

Consultation document on including data on branches in the Global LEI System

Statement of purpose

The purpose of this document is to seek input from the public on the Regulatory Oversight Committee's (ROC) proposed approach to incorporating data on branches into the Global LEI System (GLEIS). This approach is responsive to the mandate to make the GLEIS as open and inclusive as possible, and therefore more useful for both regulators and financial market participants, while also maintaining data integrity and upholding the founding principles of the GLEIS¹.

The ROC proposes a policy standard² for the Global LEI System that would allow LEIs to be issued to branches under the following conditions:

1. The branch is an international branch; for the purposes of this consultation document, an international branch is defined as a non-incorporated establishment of a head office legal entity, when this establishment is located in a separate jurisdiction from the jurisdiction in which the head office legal entity is located, i.e., in a host jurisdiction outside of its home jurisdiction. Under this definition, an establishment may consist of a single office or other business premises, or of several offices in different locations of the same host jurisdiction: even in the latter case, only one LEI would be issued per host jurisdiction. Unlike foreign subsidiaries of a parent entity, which are separately incorporated or organised under the laws of the host jurisdictions, an international branch, as defined here, is legally dependent on the head office legal entity and cannot exist without its head office legal entity.
2. The branch is registered in a publicly accessible local business registry or local regulatory register in its host country; and
3. The head office (or headquarters) of the branch already has an LEI so that the LEI of the headquarter entity could always be associated with the LEI of the international branch in the GLEIS.

¹ The founding principles of the GLEIS are established in the ROC Charter (http://www.leiroc.org/publications/gls/roc_20121105.pdf) and "A Global Legal Entity Identifier for Financial Markets," Financial Stability Board-FSB, June 2012 (http://www.leiroc.org/publications/gls/roc_20120608.pdf). Further mentions of FSB recommendations refer to the recommendations from the June 2012 report.

² Policy standards, as foreseen in FSB Recommendation 11 are defined by the ROC pursuant to Article 2 of the ROC Charter. Article 30 of the GLEIF Statutes specifies that the ROC defines the framework, principles and standards under which the GLEIS shall operate, in accordance with the purpose clause of the foundation. The GLEIF defines in turn the operational and technical standards ensuring consistent implementation by the Local Operating Units of the GLEIS.

The remainder of this document discusses the details of the proposal and seeks feedback on the proposed approach through a questionnaire. Your responses to the questionnaire annexed to this document will inform the final version of the policy framework that the ROC will approve for implementation by the Global LEI Foundation (GLEIF). **Please type your answers into the attached questionnaire and send it to leiroc@bis.org by COB 16 November 2015.**

Motivation

The ROC's motivation for proposing a policy standard to the effect of including data on international branches in the GLEIS is driven by both public sector and private sector needs. First, the responsibilities for prudential supervision of international branches are generally split between the supervisory authority where the entity is headquartered and the regulatory authority of the host jurisdiction in which the branch is located. This construct frequently results in multiple specific reporting requirements or transparency obligations for international branches, for which a separate identifier is already necessary³. Data on international branches may also be necessary for micro- as well as macro-prudential supervision.

Secondly, assigning LEIs to international branches will help to facilitate orderly resolutions for entities that have cross-border business activities, in the event of a failure. International branches that may not have a separate status from their headquarters during normal times may be treated as separate and distinct legal entities during times of financial distress. Different resolution or insolvency regimes may apply to the international branch, which may result in different priorities among creditor claims for the branch's assets compared to its headquarters' assets, and specific measures such as "ring fencing" may be applied to the branch.⁴ Further, deposits placed in an international branch may be covered by deposit insurance rules that differ from the rules applicable to its head office. These conditions require the ability to easily identify, even in normal times, the international branches of a foreign bank.

³ For instance, according to Article 101(2) of the Capital Requirements Regulation (CRR), branches, which form a significant part of the European Union (EU) banking market, may be directly subject to supervisory reporting requirements. However, when branches are requested to report supervisory data they cannot be identified using a Legal Entity Identifier. After having investigated various options, EU Competent Authorities are currently dealing with this issue using alternative identifiers similar to the LEI but without the benefits of the GLEIS framework for the issuance, maintenance and access of universal, unique and public identifiers (for example, the European Central Bank (ECB) will identify branches using as unique identifier: ISO country code + national ID provided by the National Competent Authority).

