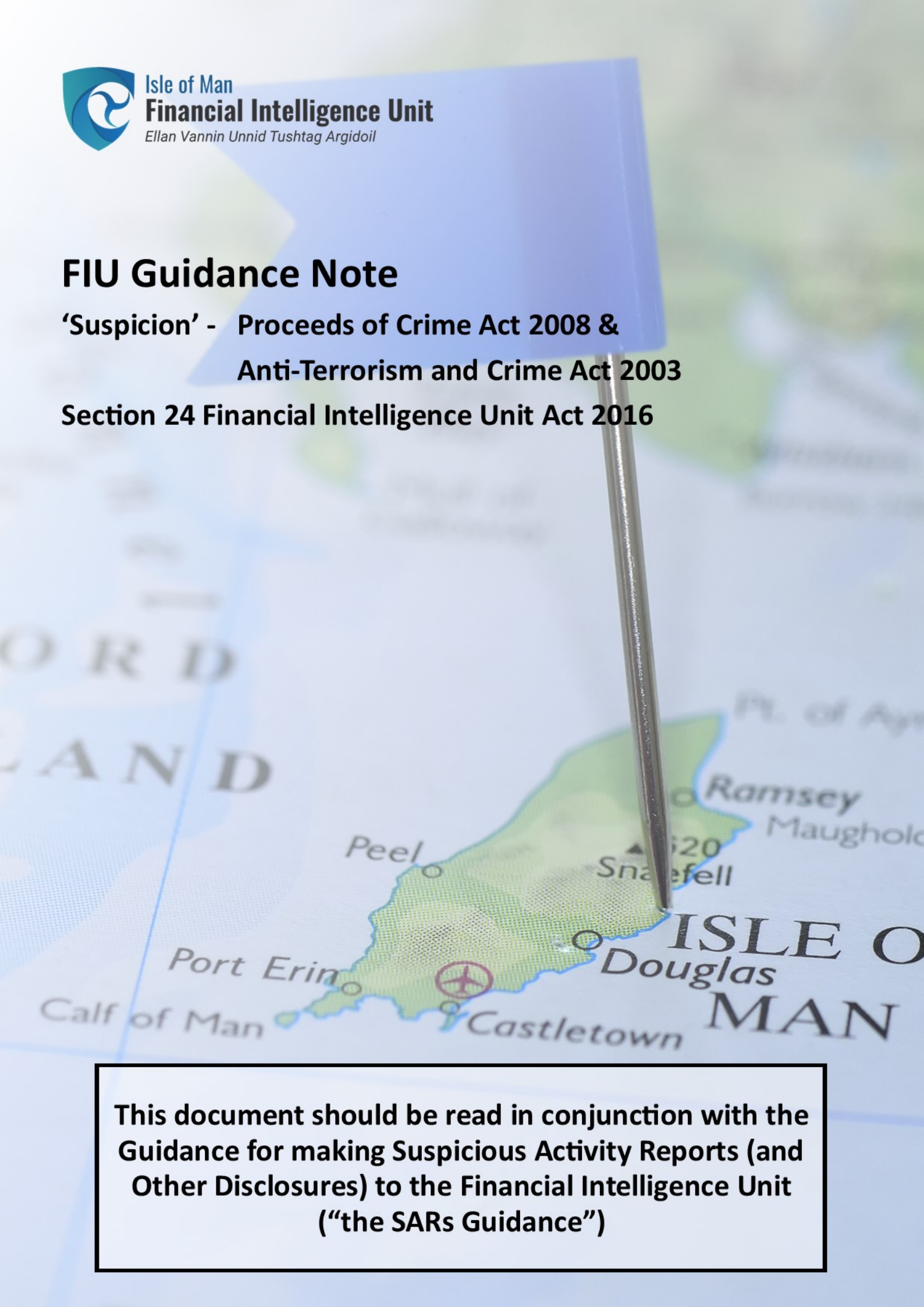


## **FIU Guidance Note**

**'Suspicion' - Proceeds of Crime Act 2008 &  
Anti-Terrorism and Crime Act 2003  
Section 24 Financial Intelligence Unit Act 2016**



**This document should be read in conjunction with the  
Guidance for making Suspicious Activity Reports (and  
Other Disclosures) to the Financial Intelligence Unit  
("the SARs Guidance")**

## **FIU Guidance Note**

### **'Suspicion' – Proceeds of Crime Act 2008 & Anti-Terrorism and Crime Act 2003**

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Feedback received by the FIU from the regulated sector following publication of the SARs Guidance suggests that a number of MLROs would like further guidance in relation to the following:

- i) what is meant by 'suspicion' under the Proceeds of Crime Act 2008 ("POCA"); and
- ii) when to make a disclosure under section 24 of the Financial Intelligence Unit Act 2016 ("FIUA").

