



Review of the 2019 Risk Evaluation Questionnaire

Notaries and Real Estate Agents

12th February 2020

Financial Intelligence Analysis Unit
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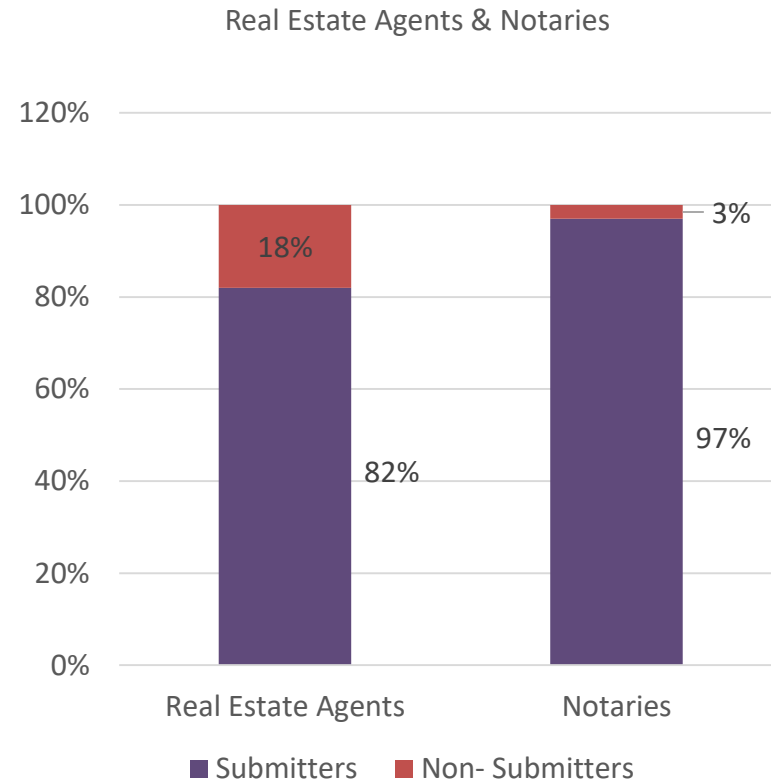
Agenda

- Statistics: review of the REQ 2019.
- General Observations
- Common mistakes
- The Imposition of Administrative Penalties and the Enforcement Process

REQ Statistics: Business Risk Assessment (BRA)

Results of the 2019 Submissions.

- The Business Risk Assessment is the process whereby the subject person identifies the threats and vulnerabilities that it is exposed to and assesses the likelihood and impact of the ML/FT risks.
- It is the **foundation** of the **risk- based approach** and the PMLFTR imposes an obligation on the subject person to 'take appropriate steps proportionate to the nature and size of its business, to identify and assess the risks of money laundering and funding of terrorism that arise of its activities or business"

