Frequently Asked Questions (FAQ) – Auditors and Accountants & Company Service Providers REqs

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 an accountancy and audit firm, which carries out relevant activity and commenced its operations in 2019. How shall we proceed with registration and completion of REQ?
   The Sole Practitioner / 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. We are a Partnership / Firm which is not registered as 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 Prevention of Money Laundering and Funding of Terrorism Regulations (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 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. Therefore 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 Partnership / 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. Furthermore, any professionals who share an office but provide their services independently from each other do not fall within the definition of a 'professional firm'.

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3. **We are a firm which provides accountancy services, but also provide other services defined under the Company Service Provider (CSP) Act. The CSP services are being offered as a result of the Accountancy Board Registration and not through a MFSA license. Do we have to submit two separate questionnaires, one for Auditors/Accountants and another questionnaire for CSP?**

Kindly note that when CSP services are provided as a result of the Accountancy Board registration, a CSP Notification Form must be completed and submitted to the FIAU. This form is found on the FIAU’s website. Kindly ensure that this form is completed before proceeding with the registration of the Subject Person on CASPAR.

When registering the Subject Person on CASPAR, both ‘Accountancy/Audit- FIRMS/COMPANIES’ or ‘Accountancy/Audit- INDIVIDUALS’ and ‘CSPs- FIRMS/COMPANIES’ or ‘CSPs- INDIVIDUALS’ categories must be chosen. THE REQ on CASPAR will then automatically display questions relating to the different activities indicated. As a result, the Subject Person will only have to complete one REQ.

Unless otherwise indicated, answers should be for the different activities combined together. There are however instances in which the system will indicate that some questions should be specifically answered for a particular activity. In this case, the REQ will indicate such.

4. **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’.

5. **In the case where a service / activity / product is listed in the REQ but is not relevant/applicable / not offered to / by the Subject Person, how should it be indicated in the REQ? Would an inputting of ‘0’ be sufficiently clear?**

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 input and the ‘Not Applicable’ option is not available, a '0' value should be input.

6. **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 the Subject Person does not have the sufficient data/records to appropriately answer the question.

7. **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.

8. **What are the ‘high risk industries’ referred to in the REQ?**

High risk industries should be defined by the Subject Person’s policies and procedures.
9. **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 to be used to convert the annual turnover to Euro should be that of when the audited financial statements were signed.

10. **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.

11. **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.

12. **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'.

13. **REQ Question:** Please provide the % of staff that completed AML/CFT training between January and December 2018.
    Can you define what is meant by staff outside the AML/CFT Unit?
    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 relevant activity.
14. **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".

15. **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 institution (legal and natural persons).

16. **REQ Question:** *Does the above number represent, to the best of your / 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 institution calculates the number of customers on the number of services offered rather than the number of unique relationships.

17. **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.

18. **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?
   Yes, 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.
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) benefited 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 serviced by the institution that are natural persons only. Therefore in instances where the UBO of a legal entity benefited from any of the mentioned schemes, it 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 inputted for the purposes of filling in this question.

21. The REQ includes a section relating to the ‘Domicile of BOs’. How should we report cases where BOs of ‘legal persons’ are from more than one jurisdiction?
If you have 50 legal customers, each having 2 UBOs, you will have a total of 100 UBOs. So percentages should reflect the total number of UBOs and not the total number of customers. Irrespective of whether they are UBO of the same company or otherwise.
If for example: out of the 100 UBOs, 50 are domiciled in Malta, 20 domiciled in an EU/EEA jurisdiction, 25 are domiciled in a non-EU/non-EEA and 5 domiciled in a high risk jurisdiction. The following questions should be answered as follows:

| What percentage of customer BOs are domiciled in Malta? | 50% |
| What percentage of customer BOs are foreign and are domiciled in an EU or EEA jurisdiction outside Malta? | 20% |
| What percentage of customer BOs are foreign and are domiciled in a non-EU or non-EEA jurisdiction outside Malta? | 25% |
| What percentage of customer BOs are domiciled in a high risk jurisdiction (as defined by the institution’s policies and procedures)? | 5% |
22. 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 the CDD on some of the beneficial owners was carried out on a non-Face-to-Face, should such beneficial owners be captured under this section since these are not considered as ‘customers’?

This section applies to customers serviced by the institution 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.

If the customer was onboarded on a face-to-face basis prior to 2018, but there were no physical meetings with the client during 2018, how should we report this relationship?

Since the customer was onboarded on a face-to-face basis, this should be regarded as a face-to-face relationship, even though no physical meetings were held with the client in 2018. Although the question states ‘onboarded or serviced’, extra weighting should be given to onboarding.

If a client was met by our group of companies, should this be regarded as a Face-to-Face or a Non-Face-to-Face?

If the customer was met face-to-face by any company within the group but not by the Subject Person, since the Subject Person has not met the client for verification purposes, the relationship is to be considered as non-face-to-face.

**These questions are only applicable to Company Service Providers**

23. An entity obtained its MFSA licence in 2017 to act as a CSP and only commenced its operations in 2019. When is the first REQ due for completion and submission?

All individuals and entities carrying out relevant activity as defined in the PMLFTR are considered to be subject persons and are required to submit the REQ – irrespective of whether or not they have actually commenced operations. If operations have not commenced, an explanatory note should be included in the ‘General Remarks’ section on the first page of the REQ. In view of this, the first REQ will cover the period 1st January 2018 – 31st December 2018 and will be due to be filed in March 2019.

24. I am the MLRO of a company which obtained a MFSA licence in 2019 to act as a CSP. What should we do now?

Once the appointment of the MLROs is duly approved by the relevant supervisory authority, where applicable, the appointment and any subsequent changes thereto must be notified to the FIAU through CASPAR. 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.
25. REQ Question: *Organization of the contributions/funding for the creation, operation, or management of companies: Was the activity important or ancillary/accessory as performed during 2018?*

What is the meaning of organisation of the contributions / funding for the creation operation or management of companies?

This refers to instances where the Subject Person is involved in aiding, undertaking or managing the financial transactions for the company (to which services are being offered), either at company formation or operation stage.

26. REQ Question: *Please list the % of customers that requested the set-up of trusts where the beneficiary is another trust or corporate vehicle. If these were set up by our group of companies in other offices outside of Malta, is this relevant or does it refer to local trusts?*

Only the percentage of customers that requested your company to set up trusts should feature in this answer. Trusts set up by other companies within your group should not be included.

27. REQ Question: *For how many customers do you / does someone at your institution hold directorship positions?*

How should we answer this question?

The answer should reflect the number of directorship positions a sole practitioner holds in his own name or in the case of a corporate entity, the number of directorship positions the corporate entity’s employees hold for its customers. By way of example, if the company has 50 customers, and directorship services are offered to 10 of these, the answer should be 10.