

FREQUENTLY ASKED QUESTIONS

RISK EVALUATION QUESTIONNAIRE (REQ)

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Ensuring that subject persons comply with their AML/CFT obligations is a core function of the FIAU, in terms of Article 16(1)(c) of the Prevention of Money Laundering Act (PMLA). One way in which the Unit carries out this function is through its supervisory role. This is performed on a risk sensitive basis to make best use of available resources in the most effective manner possible.

A key tool to conduct effective risk-based supervision is the information the FIAU has on each subject person it supervises. Regulation 19 of the PMLFTR empowers the FIAU to request periodical reports from subject persons which enable it to gather all the information it deems necessary to fulfil its supervisory functions on a risk-sensitive basis. Thus, as explained in Section 1.6.1 of the Implementing Procedures Part I (IPs), through the completion of the yearly risk evaluation questionnaire, subject persons assist the FIAU in carrying out its supervisory function in an effective risk-based manner.

The purpose of this document is to provide further guidance to subject persons on the REQ exercise.

Q1: Who is obliged to submit the REQ?

Any subject person (legal or natural) carrying out either relevant financial business or relevant activity as defined under Regulation 2(1) of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR) is obliged to submit the REQ. This unless you have been exempted from submitting the REQ by the FIAU or otherwise you solely classify as a:

- Tied Insurance Intermediary
 - VFA Issuer
 - Dealers in high value goods (including car dealers, art dealers and dealers in precious metals and goods)
 - Land based operator other than casinos, or
 - Regulated markets/Central Securities Depository (The Malta Stock Exchange)
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Q2: What data period is covered by the REQ?

Data covering the prior calendar year for which the REQ has been issued. E.g., The REQ issued in February/March 2023 covers the reporting period 1 January 2022 to 31 December 2022.

Q3: Is a separate REQ required to be completed for different subject persons, even if these are part of the same group?

Yes. Each subject person must complete a separate REQ and provide information that is specific to that subject person. Even if subject persons form part of the same group, and controls may be the same, a separate REQ is to be completed for each subject person.

Q4: Who can submit the REQ if the MLRO resigned during the submission period?

In line with Regulation 15 of the PMLFTR and Chapter 5 of the IPs, subject persons are to appoint one of their officers as the MLRO. In exceptional circumstances when the MLRO originally registered no longer holds this position and/or the new MLRO is yet to be approved by the relevant authority, the subject person must immediately inform the FIAU. They must also provide the FIAU with the details of the employee who, for the interim period, will be assuming the role of MLRO and to whom the FIAU can address any requests or queries. This individual must meet the requirements in Section 5.1.2 of the IPs Part 1 and needs to be able to duly complete and submit the REQ on behalf of the subject person.

It is essential for subject persons to ensure that the FIAU's records are duly updated with any changes to their appointed MLRO. In no instance should subject persons be operating without such assigned personnel.

Q5 (A): I do not require a license do I have to submit this year's REQ if I just started operating last year?

Yes. Subject persons who do not require a license, but have commenced operations classifying as 'relevant activity' as defined under Regulation 2(1) of the PMLFTR in the year prior to the issuance of the REQ, are still required to complete and submit the REQ.

If not already registered on the Compliance and Supervision Platform for Assessing Risk (CASPAR) portal, the MLRO needs to register and create a subject person record on the portal. Guidance on the registration process is available in Section 3 of the CASPAR User Guide [1].

Q5 (B): If I do not require a license and I am no longer providing 'relevant activity,' what should I do?

Subject persons which have ceased to provide 'relevant activity' as defined under Regulation 2(1) of the PMLFTR, are to immediately inform the FIAU by emailing compliance@fiaumalta.org and provide a declaration to this effect. If accepted by the FIAU, the subject person shall not be required to complete the REQ.

[1] <https://fiaumalta.org/wp-content/uploads/2021/02/User-Guide-CASPAR-V8-11.02.2021.pdf>

Q6 (A) : What should I do if I am subject person that obtained a license during the same year the REQ was issued?

If not already registered on the CASPAR portal, your MLRO needs to register and create a subject person record on the portal. Guidance on the registration process is available in Section 3 of the CASPAR User Guide [1].

The MLRO is to submit the REQ the year after which the license has been obtained.

E.g., If the license was obtained throughout 2023, the subject person is exempt from completing the REQ launched in February/ March 2023 (which covers the reporting period January 2022 to 31 December 2022). However, the subject person would then be required to complete the REQ launched the following year (2024) which requires reporting on the base year 2023, commencing from the day the license was obtained.

Q6 (B): Despite being licensed, do I need to submit an REQ even though I have not started operating?

Yes. Subject persons are required to complete the REQ irrespective of whether operations have commenced or not. This unless the subject person is exempted in line with Q6 (A).

Q6 (C): Despite being licensed, am I required to submit the REQ even if I am no longer operational during the year of REQ submission?

Yes. Subject persons who are licensed by a relevant authority must complete the REQ irrespective of whether operations have ceased. Such licensed entities are required to complete and submit subsequent REQs up until their license is effectively terminated, cancelled, or surrendered.

[1] <https://fiaumalta.org/wp-content/uploads/2021/02/User-Guide-CASPAR-V8-11.02.2021.pdf>

Q7: Who do subject persons contact should they encounter issues when completing and submitting the REQ?

