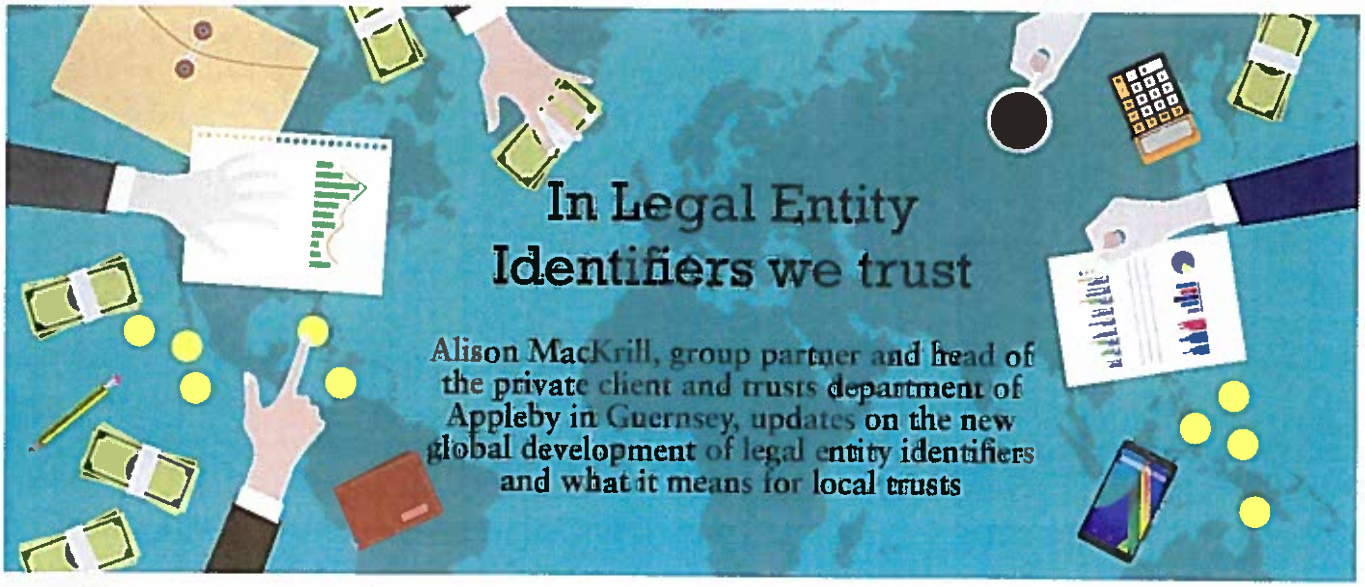

In Legal Entity Identifiers we trust

Alison MacKrill, group partner and head of the private client and trusts department of Appleby in Guernsey, updates on the new global development of legal entity identifiers and what it means for local trusts

Those working within the finance sector are likely to have heard of a Legal Entity Identifier (LEI) and that it will be needed if an entity wants to enter into a transaction relating to a financial instrument. If not, 'don't panic' – as advised on the cover of The Hitchhiker's Guide to the Galaxy. This was partly because the device 'looked insanely complicated' to operate, and partly to keep intergalactic travellers from panicking. Hopefully LEIs will not be insanely complicated.

So what is an LEI and why is one needed?

LEIs were created in response to the inability of financial institutions to identify organisations uniquely, so that their financial transactions in different national jurisdictions could be fully tracked.

The Society of Trust and Estate Practitioners (STEP) has prepared the following helpful summary: 'The Global Legal Entity Identification Foundation (GLEIF) has designed a system where every 'legal entity' will need to register and obtain a unique identification number – a Legal Entity Identifier (LEI) – before it can trade on financial markets in the UK after 3 January 2018. Investors who are deemed to be legal entities [are required] to obtain an LEI, which is a 20-character alphanumeric reference code that is unique to the legal entity. Legal entities include trusts (but not bare trusts), companies (public and private), pension funds (but not self-invested personal pensions), charities and unincorporated bodies that are parties to financial transactions.'

GLEIF's view is that 'the publicly-available LEI data pool can be regarded as a global directory, which greatly enhances transparency in the global marketplace. The data pool is a unique key to standardised information on legal entities globally. The data is registered and regularly verified according to protocols and procedures established by the LEI Regulatory Oversight Committee'.

LEI issuers (also known as Local Operating Units (LOUs)) supply registration, renewal and other services, and act as the primary interface for legal entities wishing to obtain a LEI. A legal entity is not limited to using an LOU in its own country – instead it can use the registration services of any LOU that is accredited and qualified to validate LEI registrations within its authorised jurisdiction(s).

The question for many in the fiduciary sector is, does the trustee register once for all its trusts or is one needed for each trust?

Each trust (other than bare trusts) will need its own LEI to enter into financial transactions where the Markets in Financial Instruments Directive (MiFID) apply. The use of the LEI has been mandated by the European Securities and Markets Authority (Esma) for the reporting of derivative transactions to Trade Repositories under European Market Infrastructure Regulation (EMIR). In order to obtain a LEI, details of the trust will have to be disclosed to the LOU by the trustee. If using the London Stock Exchange (LSE) as an LOU, where a discretionary trust has legal restrictions on disclosure and the trustee cannot disclose trust details, the LSE will accept a validation from the trustee and will not require sight of the trust instrument. In all other cases the LSE will generally accept a scanned copy of the first couple of pages of the trust instrument.

Entities other than trusts are obliged to provide information such as their official registry details and business address.

All LEI data will be consolidated in one database in an effort to improve global entity identification and standardisation.

Put simply, if a LEI has not been obtained by 3 January 2018 then investment firms will not be able to provide the legal entity with investment services. Although the legal entity itself is ultimately responsible for obtaining the LEI, some investment firms have agreed to apply in bulk for the LEI on behalf of their legal entity clients. Most trustees will use a range of service providers so it will still be necessary to look at each trust on a case-by-case basis. The initial allocation cost with the LSE is £115 with an annual maintenance cost of £70, plus VAT in both cases.

There is still sufficient time to obtain a LEI. It is only necessary to obtain one where the trustee will be trading in financial instruments and a LEI is therefore unnecessary in the case of many trusts.

The register has been operational for some time at www.gleif.org/en/lei/search. More than half a million legal entities from 195 countries have been issued with LEIs, and there are more than 200 entries for Guernsey LEIs and many more for Jersey.

I found surprising the number of trusts where the name of the trust discloses the involvement of an individual or family. Most trust instruments have a power to change the name of the trust by trustee's declaration. Where the name of the trust may identify who is behind the trust a trustee may want to consider changing the name of the trust prior to applying for an LEI.

Although we are in an age of transparency, that does not mean confidential information need be made public unnecessarily. In order to avoid any claim for breach of confidentiality, a trustee may like to make the time to change the name of a trust before applying for a LEI.