). These penalties are in addition to the disciplinary sanctions provided for at Article 43 of the civil service regulations: warning, reprimand, demotion, suspension, temporary exclusion and dismissal.

243. There are exceptions to this rule, in particular for foreign competent authorities: "The provisions of this article shall not prevent the exchange of information between the Senegalese authorities and those of states with which mutual administrative assistance conventions have been concluded".

244. Other exceptions exist. First, Article 604 of the Tax Code provides for another exception for "other Senegalese administrations". The Code of Criminal Procedure institutes a duty for all public employees to report criminal offences to the public prosecutor. Article 363 of the Penal Code aforesaid states that professional secrecy may never be invoked against the police or the tax authorities acting on the instructions of the Special Prosecutor at the Criminal Court against Illicit Enrichment. These provisions may seem rather broad, but the Senegalese authorities explain that "other administrations" covers the Treasury and Customs and Excise, which are financial authorities involved in the assessment and collection of taxes. In addition, as treaties take precedence over domestic law, information received from a treaty partner may not be transmitted to a person not covered by the treaty. The interpretation of the legal provisions and the implementation in practices of the measures to protect the confidentiality of the information exchanged will be reviewed in the framework of the Phase 2 of the review process.

All other information exchanged *(ToR C.3.2)*

245. The provisions concerning confidentiality which are included both in the relevant agreements and in Senegal's domestic legislation do not distinguish between information received in reply to a request and information that forms part of the request. These provisions apply in the same manner to requests, attached documents, and all communications between the jurisdictions concerned by the exchange.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

246. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise.

Exceptions to requirement to provide information *(ToR C.4.1)*

247. Most information exchange mechanisms established by Senegal ensure that the parties concerned are not required to supply information that would reveal an industrial, business or professional secret or the disclosure of which would be contrary to public policy, in accordance with Article 26 (3) (c) of the OECD Model Tax Convention.

248. The tax conventions with France and Mauritania and the OCAM Convention, which date from the 1970s, contain concise provisions which diverge from those of the current Model Convention. In addition to information that would reveal an industrial, business or professional secret, the three conventions prohibit information exchange where the requested jurisdiction considers that it is "likely to endanger its sovereignty or security or prejudice its general interests". The Senegalese authorities indicate that the terms "sovereignty", "security" and "general interests" are understood to have the same content as the notion of "public policy" contained in Article 26 (3) (c) of the OECD Model Tax Convention.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

Responses within 90 days *(ToR C.5.1)*

249. In order for exchange of information to be effective, it needs to be provided in a timeframe which allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time, the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

250. Senegal's information exchange mechanisms do not impose any time limit for responding to requests received from partner countries, nor is there any specified time for processing requests in Senegalese domestic law. Thus, there is nothing in Senegalese laws or regulations to prevent the authorities from responding to information requests or providing a progress report within 90 days.

Organisational process and resources *(ToR C.5.2)*

251. Under the terms of Senegal's information exchange mechanisms, the competent authority is the Finance Minister or an authorised representative. The organisation, resources and operation of the competent authority will be examined as part of the Phase 2 review.

Absence of restrictive conditions on exchange of information *(ToR C.5.3)*

252. There is no provision in Senegalese law or in its exchange of information agreements which contains restrictions on the exchange of information, other than those included in Article 26 of the OECD Model Convention.

Determination and factors underlying recommendations

Phase 1 determination
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

Summary of determinations and factors underlying recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1.)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	The new OHADA Uniform Act on commercial companies and economic interest groupings provides for the dematerialisation of securities and allows companies a two-year period in which to comply. However, it does not precisely define the status of bearer shares which are not dematerialised on expiry of the transition period and there is no other provision in Senegalese law clarifying the terms and conditions of dematerialisation.	The Senegalese authorities should take appropriate measures to ensure the dematerialisation of all bearer shares on expiry of the two-year transitional period allowed to companies for that purpose.
	Senegal recently passed a law on waqfs. Whereas the law seems to clearly frame these entities and allow for the identification of all relevant persons, the transition period is ongoing and all the implementation regulations have not been published yet.	The Senegalese authorities should ensure that the 2015 law on waqfs is correctly implemented in practice.

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2.)*		
The element is in place		
Banking information should be available for all account-holders. *(ToR A.3.)*		
The element is in place		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(Tor B.1.)*		
The element is in place		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2.)*		
The element is in place		
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1.)*		
The element is in place		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2.)*		
The element is in place		Senegal should continue to develop its EOI network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3.)*		
The element is in place		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4.)*		
The element is in place		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5.)*		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction's response to the review report[14]

The Republic of Senegal would like to express its full satisfaction with the findings of the Phase I Peer Review, and wishes to thank the evaluation team for its considerable work and the members of the PRG for their valuable contribution to the evaluation.

The Peer Review process provided an opportunity for our jurisdiction to make substantial changes to its legal framework to bring it into line with international standards of transparency and information exchange.