⁴ See for instance Basel Committee on Banking Supervision, *Report and Recommendations of the Cross-border Bank Resolution Group*, March 2010 (<http://www.bis.org/publ/bcbs169.pdf>), for a description of the regulatory requirements that may be imposed on branches by host countries in normal times (such as asset maintenance, capital or liquidity requirements) and examples of ring fencing and other actions taken during the 2008 financial crisis against bank branches, such as the prohibition of making payments and the appointment of administrators for the different branches of a bank. Concerning the need to identify international branches to support resolution activities, see also, in the United States, 31 CFR Part 148, "Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation Authority; Proposed Rule," 80 Fed. Reg. 966, January 7, 2015 (<http://www.gpo.gov/fdsys/pkg/FR-2015-01-07/pdf/2014-30734.pdf>).

For the uses discussed above, identifying a local branch with its headquarters' LEI may be adequate at a purely domestic level, but such an approach is frequently inadequate in a cross-border context. The ROC is of the view that an LEI for international branches could support the identification of trades reported by different branches in trade repositories that cover different jurisdictions, and more generally would offer the benefits of a universal identifier to support information exchange on branch activities between the home and host supervisors of international financial institutions.

Further, LEIs for international branches may be relevant for cooperation in the tax area, market structure analysis, and statistical reporting, where it could offer similar benefits. Facilitating identification of international branch activities could in addition help market participants to measure, monitor, and mitigate their risks, by supporting a more granular tracking of their relationships with different branches of the same counterparty in several countries, while preserving the capacity to aggregate risk positions and financial data of all international branches with those of the head office, given the condition envisaged by the ROC that the LEI of the headquarter entity should always be associated with the LEI of the international branch.

The introduction of international branches into the GLEIS is not meant to influence regulatory reporting and market monitoring goals and policies, especially where the focus is on the legal entity as a whole (home office activity plus its international branches). The ROC considers that granting LEIs to international branches as proposed in this consultation could nevertheless provide a valuable “building block”⁵ to additionally contribute to and facilitate many financial stability objectives, including but not limited to improved risk management in firms, better assessment of micro- and macro-prudential risks, and facilitation of the orderly resolution of cross-border entities.

Adding an extension to the LEI of the head office was considered by the ROC but rejected as this would require handling different formats of identifiers in reporting. This would also go against the principle of the Global LEI System that there should be no embedded meaning in the identifier itself and that relevant information should be found in the reference data associated with the LEI.

Proposed Approach

The ROC proposes a policy standard for the Global LEI System that would allow LEIs to be issued to branches under the following conditions:

1. The branch is an international branch;

⁵ The GLEIS is designed to evolve over time in response to the needs of the regulatory community and private sector users. Flexibility was built into the GLEIS to allow it to expand, evolve, and adapt to accommodate innovations in financial markets. The ROC encourages widespread adoption of LEIs and consequently supports that the idea that the term “legal entities” for the purpose of obtaining LEIs should be broadly defined, in order to ensure that all relevant entities can apply now and in the future as financial markets evolve and adapt. The ROC believes this approach is consistent with the GLEIS founding principles and the ISO 17442:2012 standard.

2. The branch is registered in a publicly accessible local business registry in its host country; and
3. The head office (or headquarters) of the branch already has an LEI.

Condition 1: Limiting eligibility to international branches

For purposes of this consultation document, an international branch is defined as stated on page 1. Eligibility should be limited to international branches for several reasons: There is an established need to identify international branches as separate and distinct entities from a head office, as described above. Domestic branches are generally not treated as separate legal entities and, for instance, their assets generally are not treated differently in liquidation. Accordingly, particular care is needed to avoid violations of the exclusivity principle of the Global LEI System, under which no more than one LEI shall be assigned to any legal entity.⁶ For the same reasons and consistently with the definition of branches proposed here, even when the same company or other eligible entity has several offices in different locations within the host jurisdiction, only one LEI would be issued per host jurisdiction.⁷

Condition 2: Registration in a local business register

Due to the special nature of international branches, the ROC considers it reasonable to restrict LEI issuance to only those international branches that have registered in a publicly accessible business registry or regulatory registry in the jurisdiction where the branch is domiciled (in the host country). The definition of a branch and conditions for recognising a branch may vary across jurisdictions beyond the general definition provided in this document, depending on the legal corporate definition applied, the regulatory framework, and market practice. Therefore, rather than attempt to create a universally applicable definition of branches for the GLEIS, the ROC proposes to rely on whether the branch is registered in a local business registry as a reasonable condition for it to be issued an LEI.

Obtaining an LEI has so far not been predicated on the registration of the legal entity in a local business registry. The ROC is of the view, however, that reliance on registration in business registries would be a cost-effective and reliable way to verify the eligibility of branches to obtain an LEI, given that Local Operating Units (LOUs) are already required to specify the business registry or other registration authority (see [Common Data Format](#)⁸ (CDF)) as part of the LEI reference data. The following set of reference data attributes have from the very beginning constituted part of the minimum set of validation data that should be available, as specified in the CDF:

⁶ See FSB Recommendation 8, in the FSB report "A Global Legal Entity Identifier for Financial Markets," referenced in footnote 1.

