10 August 2012

Seeking views on matters regarding the jurisdiction for establishment of the Global Legal Entity Identifier (LEI) Foundation and Central Operating Unit (COU) of the global LEI system

The FSB Secretariat is seeking views regarding the appropriate jurisdiction for establishment of the Global LEI Foundation and Central Operating Unit of the global LEI system. The LEI system will uniquely identify parties to financial transactions. Legal experts are invited to provide views on a pro-bono basis.

On 8 June 2012, the FSB published 'A Global Legal Entity Identifier for Financial Markets'[1] report (LEI report), which set out global LEI system High Level Principles and 35 recommendations for the development of a unique identification system for parties to financial transactions. The G20 endorsed the recommendations at the Los Cabos Summit and asked the FSB to take forward the work to implement the system.

The FSB established a working group (the LEI Implementation Group) to this end[2]. A key objective of the group, as set out in recommendation 15 of the LEI report, is to develop and implement a detailed plan for the formation of the proposed Central Operating Unit (COU) that supports the federated nature of the LEI system via the establishment of a not-for-profit global LEI foundation (or similar legal equivalent) by private sector participants. The latter will be directed by a Board of Directors who would operate under the supervision of a Regulatory Oversight Committee (ROC) which has ultimate authority over the system. Under the supervision of the ROC, the COU will be the pivotal operational arm of the LEI system. It will have responsibility for ensuring the application of uniform operational standards and protocols around the world and support the maintenance of a 'logically' centralised database of identifiers and corresponding reference data. The COU is anticipated to be the contracting and operational body of the system and will have legal personality.

Setting up the not-for profit LEI foundation (or similar entity) to form the COU requires informed decisions on its legal structure and domicile. The LEI report noted the following key considerations:

- The not-for-profit foundation should be established by interested private sector participants under the oversight of the formed LEI Regulatory Oversight Committee.

[1] http://www.financialstabilityboard.org/publications/r_120608.pdf

[2] The FSB LEI Implementation Group is comprised of experts from the global regulatory community. To foster strong co-ordination between the public and private sectors in developing and implementing a global LEI system, the FSB has established a global Private Sector Preparatory Group (PSPG) of representatives from well over 100 institutions from some 25 countries. The PSPG is working closely with the Implementation Group on three workstreams: governance and legal issues, operations, and hierarchy and reference data.

- The LEI foundation (or similar entity) should be shielded against undue influence by capital donors as well as local public authorities. That is, the legal system must ensure that neither the providers of the entities capital nor local public authorities have the ability to exercise control over the Foundation and the COU.
- The COU should be bound by direction from and decisions taken by the ROC. That is, the local legal system must respect the governance structure of the LEI system. The Regulatory Oversight Committee would be established and governed by a Charter. It is currently considered that the ROC would not need a separate legal personality, conditional on an alternative and satisfactory resolution of ROC authority and enforcement powers over the LEI system. One of the options considered is that the ROC will enter into an agreement with the COU (or its Board of Directors) whereby the COU will assent to governance and authority of the ROC. Another or related approach is to embed within the organising documents for the Foundation a requirement that the COU (and its Board of Directors) follow the mandates set by the ROC and, if it fails to do so, the ROC or its agents would have the ability to force remedies (perhaps enforceable at law). Specific research on the viability of these two options is sought. As the ROC is mandated to act in the public interest, it should be insulated from liability with respect to the due exercise of its mandated functions.
- The legal framework of the jurisdiction where the global LEI foundation (or legal equivalent) is established, in its intellectual property and data protection laws, tax legislation, dispute settlement arrangements, regulatory framework and judicial system, should support the objective and effective operation of the global LEI system consistent with the objectives set out in the High Level Principles and 35 recommendations.

Views are sought from legal experts on the most suitable jurisdiction for the establishment of the Global LEI Foundation and COU taking into account the above considerations. As well as structures where the LEI Foundation and COU are legally equivalent, respondents should consider structures whereby the Global LEI Foundation is the sole shareholder of an operative entity possibly established in another jurisdiction. Legal experts should set out options of suitable legal structures and possible jurisdictions, providing where appropriate an explanation of the respective pros and cons of each option, and the extent to which the applicable legal and regulatory framework is supportive of the public interest objectives of the LEI system and facilitates its effective operation consistent with the objectives set out in the LEI report.

The views and recommendations will support the FSB in selecting an appropriate home jurisdiction for the global LEI foundation (or legal equivalent). Submissions are invited on a pro bono basis only. They will not create any fiduciary responsibility and will not result in an attorney-client relationship.

Responses should be sent by e-mail to nigel.jenkinson@bis.org and irina.leonova@bis.org by **10 September 2012** and should include permission to republish with attribution.

Any questions should be directed to Nigel Jenkinson (nigel.jenkinson@bis.org) and Irina Leonova (irina.leonova@bis.org).