Frequently Asked Questions (FAQ) – Advocates REQ

This FAQ document clarifies the interpretation of specific questions as well as provide more information on the data being requested in particular sections within the REQ. Please go through this document prior to the completion and submission of the REQ. Any other questions which are not included in this document may be sent to caspar@fiumalta.org.

Kindly note that not all questions included within this FAQ document may be relevant to Sole Practitioners.

1. **I am a Sole Practitioner/MLRO of a firm, which carries out relevant financial activity/business and which commenced its operations in 2019. What should we do now?**
   The MLRO should register on CASPAR and create a Subject Person. Guidance on the registration process is available on the FIAU website. The first REQ in this case will be due in 2020 and will cover the period 1st January 2019 to 31st December 2019.

2. **I am a Sole Practitioner/MLRO of a Legal Entity with no registered employees. How should I answer all employee-related questions in the REQ?**
   All questions related to employees should be marked as ‘Not Applicable’.

3. **In the case where an activity/product is listed in the REQ but is not relevant/applicable to the Subject Person, would a 0 reply be sufficiently clear to indicate that a particular service/product/activity is not offered?**
   Most of the questions have a 'Not Applicable' check box. This should be ticked in instances where the service/product/activity is not offered by the Subject Person. When a number/percentage is required to be inputted and the ‘Not Applicable’ option is not available, a ‘0’ value should be inputted.

4. **Certain questions have a ‘Not Available’ tick box. When should this be used?**
   The ‘Not Available’ tick box should be used in instances when the question is applicable to the Subject Person, however it has insufficient data/records to appropriately answer the question.

5. **What is the meaning of the term ‘Offshore’ in the REQ?**
   The term offshore refers to jurisdictions that have distinctive characteristics such as low or zero taxation, tax secrecy and possibly lack of transparency. You are kindly requested to refer to the EU list of offshore jurisdictions/centres.

6. **What are the ‘high risk industries’ referred to in the REQ?**
   High risk industries should be defined by the subject persons’ policies and procedures.
7. **We are a Firm which is not a company/legal entity and all professionals are personally employed by the main partner who is acting as a sole practitioner. Shall we register the user on CASPAR as a legal person or as a sole practitioner?**

Reference should be made to FIAU’s interpretative note on the obligations of professionals and professional firms which highlights the difference between the two. In terms of Regulation 5(8) of the PMLFTR, professionals who carry out any of the activities listed under paragraphs (a) or (c) of the definition of 'relevant activity' in Regulation 2 of the PMLFTR as employees of a professional firm are not themselves considered as subject persons. A civil partnership or other form of partnership, association or similar arrangement between two or more professionals who decide to jointly conduct their profession, provided that this is constituted in writing, constitutes a 'professional firm', even if not endowed with legal personality. This means that professionals who share an office but provide their services independently from each other do not fall within the definition of a 'professional firm'. On the other hand, any professional who is a partner, associate, or who is employed by a professional firm shall not be personally considered as a subject person when that professional exercises any of the activities mentioned above for or on behalf of that professional firm or as part of that firm. In these instances the Firm is required to complete the REQ.

On the other hand, if that professional exercises any relevant activity defined under paragraphs (a) or (c) of the definition of 'relevant activity' in Regulation 2 of the PMLFTR in their personal capacity, then that same professional is personally considered to be a subject person in terms of the PMLFTR - irrespective of whether or not the professional is employed by or provides professional services as part of a professional firm. In these circumstances, each individual professional would have to complete the REQ.

8. **REQ Question: Please indicate total annual turnover according to the latest available audited financial statements and/or tax declaration.**

Our turnover is reported in a currency other than Euro. Shall we convert it to Euro?

Yes. The applicable exchange rate as at the date of the audited financial statements should be used to convert the annual turnover to Euro.

9. **REQ Question: How many years of experience in this industry do you/does the principal(s) and/or partners of your institution have?**

In case of multiple partners/principals, should we provide the cumulative years of experience?

No. The answer should reflect the principal/partner having the most experience in the industry. For example, if there are two partners, one having 15 years of experience and the other having 3 years of experience, the answer to this question should be 15.

10. **REQ Question: Please list the countries in which your institution has subsidiaries, branches, affiliates.**

ABC Malta is a branch of ABC Group. The Group has several branches and subsidiaries situated in different countries. For the purpose of this question, shall we mention the subsidiaries and branches of the group even though they are not branches/subsidiaries of ABC Malta Branch?

No. The subsidiaries and branches of the group are not subsidiaries/branches of ABC Malta Branch and therefore should not be included in your response to this question.
11.REQ Question: *Has your institution undergone changes in its ownership structure between January and December 2018?*
   
   During the year ending 2018, there were changes in the share capital of the entity which however did not affect the ownership structure. How should we answer this question?
   
   If the change in share capital did not lead to a change in the ownership structure of the institution, then mark your answer as 'No'.

12.REQ Question: *Please provide the % of staff that completed AML/CFT training between January and December 2018.*
   
   We have a complement of 10 Full Time Equivalents. 2 of these are a courier and a cleaner. Shall we include them in the calculation of this percentage?
   