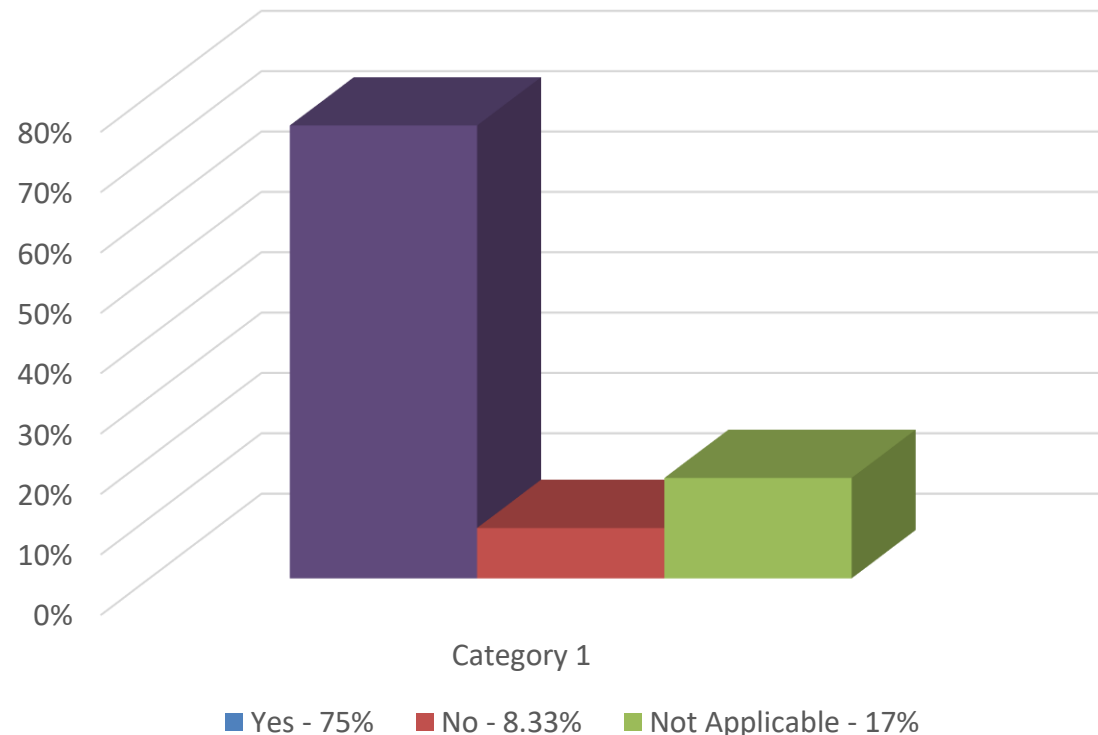


Statistics: Results of the 2019 REQ

- Do you/ your institution's internal procedures provide for a **regular update** of the Business Risk Assessment, or for a **periodic assessment** verifying that the risk assessment is still complete and up to date?

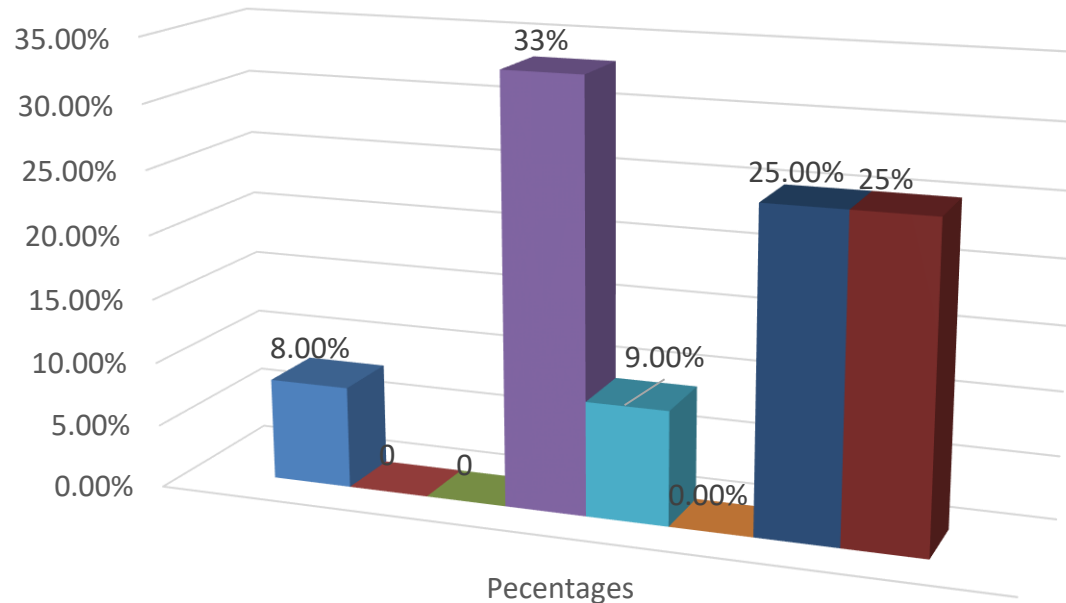
Regulation 5(4) of the PMLFTR lays down that a BRA *is regularly reviewed and kept up to date*. This requirement stems from the **very nature of risk**, which is **not static** but evolves continuously in view of external changes as well as changes in the activities or services of the subject person.

