LEAR appointment form - practical considerations

- Practical Considerations for Entities on the Appointment of “Legal Entity Appointed Representative Form”

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Disclaimer

This document does not constitute legal advice. It is aiming to provide context to potential cloud service providers willing to onboard on the Marketplace.

You are strongly encouraged to seek legal advice from qualified professionals in the jurisdiction where you are located.

The Marketplace and the Consortium disclaim any and all liability arising out of or in connection with the use of the information provided herein.

Introduction

The Legal Entity Appointed Representative (LEAR) Form aim is twofold: first, to provide legal certainty for the marketplace operator that the actions taken the people operating the account of a Cloud Services Provider (CSP) are legally binding to the CSP, either vis-à-vis the Marketplace and the cloud services customers as well; and second, as a consequence of the first, to generate a plus of trust in the cloud services customers that will find in the Marketplace a safe site where purchasing services.

Further, the LEAR having full power to bind the entity she/he represents is coherent with the verifiable credentials scheme that the Marketplace has put in place to allow a swift, fully digital and trustworthy system to structure communications and transactions within the Marketplace.

The verifiable credentials system implemented in the Marketplace is based on the claim that the people operating the account of a CSP have the authority to represent that CSP and to legally bind it.

The Marketplace, that is the issuer of the verified credentials, needs to verify that the operators of the CSP account do have the powers needed to fully operate the account. This verification is made through the LEAR appointment form and the rest of the documentation requested in the onboarding phase.

Please, bear in mind that **the LEAR is expected to have an active role in the Marketplace from an operational perspective**, you are therefore strongly encouraged to designate as LEAR a person who can be actively involved in the management of your subscription on a daily basis. It is up to each entity to freely decide who is to its LEAR, but we do not recommend the designation of C-level executives or other profiles that cannot devote the time required to the management of the subscription.

How to deal internally with the LEAR appointment form?

For many entities, subscribing the LEAR appointment form can be an issue, due to the broad extent of the powers granted by the company to the LEAR and the difficulty those powers with their internal policies on the delegation of the entity's powers of representation.

To overcome the difficulties that this appointment letter may pose, in many cases, the entities opt for subscribing a side letter between the entity and the person who is appointed as the LEAR of the entity.

This side letter is an internal document to the entity that expresses the conditions under which the appointed LEAR can exert the powers granted in the LEAR appointment letter (i.e., using the verified credential issued by the Marketplace) and may also express which are the consequences in the event the conditions for using the verified credential are not met. For instance, an entity may require the appointed LEAR to seek the internal approval of certain acts from a senior manager of the entity before executing them by means of the verified credential.

This scheme brings comfort to both sides: on the entity's side, controls and limits can be set that enable compliance with internal delegation of powers policies; on the individual appointed as LEAR side, the fact of having a framework of rules under which to operate the verified credential, allows her/him to operate with a kind of safety net, for its actions would be confirmed/controlled beforehand by senior managers of the entity she/he represents.

The fact that the side letter is an internal document means that it cannot be opposed to third parties that deal with the entity relying on the powers that the LEAR is invested with, as claimed in the verified credential. The side letter only binds the entity and the individual appointed as the entity's LEAR. The side letter it is not meant to be disclosed to the public nor to any other party dealing with the entity.

Although signing a side letter is a widespread practice in similar cases to the appointment of a LEAR, you should seek appropriate advice in relation to whether this solution is feasible or not in your jurisdiction and what should the contents of the side letter be.

Who can be designated as a LEAR

Any person of legal age can be designated as the LEAR of an entity. There is not any further limitation on this aspect.

That means that an entity can appoint as its LEAR either an employee (regardless of its position in the company) or even someone who is not linked to the entity at all.

However, the entity appointing a LEAR should carefully consider who is the right person to fill the role.

This person should be someone who is trusted by the entity's management and with the right qualifications and skills to hold this position, for his/her actions may yield legal liabilities on the entity.

Also, the same individual can be appointed as the LEAR by more than one entity. Each appointment will generate its own and separate verifiable credential, so the individual can only represent one single entity at a time when operating in the Marketplace.