⁷ As regards federal states and the case of distinct territories, what constitutes a separate jurisdiction for the purposes of LEI issuance would be specified as needed in future guidance, taking into account the opinion of local authorities as well as for instance the existence of a distinct treatment of assets in liquidation, and whether offices located in these different subdivisions or territories are treated as different legal entities for a number of purposes (e.g., taxes, financial regulation, corporate law, registration requirements, ...). Guidance would also specify how to address situations where the applicable definition of branches in a host country allows several branches of the same head office to be registered.

⁸ http://www.lei.org/publications/gls/lou_20140620.pdf

- The official business registry where the foundation of the legal entity is mandated to be recorded on formation of the entity, where applicable; and
- The reference in the official business registry to the registered entity, where applicable.

Business registry information supports the identification process and provides publicly available, reliable information that can be used to verify an entity's existence and reference data. Furthermore it contributes to demonstrating that the branch is recognised by the host jurisdiction as an entity established on its territory.

In addition, the ROC seeks the view of respondents on whether the registration in a business registry held in the home country could also be accepted in the GLEIS as an acceptable means to provide certainty on the existence of an international branch as a separate entity in the host country, especially where the establishment of a branch involves both home and host authorities, for instance in the banking sector (see question 2.3 in Annex 1).

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 international branch is eligible to be issued an LEI, only take into account records that evidence an establishment with business activity in the host jurisdiction. Whenever there is no business registry in a host country, the branch in question is not registered in such a business registry, or the information from a business registry is not publicly available, no LEI may be issued to a branch.

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

Condition 3: Condition that the head office already have an LEI

The ROC envisages that only international branches with a “headquarter-LEI” should be authorised to register and receive an LEI as an international branch. This requirement would ensure that aggregation of different branches of the same entity is possible through the LEI reference data.

Although an international branch and its head office are proposed to be considered different legal entities (in the LEI sense, with for instance assets treated differently, as discussed above), they remain part of the same legal person (in the traditional legal sense), which makes it expedient that both entities have an LEI and that the association between the two LEIs be recorded in the Global LEI System. In addition, when a head office opens a branch in a foreign jurisdiction, the legal entity (consisting of both head office and branch) has a presence in that jurisdiction and would have to comply with any local reporting or other legal requirements that govern this presence, including any requirement that both the head office and branch have LEIs.

Other considerations and limitations

Reporting requirements may vary across jurisdictions, or even across international branches operating in the same host country. For example, there are often reporting requirement thresholds based on branch size, business activity, or other attributes. The necessity to identify international branches may also vary across industry sectors (e.g., banking, insurance, investment products, etc.) or type of uses (e.g., monetary, statistical, supervisory, consumer protection, etc.).

Consistent with the mandate of the ROC, this proposal only envisages the conditions under which international branches would be eligible to obtain an LEI from the GLEIS and does not in any way compel international branches to obtain LEIs or head office entities to register their international branches into the GLEIS. As for all LEIs, it is within the purview of national authorities to define any requirement for international branches to be registered into the GLEIS. Furthermore, it would also be up to those authorities to specify whether any given reporting should take place at the level of the branch or the entire legal entity, or whether a branch's LEI or its head office's LEI should be used for reporting purposes.

An appropriate lead time, with a minimum of 6 months, would be provided between the decision by the ROC to include international branches among eligible entities and the actual issuance of LEIs for this population. This would allow LEI issuers and users to adapt their systems and regulatory authorities to issue, as necessary, guidance as to whether existing reporting requirements should or not include international branches once LEIs become available for them.

Reference data format

The ROC proposes to link international branches to their head offices within the LEI reference data in a simple, straightforward, and easy-to-implement fashion. Two existing elements of the current CDF can be used to establish a link between the head office and its international branch:

1. First, the "LegalForm"-data element, which is currently a freeform field, could be modified to include an appropriate designation for international branches, for instance as part of the normative list of codes that ISO has been asked to develop for this field; and
2. Second, the "AssociatedEntity"-data element could refer to the LEI of the head office in the reference data of the branch. The "AssociatedEntity"-data element has been structured in such a way that it can potentially describe several types of associations. Currently, the enumeration for "AssociatedEntity" only contains one value, "FUND_FAMILY", to describe the managing or umbrella structure of a fund, but the enumeration could be expanded to include a description such as "HEADQUARTER_ENTITY" for branches.