- Whenever **new threats** and **vulnerabilities** are identified
- Whenever there are **changes to its business model/structures/activities**.
- Whenever there are **changes to the external environment** within which the subject person is operating.



Statistics: 2019 REQ – Internal Audit and Independent Testing

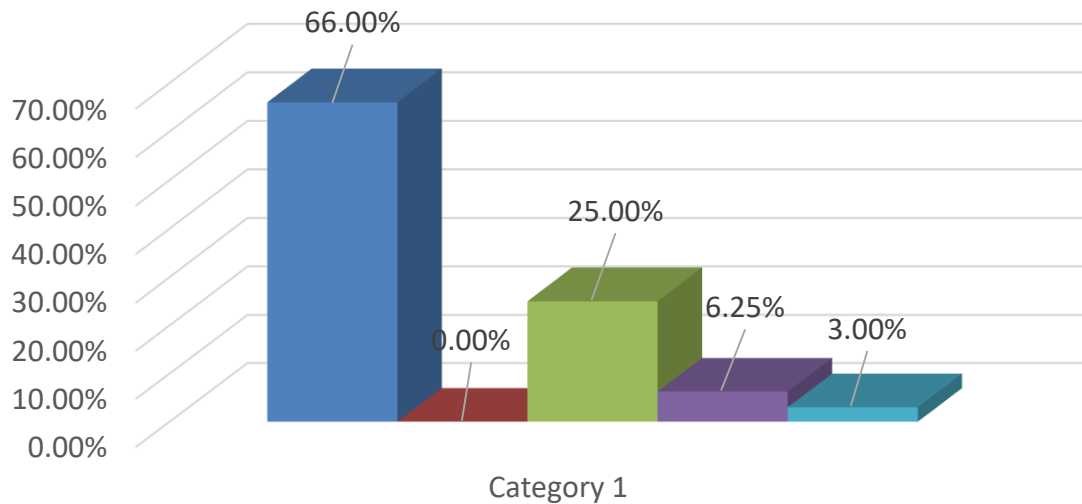
- What is the scheduled frequency for performing audits with regard to proper compliance with the Maltese AML/CFT obligations?



- 8% - As needed
- 0% - Quarterly
- 9% - Between 1-3 Years
- 25% - No Audit performed
- 0% - Monthly
- 33.3% - Annually
- 0% - Every 3 or more years
- 25% Not applicable

Statistics: 2019 REQ – Recordkeeping

- If the FIAU requests specific customer or alert investigation records, are you / is your institution in a position to retrieve such records immediately? *If you / your institution have received reminders or else requested extensions for deadlines imposed by the FIAU.



- Yes, always - 66%
- No - 0%
- Yes, most of the time - 25%
- Not applicable - 6.25%
- Depending on the request - 3%

Note: Subject persons should bear in mind that, in the case of a **request for information from the FIAU**, the information is to be furnished by the subject person within five (5) working days from the request, or such other shorter period of time that may be indicated in the request for information, regardless of whether the CDD measures were carried out by an entity being relied on. This **has to** be factored into any reliance agreement to ensure that the subject person remains in a position to fulfil its obligations at all times. (For more information refer to Cap 4. of the IPs).

Risk Assessment: the Risk Factors

The key risk factors to be considered when formulating a risk-based approach include:



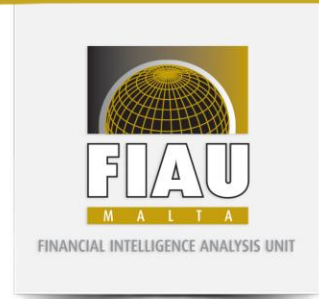
Risk mitigation

Once these risk factors have been assessed, controls should be designed and implemented to mitigate these risks. Although it is not possible to totally remove any risk, the **aim** is to mitigate the risks as far as possible.

