

## Statement on INDIVIDUALS ACTING IN A BUSINESS CAPACITY

**Differences in the interpretation of the standards governing the Global LEI System (GLEIS) have been brought to the attention of the Regulatory Oversight Committee (ROC) concerning the eligibility to obtain an LEI by individuals acting in a business capacity. This statement is intended to provide clarity to the GLEIF, (pre-)LOUs<sup>1</sup> and LEI registrants in order to improve consistent application among LOUs regarding registrant eligibility for LEIs. This statement clarifies that:**

- **individuals acting in a business capacity are eligible to obtain LEIs, provided they conduct an independent business activity as evidenced by registration in a business registry, with only one LEI issued for the same individual and adequate verifications that data protection, privacy or other obstacles do not prevent the publication of the current LEI data file;**
- **other individuals are not eligible to obtain LEIs including, but not limited to: natural persons acting in a private or non-professional capacity; and professionals acting as employees (as opposed to trading in their own names), even if they are subject to some form of licensing or authorisation by a financial regulator. Any specific identification needs concerning professionals acting as employees<sup>2</sup> will be considered separately in the future by the ROC.**

**This statement does not require issuance of an LEI to an individual acting in a business capacity, but rather is intended to prevent issuance when the conditions described in this statement are not met.**

The FSB report, [A Global Legal Entity Identifier for Financial Markets \(“FSB Report”\)](#), specifies under recommendation 8 a definition for legal entities that corresponds to the ISO 17442:2012 standard (“ISO Standard”).<sup>3</sup> The report’s definition excludes natural persons. The report does not

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<sup>1</sup> Local Operating Units (LOUs) of the Global LEI System are the utilities providing LEI registration and other services. The expression “pre-LOUs” is used to specifically refer to the LOUs endorsed by the ROC before the Global LEI Foundation is able to assume the function of accrediting LOUs. This statement applies to both pre-LOUs and future LOUs.

<sup>2</sup> For example, employees licensed or authorised by a financial regulator.

<sup>3</sup> FSB recommendation 8: “Eligibility of ‘legal entities’ to apply for an LEI should be broadly defined, in order to identify the legal entities relevant to any financial transaction. No more than one LEI shall be assigned to any legal entity.” Further details, including the definition of legal entities, are provided page 35 of the report. Under ISO 17442:2012: “The term ‘legal entities’ includes, but is not limited to, unique parties that are legally or financially responsible for the performance of financial transactions or have the legal right in their jurisdiction to enter independently into legal contracts, regardless of whether they are incorporated or constituted in some other way (e.g. trust, partnership, contractual). It excludes natural persons, but includes governmental organizations and supranationals.”

discuss that for a variety of reasons, including privacy concerns, the GLEIS should not cover natural persons when they are acting in a private capacity.

However, the definition of legal entities in the FSB Report and ISO Standard includes entities that are not incorporated, and refers first and foremost to abilities (e.g. being “legally or financially responsible for the performance of financial transactions” and “to have the legal right in their jurisdiction to enter independently into legal contracts”).

In addition, both the FSB Report and the ISO Standard specify that examples of eligible legal entities include, without limitations, “all financial intermediaries”; “all entities that issue equity, debt or other securities for other capital structures”; “all entities under the purview of a financial regulator”; and “counterparties to financial transactions”. The ROC has surveyed its membership and has found instances in which ROC member jurisdictions included individuals acting in a business capacity in each of these four categories.

In order to identify the extent and the exact nature of the issue, the ROC has conducted a survey of endorsed and operational pre-LOUs. Based on the responses received from 20 pre-LOUs, 3905 LEIs were reported to have been issued to individuals as of March 2015. It is not clear whether each of these individuals sought and received an LEI to identify themselves when acting in a business capacity. A majority of LOUs reported interest by individuals in obtaining an LEI. Nine pre-LOUs reported that they currently provide LEIs to individuals while the remaining (pre-)LOUs stated they refrained from issuing LEIs to any natural person, even if acting in a business capacity.

In providing this statement, the ROC is guided by the relevant principles governing the GLEIS, in particular the GLEIS High Level Principle 2 that “the LEI system should meet the requirements of the global regulatory community for accurate, consistent and unique entity identification” and FSB recommendations 2 and 10.<sup>4</sup>

We note, however, that any clarification of the extent to which individuals acting in a business capacity are eligible to obtain an LEI must be compatible with ISO Standard 17442:2012 and conducted within the limits of the current framework.