The meaning of 'suspicion' is also central to the obligations imposed by the Anti-Terrorism and Crime Act 2003 ("ATCA")

#### **Section 14 ATCA – Failure to disclose: regulated sector**

A person commits an offence if they:

- a) know or suspect, or have reasonable grounds for knowing or suspecting that another person has committed a terrorism financing offence (under sections 7 to 10 of ATCA); and
- b) the information on which the knowledge or suspicion (or reasonable grounds for which) is based came to them in the course of a business in the regulated sector; and
- c) they do not disclose the information to the FIU (or a nominated officer).

There is no definition of 'suspicion' in ATCA.

#### **Section 142 POCA - Failure to disclose: regulated sector**

Persons conducting business in the regulated sector (as defined in schedule 4 of POCA) are required under POCA to submit SARs in respect of information that comes to them in the course of their business, if they know or suspect, or have reasonable grounds for knowing or suspecting, that a person is engaged in (or attempting) money laundering. Failing to disclose such matters is a criminal offence.

There is no definition of 'suspicion' in POCA.

#### **Section 24 FIUA – Disclosure of information to FIU**

Any person may disclose information to the FIU if the disclosure is made for the purposes of the exercise by the FIU of any of its functions.

The FIU's functions (under section 5 FIUA) are:

- i) receiving, gathering, analysing, storing and sharing information about financial crime (whether in the Island or elsewhere);
- ii) assisting with the prevention and detection of crime, and in particular, financial crime (whether in the Island or elsewhere);
- iii) cooperating with law enforcement agencies; and
- iv) contributing to the reduction of crime (particularly financial crime) and to the mitigation of its consequences.

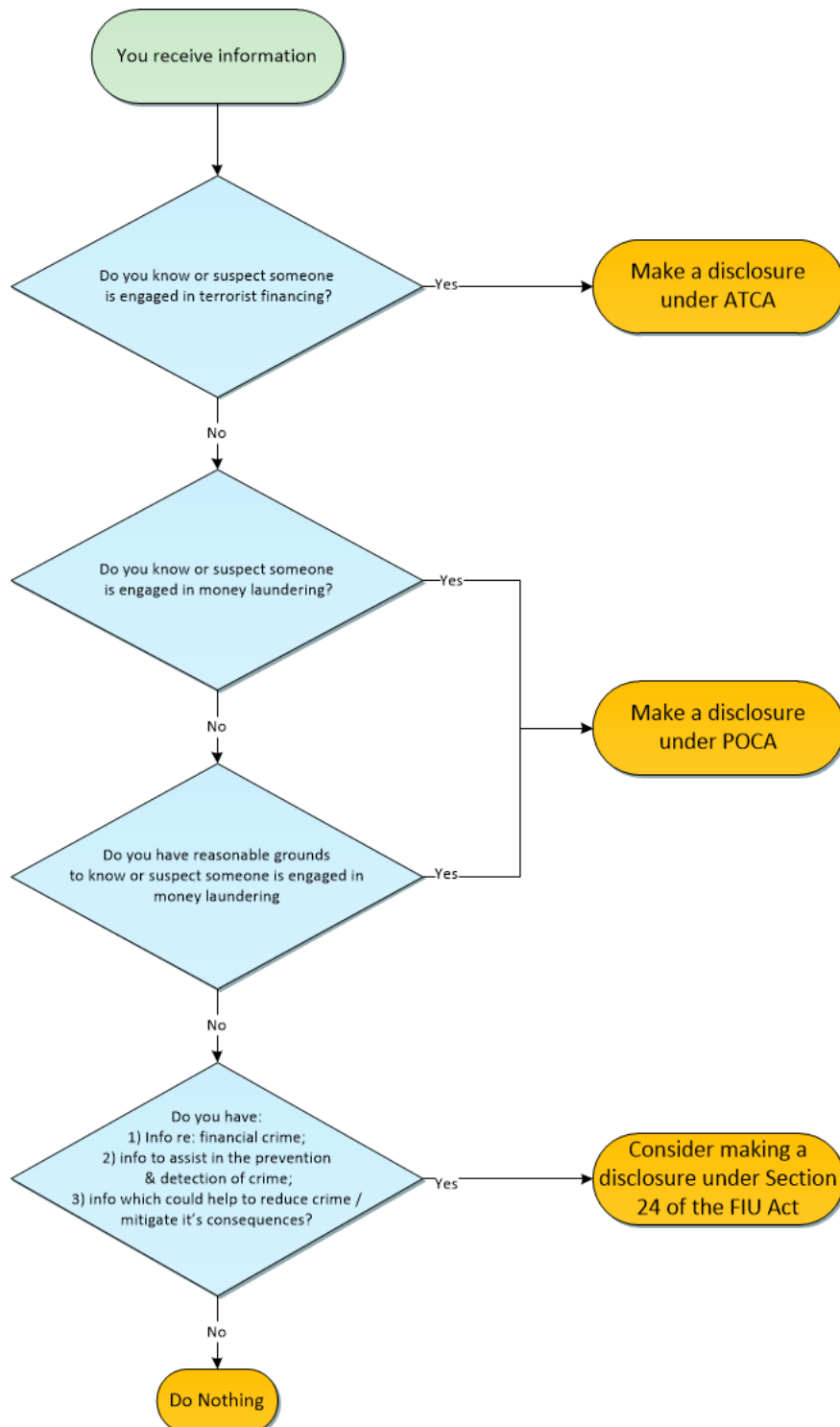
## Consent – Defence Against Money Laundering