Risk Assessment: the Risk Factors

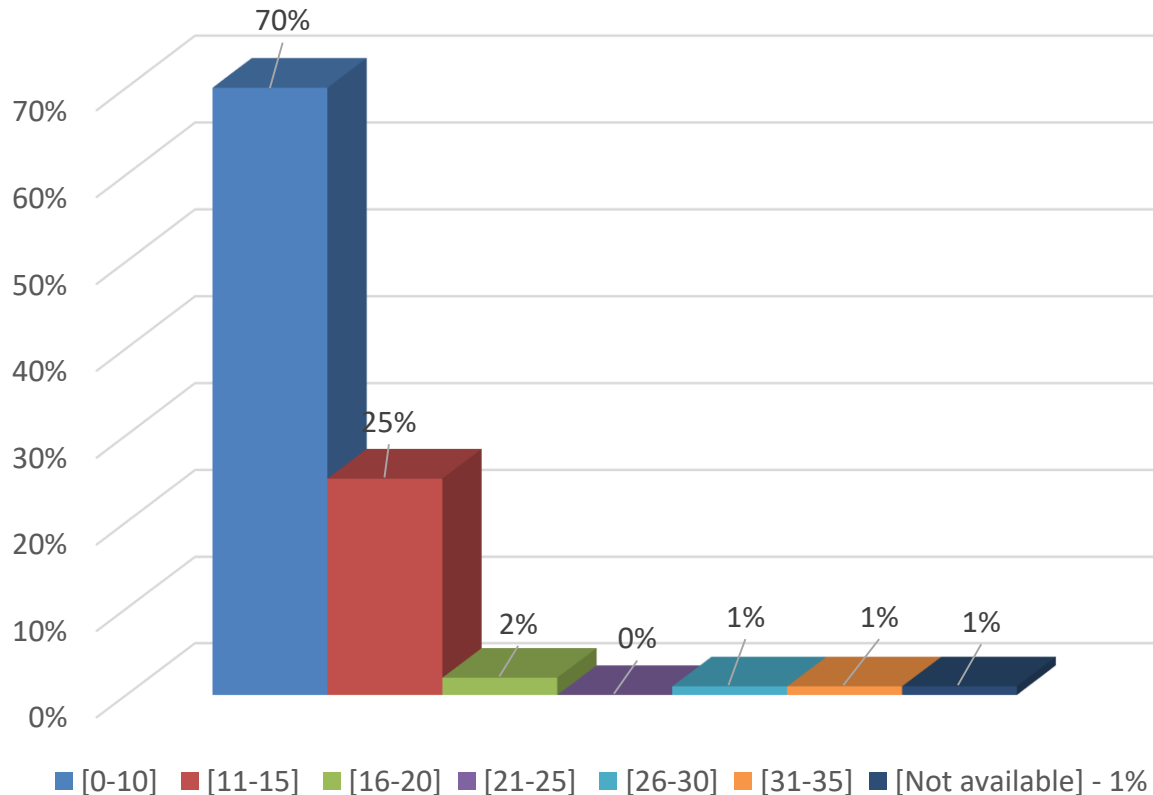


Figure 1 Risk is the probability that something bad or unpleasant will happen. Intuitively, it seems like a very simple concept. However, there is strong evidence that both doctors' and patients' comprehension of RISK is poor.