As is the case currently for other entities, the reference data associated with the branch LEI would provide the address of the branch, including the jurisdiction where the branch is located. The GLEIF would specify any adaptation needed to the data format, in consultation with the ROC and other stakeholders.

Modalities of issuance

As is currently the case, some LOUs may specialise on specific legal forms within a jurisdiction, and could choose not to issue LEIs for international branches, where, after assessment according to the criteria above, they consider they do not have the appropriate capacity. However, based on a consultation of pre-LOUs, it is expected that most would offer this service.

The LEI of the head office and the LEI of the international branch would not need to be issued by the same LOU.

Consultation Document: Including data on branches in the Global LEI System

Annex: Questionnaire

Please type your answers into the attached questionnaire and send it to leiroc@bis.org by COB 16 November 2015. Where possible, please specify the reasons for the preferences expressed or the details of any trade-offs you see. (For an MSWord version: http://www.leiroc.org/publications/LEI_ROC-questionnaire_on_branches.docx).

The responses to the questionnaire will be shared within the ROC membership and with the GLEIF. Neither participants' identity nor any specifically identified reference to their opinion will be made public without their express consent. However, the responses themselves may be quoted on an anonymised basis. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.

Identification of the respondent and confidentiality
Respondent: Name and email of a contact person: <input type="checkbox"/> Please check this box if you object to any of the responses below being quoted on an anonymised basis, and specify here any sections or questions to which this objection applies
<i>Please specify here as needed which response(s) should not be quoted:</i>
1 Uses of international branch information
1.1 What regulatory or private sector uses could benefit from allowing international branches to obtain LEIs? <i>Please insert your response here:</i>
1.2 Are there complications that you envision from allowing international branches into the GLEIS, notably in view of possible breaches or risk of confusion with regard to the principle of exclusivity? If so, how would you propose to address them? <i>Please insert your response here:</i>
2 Conditions for issuing LEIs to branches
2.1 Are the conditions described in this consultation sufficiently restrictive or too

restrictive? Please explain your answer and offer alternative suggestions. Be specific about what you would suggest adding or removing.

Please insert your response here:

2.2 Should an international branch's head office be required to authorise that an international branch can obtain an LEI, prior to issuance of an LEI to the branch? Alternatively, should the GLEIS envisage a system where the contact person(s) of the headquarter entity, as recorded by the relevant LOU, would simply be notified that a request by one of its international branches was made? Please explain the reasons for your preference.

Please insert your response here:

2.3 In addition to host country business registries, could the registration in a business registry held in the home country also be accepted in the GLEIS as an acceptable means to provide certainty on the existence of an international branch as a separate entity in the host country, especially where the establishment of a branch involves both home and host authorities, for instance in the banking sector?

Please insert your response here:

2.4 What other factors should the ROC take into consideration?

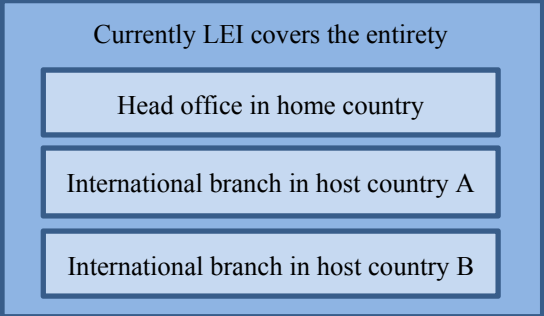
Please insert your response here:

3 Other

3.1 Do you have any comment on the definition of international branches on page 1 of this consultation document?

Please insert your response here:

3.1 Do you think it should also be possible to assign an LEI to the “home activity excluding foreign branches,” for instance to avoid that the “headquarter-LEI” be used for two competing purposes: (i) identifying the entire legal person (home country activity plus foreign branches) and (ii) identifying only the home country activity? Please describe the uses or the risks you would see to such an LEI.



Please insert your response here:

3.2 **a)** Because the existence of a branch is so closely linked to its head office, can it be considered that the LEI of the branch LEI would necessarily expire when the head office LEI does, or are there cases where the branch would be considered in the host jurisdiction to survive, for instance, to a dissolution of the head office entity? **b)** Similarly, in case a branch has been acquired by another legal entity, should it keep its LEI and the associated entity information be updated with the LEI of the new head office? **c)** If a branch is incorporated into a distinct legal person, should the LEI become inactive, be marked as a “CORPORATE_ACTION” and a successor entity LEI mentioned, or should the entity keep its LEI with a mere update of the legal form?

Please insert your response here:

3.3 Is there anything important at this stage related to branches that has been omitted from this consultation or any other comment or suggestion you would like to make?

Please insert your response here:

Thank you for participating in this consultation.