

Guidance Notes for the Common Reporting Standard (CRS) Cook Islands

DISCLAIMER:

These guidance notes are designed to provide assistance in relation to the implementation of the Automatic Exchange of Information for tax purposes - the Common Reporting Standard - (CRS) in the Cook Islands.

The notes are not intended as a substitute for legal advice or familiarity with the CRS.

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GENERAL INTRODUCTION

The OECD, together with G20 countries and the EU, developed the *Standard for Automatic Exchange of Financial Account Information* (“the Standard”) for the adoption of a common approach to automatic exchange of information in order to tackle offshore tax evasion. The model builds on the FATCA IGA Model 1 to maximise efficiency and minimise costs.

The Standard consists of the following four key parts:

- A model Competent Authority Agreement (CAA), providing the international legal framework for the automatic exchange of CRS information;
- The Common Reporting Standard which contains the due diligence rules for financial institutions to follow to collect and report;
- The Commentaries on the CAA and the CRS; and
- The CRS XML Schema User Guide.

The Common Reporting Standard (CRS) sets out the rules for jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions.

The abovementioned documents, and Frequently Asked Questions, are able to be accessed on the OECD Website:

<http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/>

LEGAL BASIS

In October 2015 the Cook Islands' formally committed to the automatic exchange of information (AEOI) by 2018.

In accordance with its commitment to automatic exchange of tax information under the OECD Common Reporting Standard (CRS), the Cook Islands' signed the *Multilateral Competent Authority Agreement* ("MCAA") in October 2015, the signing of which allowed for the implementation of the CRS into domestic law by operationalising the automatic exchange of information under the CRS and linking the CRS and the legal basis for exchange between the Cook Islands and other countries.

The Cook Islands signed the *Convention on Mutual Administrative Assistance in Tax Matters* ("the Convention") on 28 October 2016. The Cook Islands' is the 106th nation state to sign the Convention as part of the global initiative to fight off shore tax evasion. The Convention provides for all forms of administrative co-operation and permits the automatic exchange of information. This co-operation ranges from exchange of information, including automatic exchanges and spontaneous exchanges, to the recovery of foreign tax claims.

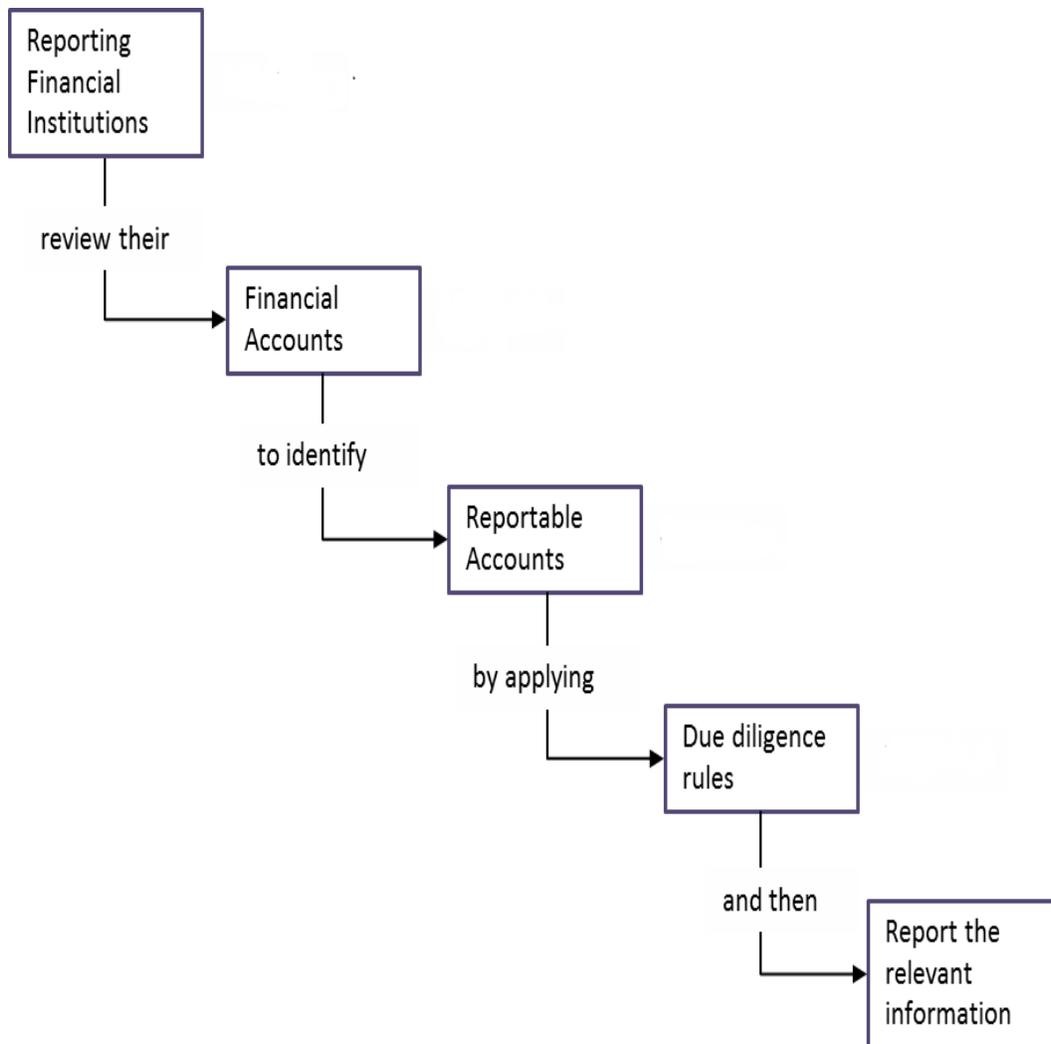
The MCAA contains the rules on the exchange of information between the Cook Islands' Competent Authority and partner jurisdiction Competent Authorities. The confidentiality, safeguards and the existence of the necessary infrastructure for an effective exchange are all covered by the MCAA.