Statistics: 2019 REQ Customers

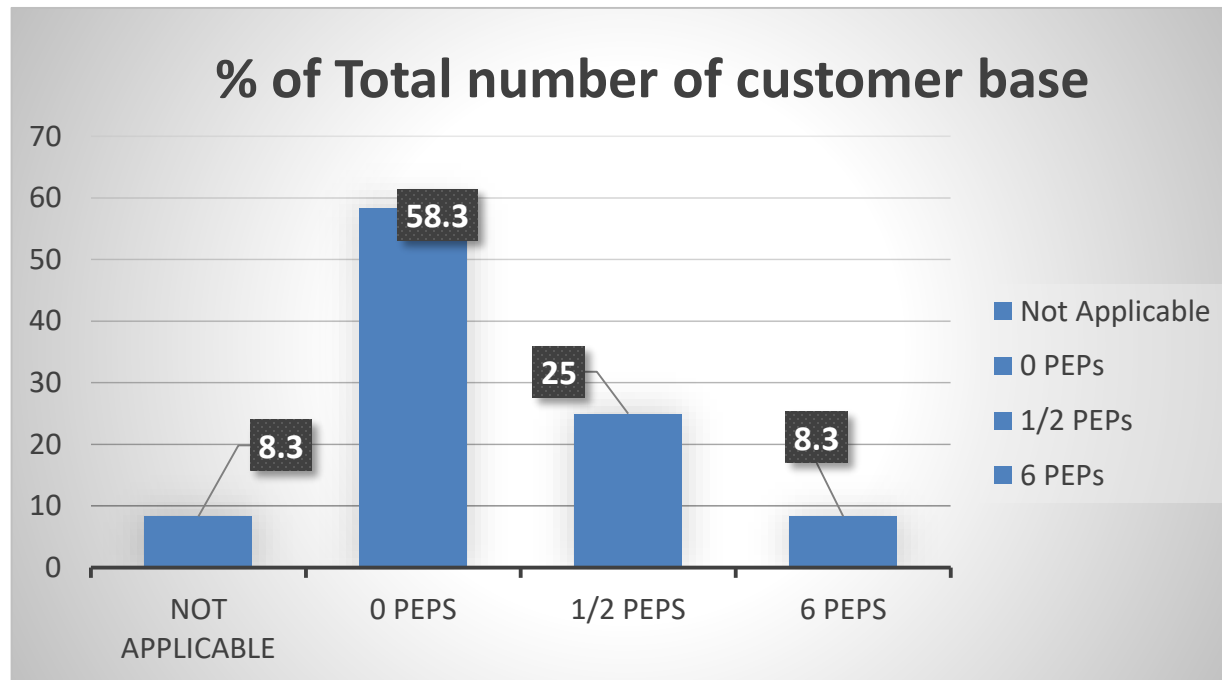
Breakdown of total customers identified: please list % of “high risk” customers.



- Example: **Politically Exposed Persons (PEPS)** pose a **high risk** of ML/FT due to the **position** they occupy and the **influence** they exercise.
- PEPs may abuse of their prominent public functions for private gain, such as by being involved in corrupt practices, accepting of bribes or abusing or misappropriating public funds.
- These crimes generate proceeds that would need to be laundered. Certain PEPs in certain position may also be exposed to the possibility of being involved in FT. The **application of EDD measures is therefore necessary to mitigate the potential risks of ML/FT that arise when a subject deals with PEPS.**
- For more information refer to Cap 4 of the Ips.

Statistics: 2019 REQ Customers

- Of the total number of customers, how many PEPs and/or close associates and family members (collectively referred to as PEPs) are in your/your institution's customer base (including Bos)?



Similarly, family members or persons known to be close associates of PEPs may, as a result of this connection, also benefit from, or be used to facilitate, abuse by the PEP of his/her position and influence.

Therefore, EDD measures are required also with regard to family members or persons known to be close associates of PEPs. Regulation 11(5) of the PMLFTR requires that subject persons have appropriate AML/CFT risk management procedures in place that enable them to determine whether a customer or a beneficial owner (current or prospective) is a PEP and, subsequently, to carry out EDD measures both when establishing or continuing business relationships with or undertaking occasional transactions for a PEP.