To ensure that the REQ is completed and submitted in a timely manner, subject persons are encouraged to start compiling the REQ immediately when launched by the FIAU. Should any technical issues be encountered, subject persons are to refer to Section 5 of the CASPAR User Guide link below and if the issue cannot be resolved in this manner, they are to email on caspar@fiaumalta.org for further assistance.

Q8: Can I submit the REQ after the submission date?

It is important for subject persons to submit the REQ within the deadlines stipulated by the FIAU on its website. Failure to do so hinders the FIAU's ability to conduct its supervisory function in a risk-based manner and may result in the imposition of administrative measures in line with Regulation 21 of the PMLFTR on such subject persons. Despite this, post the FIAU's deadline, subject persons are still encouraged to duly submit the REQ as this will still aid in the FIAU's supervisory process and will result in a less stringent administrative measure to be imposed for the subject persons failure to submit within the FIAUs deadline.

Q9: What happens if the REQ is not submitted?

In this circumstance, the FIAU will not have the necessary information to carry out a comprehensive risk assessment on the subject person. Since the REQ would not be available to risk assess the subject person, a heightened risk rating is assigned to these subject persons. Additionally, administrative measures in line with Regulation 21 may also be taken on subject persons who fail to submit the REQ within the stipulated timeframes.

[1] <https://fiaumalta.org/wp-content/uploads/2021/02/User-Guide-CASPAR-V8-11.02.2021.pdf>

Q10: What is the enforcement process for non-submission or late submission of the REQ?

The FIAU's enforcement section carries out a yearly periodic exercise to monitor subject persons compliance with their requirement to submit the REQ within the stipulated deadlines. Information about non or late submission is provided by the FIAU's Supervision section, this information leads to the issuing of potential breaches letters to each subject person who either did not submit the REQ or submitted the questionnaire late. Subject persons are then given a 30-day time period to provide representations, following this, each case is presented to the FIAU's Compliance Monitoring Committee (the Committee). The Committee considers the subject person's representations and determines whether there was an actual breach of Regulation 19 of the PMLFTR and if so, determines the administrative measure(s) to impose for the breach.

Q11: What actions should I take when receiving the potential breaches letter?

Subject persons are required to ensure that representations are submitted within the timeframes stipulated in the potential breaches letter. Unless already submitted, the subject person is also encouraged to submit the REQ despite being late.

Q12: What is important to include in the representations?

If there is a justified reason for the non-submission or late submission of the REQ this should be clearly explained. It is also very important to provide details about the subject person's current level of activity, turnover, and any business specific circumstance. This will assist the FIAU's Committee in determining the appropriate administrative action to impose, if any.

One should keep in mind that there are a number of **unjustified reasons** including:

- **Reference to workload and/or insufficient resources.** Subject persons are given ample time to complete the REQ and this is a legal obligation.
 - **The resignation of MLROs, changes in management or other key officials.** It is always the duty of the subject person to submit the REQ and the subject person must ensure that someone (the MLRO or any other person in his stead) is able to submit the REQ. Further guidance on this can be obtained through Q4 above.
 - **The inability to extract the required data.** Prior to launching the yearly REQ, a draft version (in pdf) is made available ahead on the FIAU's website in PDF format, to assist subject persons in understanding the granularity of the data required.
 - **Not knowing of the obligation to submit the REQ.** It is clearly outlined in Regulation 19 of the PMLFTR and Section 5.12 of the IPs that the FIAU can request periodic reports from subject persons. The FIAU also notifies Subject Persons of the requirement and timeframes of submission through various means including through its website, newsletter and through email correspondence.
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Q13: How does the FIAU determine the administrative measure to impose for failing to submit the REQ within the stipulated timeframes?

All potential breaches of the AML/CFT legislative provisions are brought before the FIAU's Committee. This internal Committee was set up to determine breaches of the law and determine the most appropriate administrative measure to impose in line with its internal policies and procedures.

The Committee must ensure that the administrative measure(s) imposed are always proportionate, effective, and dissuasive. In determining the administrative measure(s) the Committee considers:

- **Subject person representations.** Refer to Q12 as to how to provide representations and what should be included
 - **The seriousness of the breach committed.** In such circumstance, the Committee considers the 'relevant activity' or 'relevant financial business' undertaken by the subject person. It evaluates the importance the information found in the REQ has for the FIAU's supervisory function, to be able to perform its risk-based approach to supervision in an effective manner. The size of the Subject Person's level of activity undertaken is also a factor taken into consideration.
 - **Repeated non- compliance.** Subject persons who repeatedly fail to submit the REQ within the stipulated timeframes are given heftier penalties in view of their repeated lack of regard towards their obligation at law.
 - **Submission of the REQ.** The Committee also considers whether the subject person submitted the REQ following the receipt of the potential breaches letter. This is a positive factor and shows a better level of regard to the legal obligations as opposed to other subject persons who still fail to submit the REQ.
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Questions on this document may be sent to
caspar@fiaumalta.org

Financial Intelligence Analysis Unit
65C, Tower Street,
Birkirkara BKR 4012,
Malta

Telephone: (+356) 21 231 333
Fax: (+356) 21 231 090
E-mail: info@fiaumalta.org
Website: www.fiaumalta.org