It follows that LEI eligibility shall not be granted to individuals in their capacity as natural persons but only to individuals in their capacity as business entities due to their special status granted within jurisdictions. Therefore, this document clarifies under which conditions an LEI may – though not necessarily must – be issued and maintained for an individual acting in a business capacity, to ensure consistency among (pre-)LOUs. These conditions correspond to additional precautions that are necessary to maintain consistency of LEIs issued to individuals acting in a business capacity with the following principles:

- Compliance with the definition of legal entities (FSB recommendation 8);
- Uniqueness and exclusivity (FSB recommendations 1 and 8);

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<sup>4</sup> Recommendation 2: GLOBAL REGULATORY COMMUNITY REQUIREMENTS The LEI system should meet the requirements of the global regulatory community (including supranational organisations). The potential benefits of the LEI include: to support authorities in fulfilling their mandates to assess systemic risk and maintain financial stability; conduct market surveillance and enforcement; supervise market participants; conduct resolution activities; prepare high quality financial data and undertake other regulatory functions. Recommendation 10: REVIEW OF SCOPE OF COVERAGE The ROC should undertake regular reviews of the scope and extent of coverage of the LEI to reflect emerging regulatory and market requirements for the LEI use according to an agreed schedule [...] Eligibility of ‘legal entities’ to apply for an LEI should be broadly defined, in order to identify the legal entities relevant to any financial transaction. No more than one LEI shall be assigned to any legal entity.

- Accuracy of LEI reference data as described in FSB recommendation 18;
- Availability in the public domain, without limit on use or redistribution, of LEI data and reference data (FSB recommendation 31).

These additional precautions build on, and do not replace, the due diligence that pre-LOUs must apply to the issuance of any LEI. The ROC is aware that the present additions to the Interim Principles to be observed by pre-LOUs may need to evolve in the future, but believes that current differences in practice require immediate clarifications.

Finally, to maintain consistency with existing recommendations, this document does not seek to address situations where several individuals have formed an unincorporated entity based on a contractual arrangement (e.g. partnership), or the case of other arrangements without legal personality, such as trusts or other fiduciary arrangements, even where the trustee (or equivalent) is a natural person. Partnerships and trusts are already mentioned in the FSB Report and ISO Standard among the examples of eligible entities.

## 1. Eligibility: The GLEIS should establish processes that verify that the individual is conducting an independent business activity as evidenced by registration in a business registry

Clear processes have to be in place within the GLEIS to avoid the issuance of an LEI to natural persons that are not covered by the ISO Standard 17442:2012. The LOU must verify that the individual is conducting an independent economic activity and should do so by ensuring that the individual is registered in a business registry.

The ISO Standards Advisory Group (SAG) for ISO 17442 noted that a strict definition of business registry was not intended in the ISO 17442 standard. In some instances, tax registries or registries of regulated entities held by a financial regulator are the only registries recording the existence of a legal entity. At the same time these registries may have a variety of purposes and LOUs should, for the purpose of determining whether an individual is acting in a business capacity to verify LEI eligibility, only take into account records that evidence an independent business activity.<sup>5</sup> In order to carefully limit the scope of eligible individuals acting in a business capacity, the reference to an “independent” business activity excludes:

- the private or non-professional activity of a natural person;
- professionals acting as employees (as opposed to trading in their own names), even if they are subject to some form of licensing or authorisation by a financial regulator. Any specific identification needs concerning this population will be considered separately.

The ROC and GLEIF are working on developing more specific guidance on the use of business registries in the GLEIS.

Reliance on registration in business registries was chosen as the most cost-effective and reliable way to verify eligibility, given that (pre-)LOUs are already required to specify the business registry or other

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<sup>5</sup> As opposed, for instance, to records in a tax registry that would merely capture natural persons as taxpayers, or records in a registry of regulated entities held by a financial regulator, which would capture authorised employees.

registration authority (see [Common Data Format](#), p. 16). Almost all pre-LOUs surveyed appeared to rely first and foremost on business registries records.

The ROC also clarifies that:

- the fact that the individual is subject to reporting regulations requiring identification using an LEI is not a proof of LEI eligibility.
- LEI eligibility does not require that the individual is licensed as a professional of the financial sector.