General Observations: Common mistakes in Products and Services

Case study - Real Estate Agent

Products and Services (DNFBPs) (75)

Question: Buying and selling of real property or business entities: Was the activity important or ancillary/accessory as performed during 2018?

Answer: Not Applicable

Products and Services (DNFBPs) (76)

Question: Buying and selling of real property or business entities: Was this a new activity in 2018?

Answer: Not Applicable



General Observations: Common mistakes in Products and Services

Case study - Real Estate Agent

Products and Services (DNFBPs) (75)

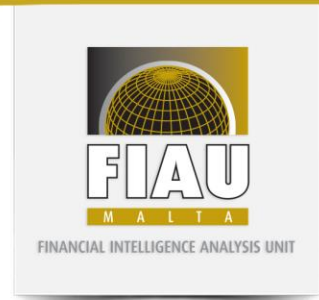
Question: Buying and selling of real property or business entities: Was the activity important or ancillary/accessory as performed during 2018?

Answer: Not Applicable

Products and Services (DNFBPs) (76)

Question: Buying and selling of real property or business entities: Was this a new activity in 2018?

Answer: Not Applicable



General observations: Common mistakes found in the 2019 REQs

Case study: Notary

Business Risk Assessment (1)

Question: Have you / your institution performed a Business Risk Assessment?

Answer: No

Business Risk Assessment (7)

Question: Do your / your institution's internal procedures provide for a regular update of the Business Risk Assessment, or for a periodic assessment verifying that the risk assessment is still complete and up to date?

Answer: Yes



General observations: Why recordkeeping is important.

Case study: Real Estate Agent

Products and Services (DNFBPs) (95)

Buying and selling of real estate Please provide the following information based on your business in 2018:

Question: What was the largest amount transacted (in a calendar year) in € in relation to letting of Commercial property?

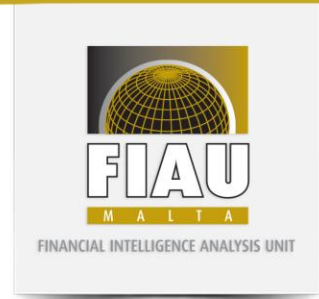
Answer: Not Available

Products and Services (DNFBPs) (96)

Buying and selling of real estate Please provide the following information based on your business in 2018:

Question: What was the largest amount transacted (in a calendar year) in € in relation to letting of Residential property?

Answer: Not Available



General observations: Common mistakes found in the 2019 REQs

1. Question: Breakdown of total customers identified: Please list % of "high risk" customers.

Answer: 4

2. Question: Breakdown of total customers identified: Please list % of "medium risk" customers.

Answer: 6

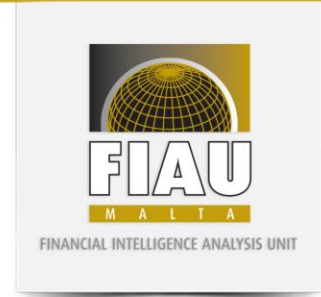
3. Question: Breakdown of total customers identified: Please list % of "low risk" customers.