The FIU can give consent to do a prohibited act (e.g. carry out a transaction which may amount to money laundering), and thereby provide the reporter with a defence against money laundering, under section 151 of POCA.

There is no such provision in the FIUA, and it is therefore not possible for the FIU to give consent to do a prohibited act in relation to a disclosure made under section 24 of the FIUA.

## POCA or FIUA?

Where a SAR is submitted under POCA, the FIU can help the reporter to fulfil their AML/CFT obligations. By disclosing information under FIUA, the reporter is helping the FIU to prevent and detect crime.



## Suspicion

The decision to submit a SAR under POCA is founded upon suspicion. The meaning of 'suspicion' under POCA can be difficult to pin down:

### Ordinary Meaning

The dictionary definition of 'suspicion' is a feeling or belief that something is possible, likely or true, or a feeling or belief that someone is guilty of an illegal, dishonest, or unpleasant action.

### Case Law

The leading case (from England and Wales, and therefore not binding, but persuasive in the Manx Courts) is *R v Da Silva* ([2006] EWCA Crim 1654). The Court of Appeal considered the meaning of 'suspecting' (under the Proceeds of Crime Act 2002 of England and Wales) and concluded that it meant "...that there is a possibility, which is more than fanciful... A vague feeling of unease would not suffice... there [is] a possibility which was more than fanciful..."

However, as there is no explanation of what is meant by 'fanciful' or 'unease', this does not add a great deal to the ordinary meaning of 'suspicion'.

### The Law Commission

Following a recent comprehensive review of the SARs regime in the UK, the Law Commission concluded that it was both undesirable and impractical to create a precise and workable legal definition of 'suspicion' that would add to the ordinary meaning.

### National Crime Agency

In its guidance 'SARs Regime Good Practice – Frequently Asked Questions' the UK NCA refers to *R v Da Silva*, but states that it is a matter for the reporter to decide when the 'suspicion' threshold is crossed. The NCA concludes that this should be a topic for AML/CFT training in the regulated sector.

### The (IOM) FIU's SARs Guidance

The SARs Guidance states:

*"A person suspects, or has reasonable grounds for suspecting, that another person is engaged in money laundering when he or she recognises that this is a possibility which is not over-imaginative or unrealistic.*

*There may be an aspect of a transaction or activity that is at odds with normal expectations and therefore raises suspicion, whether through inference, sight of documents, clients' comments, or professional insight and experience. Typically, suspicion will arise when something unusual is identified and subsequent research or checking confirms that there are abnormal or contradictory factors. Definite knowledge or evidence of facts is not required for suspicion (or reasonable grounds for suspicion) to arise.*

*Receipt of a court order made under POCA, or a request under section 18 of the FIU Act, should be a trigger, or 'red flag' event, causing a review of the relevant client relationship(s) and client(s) conduct. If the review gives rise to further suspicions of money laundering or terrorist financing, a SAR should be made to the FIU. There is no need to submit a SAR if the only information is the fact of the court order having been made and/or served upon the reporter (sometimes referred to as 'defensive reporting'.)"*

## The FIU's Approach

The FIU understands that the difficulty that legislators and courts have had in giving a meaningful definition of 'suspicion' can be a source of anxiety for MLROs, and has tried to address this in the SARs Guidance. As suspicion is firmly rooted in the individual circumstances encountered by MLROs on a case-by-case basis, the SARs Guidance makes clear that the examples of circumstances where suspicion may arise given must be underpinned by MLROs' "*professional insight and experience.*"





Isle of Man  
**Financial Intelligence Unit**  
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