Frequently Asked Questions (FAQ) – Trustees & Fiduciaries 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.

1. **An entity obtained its MFSA licence in 2017 and only commenced its operations in 2019. When is the first REQ due for completion and submission?**
   
   All individuals and entities carrying out any relevant financial business or 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.

2. **I am the MLRO of a company which obtained a MFSA licence in 2019. 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.

3. **I am a 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’.

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

5. **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.
6. **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.

7. **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.

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 outside the AML/CFT unit 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 either relevant financial business or relevant activity.
13. **REQ Question:** Are staff tested for knowledge retention following AML/CFT training and required to obtain a score over a specific threshold in order to pass?  
Should we answer this question on 2018 or on the last 3 years as per other questions in this section?  
Since no references are made to previous questions, kindly reply in the context of 2018 only.

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:** In regards to Article 43 (12)(b) of the Trusts and Trustees Act, please indicate the following for the period of 2018: Please list the number of foundations that you administered.  
**REQ Question:** Please list the % of customers that are charities or foundations, if applicable.  
What is the difference between the two questions?  
When the company is approached by a natural person/legal entity to set up a foundation/charity, the customer at that point in time shall be the natural person/legal entity. Should the company offer other services which constitute a business relationship with the foundation/charity, then the foundation/charity shall be considered as the customer since the services will be offered to the foundation/charity. It is further noted that the first question refers specifically to the administration of foundations whereas the second question refers to all the services offered to charities/foundations (including administration) by the company.

16. **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).

17. **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.

18. **REQ Question:** Breakdown of the total number of customers: Please list the % of legal persons of the total customers.  
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.
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’.

19. 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.

If I am the appointed Qualified Person (QP) for a trust, will that qualify as a customer with an ownership structure that includes offshore vehicles or trusts?
Yes, if you are a QP for a trust, then that will qualify as a customer having an ownership structure that includes offshore vehicles or trusts or other legal arrangements

20. 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.
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 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% |

21. 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 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 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.