Answer: 83

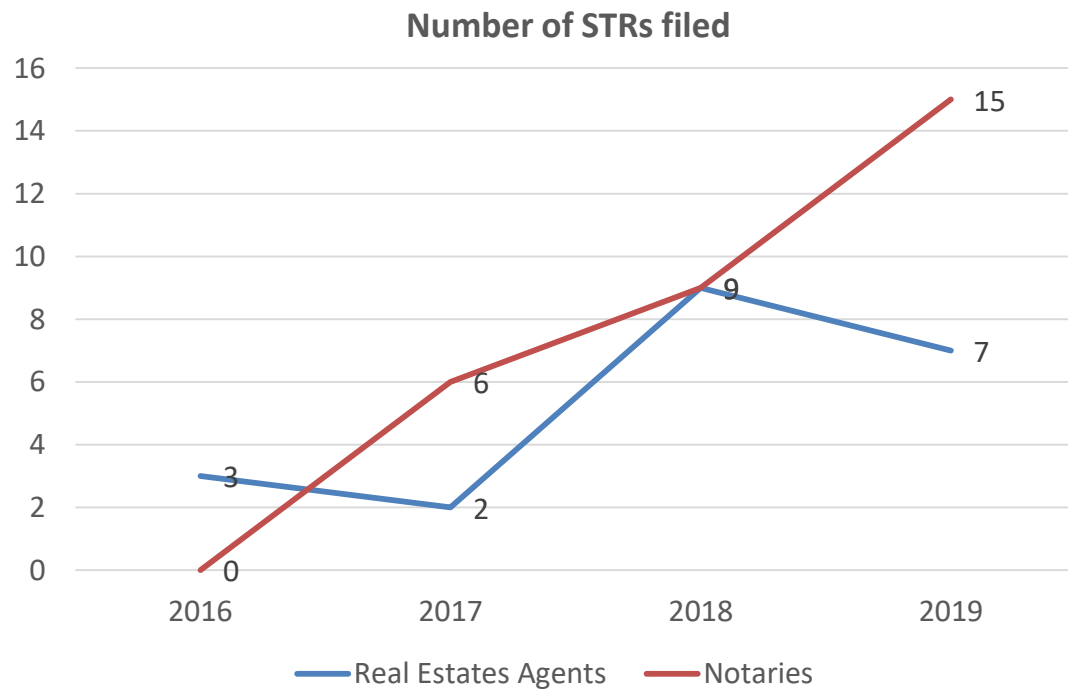
4. Question: Does a percentage of your customer base have a risk rating outside of the "high", "medium" and "low" categories?

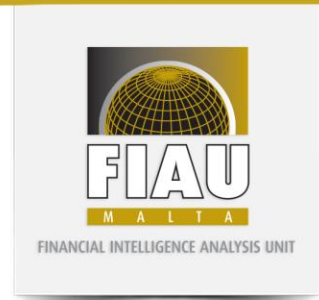
Answer: No

General observations



The importance of STRs is essential. **It is important to keep in mind that subject persons must file STRs only with the FIAU and with no other supervisory authority.**





The imposition of Administrative Penalties & the Enforcement Process

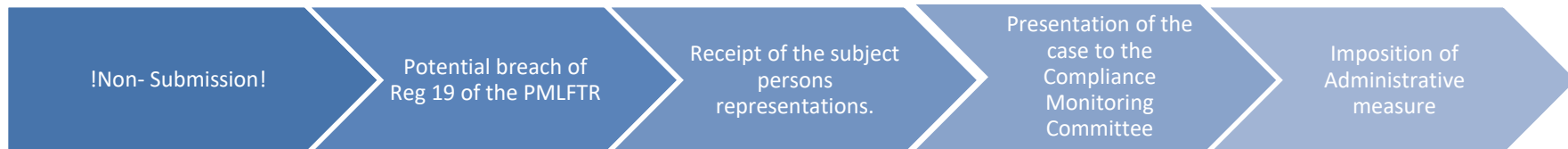


2019 REQ: The Imposition of Administrative penalties and the Enforcement process.

Periodical Reporting

In terms of Reg 19 of the PMLFTR:

“In fulfilment of its **supervisory functions** under the Act, the Financial Intelligence Analysis Unit may require subject persons to submit periodical reports on the measures and procedures they maintain and apply pursuant to regulation 5 and any other information or documents as the Financial Intelligence Analysis Unit may consider necessary.”





2019 REQ: The Imposition of Administrative penalties and the Enforcement process

To Recap

- ❑ Potential breaches letters issued: **207**
- ❑ Failure to submit the REQ 2019 or not submit the REQ in a timely manner has led to the issuance of a potential breaches letter on a total of **207** subject persons.
- ❑ Currently: Ongoing process of receiving representations, presentation to the CMC and issuance of letters reflecting the administrative measure to be taken.



Thank you.

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