The legal framework will be further strengthened in the next few days by Senegal's signing of the OECD's Multilateral Convention, thereby strengthening the country's commitment to transparency and the effective exchange of information for tax purposes.

Senegal has noted the recommendations made in the evaluation report, and is committed to effectively dematerialising all forms of bearer shares and enacting legislation on waqfs in due time.

14. This Annex presents the jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

Annex 2: List of all exchange of information mechanisms

Regional instruments

- Senegal is Party to a regional instrument (Regulation 08/2008/CM/UEMOA to prevent double taxation in the Community and to institute mutual tax assistance), in force in eight jurisdictions: Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo.
- Senegal is also Party to the General Convention on Tax Co-operation between the Member States of the Common Organisation of African States, Madagascar and Mauritius (OCAM) of 29 July 1971. Although OCAM has been dissolved, Congo, Côte d'Ivoire, Gabon and Senegal continue to apply the tax convention which arose from it.

Bilateral instruments

- Senegal has also concluded bilateral information exchange instruments in the form of double taxation conventions.

List of information exchange mechanisms

The table below lists the jurisdictions with which Senegal has one or more information exchange mechanisms as at 24 July 2015. Where Senegal is bound to a jurisdiction by more than one mechanism, all are mentioned in the table.

The text of Senegal's EOI instruments is available on the *EOI Portal* at http://eoi-tax.org/.

	Jurisdiction	Type of EOI agreement	Date of signature	Date of entry into effect
1	Belgium	Tax convention	29-09-1987	04-02-1993
2	Benin	Regional WAEMU	26-09-2008	01-01-2009
3	Burkina Faso	Regional WAEMU	26-09-2008	01-01-2009
4	Canada	Tax convention	02-08-2001	07-10-2004
5	Chinese Taipei	Tax convention	20-01-2000	10-09-2004
6	Congo (Republic of)	Regional OCAM	29-07-1971	01-01-1972
7	Côte d'Ivoire	Regional WAEMU	26-09-2008	01-01-2009
		Regional OCAM	29-07-1971	01-01-1972
8	France	Tax convention	29-03-1974	24-04-1976
9	Gabon	Regional OCAM	29-07-1971	01-01-1972
10	Guinea-Bissau	Regional WAEMU	26-09-2008	01-01-2009
11	Iran	Tax convention	20-06-2010	
12	Italy	Tax convention	20-07-1998	24-10-2001
13	Kuwait	Tax convention	10-04-2007	
14	Lebanon	Tax convention	19-10-2002	22-07-2004
15	Malaysia	Tax convention	17-02-2010	*(ratified in Malaysia and Senegal)*
16	Mali	Regional WAEMU	26-09-2008	01-01-2009
17	Mauritania	Tax convention	09-01-1971	1-01-1973
18	Mauritius	Tax convention	17-04-2002	15-09-2004
19	Morocco	Tax convention	01-03-2002	19-05-2006
20	Niger	Regional WAEMU	26-09-2008	01-01-2009
21	Norway	Tax convention	04-07-1994	25-02-1997
22	Portugal	Tax convention	13-06-2014	
23	Qatar	Tax convention	10-06-1998	01-01-2000
24	Spain	Tax convention	5-12-2006	22-10-2012
25	Togo	Regional WAEMU	26-09-2008	01-01-2009
26	Tunisia	Tax convention	17-05-1984	02-07-1985
27	United Kingdom	Tax convention	26-02-2015	

Annex 3: List of all laws, regulations and other relevant material

Senegalese Constitution of 7 January 2001

Act 2012-31 of 31 December 2012 enacting the Tax Code

Civil and commercial legislation

OHADA Uniform Acts:

- on general commercial law;
- on the law of commercial companies and economic interest groupings;
- on the law of co-operative societies;
- organising securities;
- on the organisation and harmonisation of the accounting systems of undertakings located in OHADA Member States;
- organising collective proceedings for wiping off debts;

Code of Civil and Commercial Obligations;

Act 17-2014 of 15 April 2014 setting the minimum share capital of limited liability companies;

Act 95-11 of 7 April 1995 instituting public-interest foundations in Senegal;

Decree no. 95-415 of 15 May 1995 implementing Act 95-11 of 7 April 1995 instituting public-interest foundations in Senegal.

Financial legislation

Act 2008-26 of 28 July 2008 regulating the banking system;

Act 2008-47 of 3 September 2008 regulating decentralised financial systems;

General Regulation on the organisation, operation and supervision of the WAMU regional financial market;

Act 2004-09 of 8 February 2004 on the prevention of money laundering;

Uniform Act 2009-16 of 2 March 2009 on the prevention of the financing of terrorism

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: SENEGAL

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions which participate in the work of the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 *OECD Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the *OECD Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the UN Model Tax Convention.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. "Fishing expeditions" are not authorised, but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

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