

NATIONAL

FAQ: magisterial inquiries

A magisterial inquiry, requested by Prime Minister Joseph Muscat, is under way into the allegations made by Daphne Caruana Galizia that his wife, Michelle Muscat, owns a Panama-registered company, Egrant Inc, into whose account in Dubai a million dollars was transferred.

Matthew Xuereb explains the inner workings of a magisterial inquiry with the help of legal experts.

When is a magisterial inquiry requested?

There need to be two criteria for a magistrate to start an inquiry: the crime carries more than a three-year jail term and the evidence requires immediate preservation.

Can the magistrate start an inquiry on his own account?

No. He or she needs to receive a request from the police or form a private citizen following a report, information or complaints. Magistrates have a roster whereby one is on duty around the clock, seven days a week.

Can the police start an investigation on their own account?

Yes. According to article 346 of the Criminal Code, the police are duty-bound to act on any information that comes to their attention, because it is their duty to preserve public order, to investigate offences, collect evidence, whether against or in favour of the person suspected of having committed that offence, and to bring the offenders to court.

Do the magistrate and police compete?

No. The inquiring magistrate and the police

usually work in tandem. The magistrate heads the inquiry with police assistance, but it is the magistrate who has the lead role and the police should follow his orders.

The police inspector or superintendent, who usually lead the investigation from the police side, have a very important role in the magisterial inquiry but they work under the guidance of the magistrate. The specific role are quite clearly defined in the law.

In the majority of cases, the magistrate and police officers interrogate suspects and witnesses together and they also ask people to come forward as witnesses if they believe that these people could shed any form of light into what they are investigating.

Does the magistrate work in a vacuum?

No. The main tool the magistrate has to carry out the inquiry in the best way possible is the appointment of experts, depending on the case being investigated. If it's a murder, for example, the magistrate appoints scene-of-crime officers, ballistic experts if firearms were used, pathologists, photographers and any other expert that the magistrate feels is required to preserve the crime scene.

Experts can be given the power to take witness' accounts, even under oath.

There is nothing in the law that stops the police from continuing their investigation in parallel with the magistrate's.

Can one refuse to appear before an inquiring magistrate?

No. Although a magistrate presiding over an inquiry is doing this in his personal capacity as a magistrate, rather than in representation of the Court of Magistrates, he or she still has the powers of a magistrate presiding over a court.

If a magistrate summons anyone to appear, this must be obeyed. Usually, people are summoned by word of mouth, but if a person fails to appear, police summons will be issued. If the person still fails to appear, the magistrate can find them in contempt of court and issue an arrest warrant for the person to be escorted to court by the police.

What weight does a magisterial inquiry have?

Anything said before an inquiring magistrate is admissible as evidence in a court of

law, without the need to produce the person to testify in person as a witness. Anything said during a magisterial inquiry may be used in a trial.

What happens to the magisterial inquiry conclusions?

When the magistrate finishes his investigation, he compiles the conclusions with transcripts of the testimonies and the expert evidence along with their findings. In recent years, magisterial inquiries have been making a set of recommendations along with the conclusions.

The document, known as the *proces verbal*, is sent to the Attorney General. If the magistrate is recommending that the police take action against anyone in particular, the AG will send the file to the police.

'They can drag me in for us to look at each other'

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wanted to defend the corrupt". "It is not I who should be proving the guilt of these people, but they who should be proving their innocence," she said.

Ms Caruana Galizia added that the court of public opinion was not held to the same standards as a Criminal Court.

Proof beyond a reasonable doubt was entirely separate from public opinion, she said, adding that concrete evidence was now for the police and the processes of justice and a criminal trial to establish.

Ms Caruana Galizia's reports have indeed prompted a magisterial inquiry, which Dr Muscat requested late on Thursday night after the allegations first emerged.

Minister Without Portfolio Konrad Mizzi and the Prime Minister's Chief of Staff, Keith Schembri, for whom the two other Panama companies were opened, both testified yesterday before the inquiring magistrate, along with Mrs Muscat.

Absent from the courts, however, was Ms Caruana Galizia.

She told this newspaper yesterday that the only way she was stepping foot in a courtroom was if she was "dragged in under arrest".

And even if so, "If they want to drag me in only for us to look at each other after saying hello, it's up to them," she added.

Asked why she would not cooperate with the inquiry, she said that to do so would raise journalistic concerns.

"I am refusing to go on the basis that I have a source.

"As any fool would have worked out, I did not go in and get those documents myself," she said.

Ms Caruana Galizia added that as a journalist, she could not risk her source suspecting that she was collaborating with the police, especially as this person had come forward at great personal risk.

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'PEPs from high-risk Azerbaijan'

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(FIAU), an independent anti-money-laundering agency, during the first quarter of last year.

Serious customer due diligence failures, which are crucial in the prevention of money laundering, were flagged to the MFSA following the inspection.

The inspection was spurred by concerns about the bank's operations raised by MFSA officials before the Panama Papers were published in April by the International Consortium of Investigative Journalists.

MFSA sources said the inspection, which was carried out by the FIAU's compliance section, found serious shortcomings in the way Pilatus dealt with politically exposed persons (PEPs) from high-risk jurisdictions.

'Politically exposed person' is a legal term referring to politicians and other high-ranking officials who pose an increased money-laundering risk to institutions doing business with them.

Sources said that Pilatus accepted business from PEPs in high-risk jurisdictions like Azerbaijan, a country notorious for high-level corruption involving the ruling Aliyev family and those



close to them. Malta has, in recent years, stepped up its relations with Azerbaijan.

MFSA officials also flagged certain business being done with local PEPs.

Asked for copies of the due diligence and source of fund documents held by the MFSA, which gave Pilatus Bank a licence to operate in 2015, and whether any concerns about the bank had ever been raised, a spokesman for the authority said such information could not be made public.

Any administrative action taken by the MFSA was made public on the authority's website, the spokesman added.

The MFSA would have been expected to exert a high level of

due diligence before granting the licence, because the source of the bank's funding was a national of a sanctioned country, Iran.

Audit and accounting firm KMPG, which helped Pilatus obtain their banking licence, refused to comment on specific questions, citing client confidentiality.

In comments to *The Sunday Times of Malta*, FIAU director Kenneth Farrugia said specific questions about Pilatus Bank and compliance work carried out by the unit could not be answered for legal reasons.

Asked for a general comment about the advisability of doing business with Azeri PEPs, Mr Farrugia said entities and persons