## 2. Accuracy: essential information should be corroborated by business registry records

LOUs should corroborate essential information, including the name of the legal entity and whether the entity is active as a business entity, with the records from a business registry. Consequently, where there is no information available in a business registry for individuals acting in a business capacity, no LEI should be issued. LOUs are invited to report to the GLEIF any case where they would consider that an individual is acting in a business capacity and yet is not registered in any business registry, so that further guidance may be provided in the future, if necessary.

As a result of the need to corroborate information with records from a business registry, the validation source for an LEI record for individuals acting in a business capacity should not be “ENTITY\_SUPPLIED\_ONLY”. As we are envisaging here the situation where there is no contractual arrangement, and no legal person, additional precautions appear necessary at this stage to avoid situations where, for instance, the LEI record would be based on a mere unilateral statement of a single individual. Because other sources can or may have to be consulted for other information, or for validation and duplication checks, the validation source associated with records for individuals acting in a business capacity should be at least “PARTIALLY\_CORROBORATED”.

## 3. Uniqueness and exclusivity: only one LEI should be issued for the same individual

Due to regional coverage and differences in scope of business registries, there may be situations where the same individual is registered in several registries in the same or in different jurisdictions, possibly under different trade names. Such situations can affect the exclusivity of the LEI and the credibility of the system, especially for objectives such as market surveillance and enforcement.

Therefore, even if an individual is registered in several business registries, only one LEI should be issued, with verifications based primarily on the business registry of the main place of business. In particular, if an individual is registered in a business registry as a non-resident business entity or similar status, the (pre-)LOU must verify whether there is a business registration in the main place of business.

In jurisdictions where it would be admitted that the same individual can have several registrations, corresponding for instance to different business names, or where different business registries coexist for the same individuals and are admitted in the GLEIS for verification purposes, the GLEIF, working with the LOUs and the ROC, should establish validation criteria and processes that balance legitimate privacy interests with the need to avoid duplicate LEIs.

## 4. Availability in the public domain of LEI-reference data; protection and use of other LEI records and other confidentiality issues

Two aspects have to be distinguished:

### **a) The LEI-Reference data (LEI-RD)**

The LEI-RD currently corresponds to the information published in the LEI file as prescribed in the Common Data Format. To ensure the availability in the public domain, without limit on use or redistribution, of LEI-RD, LOUs should warrant to the GLEIF that there are no privacy rights, data protection, or other obstacles preventing the free publication and use of the LEI and LEI RD by GLEIF or its successor, and free use by third parties. While such requirements apply for any legal entity, (pre-)LOUs should exercise particular care in the case of individuals acting in a business capacity, especially when LEI-RD includes information on the entity that is not already published in the relevant business registry, where allowed by section 2 above. The survey of LOUs has shown that this could be the case for the address of individuals acting in a business capacity.

### **b) Other records**

(Pre-)LOUs already collect information which supports the issuance of the LEI but is not included in the LEI-RD as described above, such as the details of a contact person within the legal entity or private legal documents supporting the verification of LE-RD. Some (pre-)LOUs, because of local legislations or based on their own procedures, require various documents to establish the identity of the contact person. Any non-public information that would need to be collected under Section 3 would generally follow the same rules and, in particular, would not be published as part of LEI-RD but kept confidential and transmitted only to another LOU (in case of porting, with the authorisation of the entity; alternatively, the information could be provided again by the individual to the receiving (pre-)LOU) and to the GLEIF. It would be covered by the Non-disclosure Agreement between the GLEIF and LOUs.

Due to the particularly sensitive nature of the information that may need to be collected under Section 3, (pre-)LOU should verify the absence of legal obstacles:

- to securely storing this data,
- to sharing it with other (pre-)LOUs or the GLEIF,
- to the (pre-)LOU and GLEIF using automated treatments of this information with the sole objective of avoiding duplicates and identifying associated entities.

Releases and disclaimers from the individual and, if necessary, approvals by the relevant data protection authority should be obtained by the LOU. If these conditions are not met, no LEI should be issued. The ROC will work closely with the GLEIF and the LOUs to identify further legal obstacles to implementing this guidance and develop procedures that balance privacy with the policy objectives of assignment of LEIs to individuals acting in a business capacity.