   Reference can be made to Chapter 7 of the Implementing Procedures, Part I which indicates that awareness and training shall be provided to employees whose duties include the handling of either relevant financial business or relevant activity. In reply to your query therefore, it is safe to assume that members of staff holding the position of courier/cleaner do not fall within the definition provided under Chapter 7 of the Implementing Procedures, Part I and can therefore be excluded for the purposes of filling in this question.

13.REQ Question: *How frequently does your institution review and update the information held in their files on customers and BOs?*
   
   Our frequency of reviews depends on the risk ratings and the trigger events. How should we answer this question?
   
   The answer should capture the entire process to review and update the information of customer files. Example: The company reviews high risk customers every 12 months, medium risk customers every 18 months and low risk customers every 24 months. The answer to this question should be "Every 2 - 3 years".

14.REQ Question: *Please list the total number of customers as at 31/12/2018.*
   
   Do customers refer to beneficial owners?
   
   No, this question relates to the total number of customers serviced by your company (legal and natural persons).

15.REQ Question: *Does the above number represent, to the best of your/institution's ability, the distinct number of customers, or is it known that it contains duplicates? What is the definition of duplicate in this case?*
   
   By 'duplicate' we mean situations in which the company/firm calculates the number of customers on the number of services offered rather than the number of unique relationships.
16. REQ Question: ‘Breakdown of the total number of customers: Please list the % of legal persons of the total customers.’

Do trusts fall under the definition of ‘legal persons’?
Yes, all customers other than natural persons should be captured in the definition of ‘legal person’.

Should a holding and trading company be included as one legal entity?
Should the service be offered to both the holding and the trading company, these should be regarded as two separate legal entities for which you are providing the service; therefore, the total number of customers is two. If they form part of the same group but the subject person is offering the service to only one of the two, the customer in this case is one.

17. REQ Question: ‘Breakdown of the legal persons identified above: Please list the % of customers with an ownership structure that includes offshore vehicles or trusts or other legal arrangements including bearer shares, fiduciary deposits and foundations of the total number of legal persons as indicated in previous question.’

Should the answer include Maltese trusts?
All trusts and other legal arrangements including bearer shares, fiduciary deposits and foundations should be included in the answer, irrespective of whether these are Maltese or otherwise.

18.REQ Question: ‘Of the total number of customers, please list the % of customers that were onboarded or serviced on a non-Face-to-Face basis in 2018. [Relates to DNFBPs]’

In the case of corporate customers, where CDD measures were conducted on beneficial owners that were not met on a face-to-face basis, should such beneficial owners be captured under this section when taking into consideration that these are not considered as ‘customers’?
This section applies to customers and not physical persons. Legal entities may be onboarded on a face-to-face basis through agents (acting on behalf of the company, if met physically) or onboarded on a non-face-to-face basis. The latter would refer to instances where the customer was not met by the Subject Person on a face-to-face basis; therefore in case of subject persons not meeting the agent representing the corporate customer, such relationship/occasional transaction would be qualified as a non face-to-face relationship/occasional transaction.

19. REQ Question: Please list the number of customers serviced (of which your institution is aware) that have benefited from residency schemes (such as HNWI Rules or MRVP), or citizenship by investment schemes, or are applicants/prospective applicants for such schemes.

If the UBO of a customer (legal entity) benefitted from residency scheme, should this be included in the statistics or should these be restricted to customers who are natural persons only?
The question refers to customers only and therefore even in instances where the UBO of a legal entity benefitted from any of the mentioned schemes, this should not be inputted for the purposes of filling in this question.
20. REQ Question: ‘Please list the % of customers that are high net worth individuals.’
What is the threshold to be applied when determining whether a customer falls within the definition of a high-net worth individual?
This threshold shall be defined by the Subject Person’s policies and procedures.

If the UBO of a customer (legal entity) is a high net worth individual (HNWI), should this be included in the statistics of the high net worth individuals or should these be restricted to customers who are natural persons only?
The question refers to customers only and therefore even in instances where the UBO of a legal entity benefited from any of the mentioned schemes, this should not be input for the purposes of filling in this question.

21. The REQ includes a section relating to the ‘Politically Exposed Persons ("PEPs")’. Are the figures required for PEPs as listed in the LN 372 of 2017 only or should these also include related persons?
The report figure should also consider close associates and family members.

22. REQ Question: Please list the % of foreign BOs domiciled in a non-Maltese EU or EEA member state jurisdiction [Please provide the following information regarding the BOs of your institution’s customers as of 31/12/2018].
Our customers are legal persons with one or more BOs that reside in various jurisdictions. Is the question requesting the percentage of the total number of customers or of the total number of BOs?
In this question, the REQ requires the percentage of beneficial owners out of the total BOs.
Example: Your client base is composed of 5 customers, each having 2 BOs (therefore 10 BOs in total). Out of the 10 BOs, 3 reside in a non-Maltese EU or EEA jurisdiction, then the answer to this question should be 30%. 