The agreements are legal instruments for the implementation of the international OECD standard of Automatic Exchange of Information (AEOI) - CRS for tax purposes.

The Collector of the Revenue Management Division (RMD) of the Ministry of Finance and Economic Management is the Competent Authority for the Cook Islands.

OVERVIEW OF THE COMMON REPORTING STANDARD (CRS)

The CRS can be broken down in to a number of steps as follows¹:



¹ Taken from the Standard For Automatic Exchange Implementation Handbook: Figure 4

KEY DEFINITIONS

Entity	<p>Consists of legal persons and legal arrangements, partnerships, trusts, and foundations. Only entities can be Reporting Financial Institutions (RFI's).</p> <p>Individuals, including sole proprietorships are excluded from the definition.</p> <p>The general rule is that entities resident in a jurisdiction, their branches in that jurisdiction and branches of foreign entities that are located in the jurisdiction are included in the reporting nexus, while foreign entities, their foreign branches and foreign branches of domestic entities are not.</p>
Related Entity	<p>Under the CRS Entities are related where either they control the other OR the two entities are under common control. Common control includes direct or indirect ownership of more than 50% of the voting rights AND value of the entity.</p>
Controlling Person of an Entity	<p>Means the natural person who exercises control over the Entity i.e., who has a controlling ownership interest in the Entity and corresponds with the definition of beneficial owner as described in the FATF Recommendations</p>
Control Ownership Interest	<p>Usually identified by any persons owning more than a certain percentage of the Entity.</p>
Account Holder	<p>The person listed or identified as the holder of a Financial Account by the Reporting FI that 'maintains' the account.</p>
Financial Accounts	<p>An account which is maintained by a financial institution- includes depository accounts; custodial accounts; equity and debt interests; and cash value insurance contracts and annuity contracts.</p>
Reportable Account	<p>An account held by one or more Reportable Persons or by a Passive NFE with one of more Controlling Persons that is a Reportable Person.</p>
Non Reportable Accounts	<p>Include retirement and pension accounts; non-retirement tax-favoured accounts; term life insurance contracts; estate accounts; escrow accounts; depository accounts due to not-returned overpayments; other low-risk excluded accounts.</p>

Financial Institutions (FI's)	Means a custodial institution; a depository institution; an investment entity; or a specified insurance company.
Categorisation of Financial Institutions	Under the CRS, FIs will only be Reporting Financial Institutions ("RFIs") or Non-Reporting Financial Institutions ("NRFIs").
Reporting Financial Institution (RFI)	Includes depository institutions; custodial institutions; investment entities and specified insurance companies. RFI's are required to review the Financial Accounts they maintain to identify whether any of them need to be reported to RMD.
Non Reporting Financial Institutions (NRFI's)	Means an FI that is excluded from reporting and includes - government entities; broad participation retirement funds; any other low risk entity; an exempt collective investment vehicle; or a trust to the extent that the trustee of the trust is a RFI and reports all information required with respect to all Reportable Accounts of the trust.
Participating Jurisdiction Financial Institution	Any FI that is resident in a Participating Jurisdiction but excluding any branch of that FI that is located outside of the Cook Islands; and any branch located in a Participating Jurisdiction of a FI that itself is not resident in such Participating Jurisdiction.
Reportable Person	Means a Reportable Jurisdiction Person other than (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a Related entity of a corporation described in clause (i); (ii) a Government entity; (iv) an International Organisation; (v) a Central bank; or (vi) a Financial Institution.
Reportable Jurisdiction Persons	An Individual or Entity resident in a reportable jurisdiction under the tax laws of such jurisdiction i.e., tax residence not citizenship. Where an Entity does not have residence for tax purposes, the effective place of management of the Entity is used.
Active NFE (Non-Financial Entity)	An NFE can be an Active NFE provided it meets the criteria set out at page 195 of the Commentary.
Passive NFE definition	CRS definition includes Investment Entities not resident in Participating Jurisdictions. This will require reporting the Controlling Persons under the Standard.

<p>Controlling Persons of passive NFE's</p>	<p>Under CRS Controlling Persons of Passive NFEs are reportable regardless of whether they are resident in the same jurisdiction as the Passive NFE.</p>
<p>Controlling Persons of Trusts</p>	<p>Means the settlor, trustee, protector (if any), beneficiaries or classes of beneficiaries, and any other natural persons exercising ultimate effective control over the trust. The settlors, trustees, protectors and beneficiaries will always be treated as controlling persons regardless of whether or not any of them exercises control over the Trust</p>
<p>Application of due diligence procedures</p>	<p>FIs may choose to apply due diligence procedures for New Accounts to Pre-existing Accounts, and High Value Account procedures to Low Value Accounts.</p>

CRS OPTIONS

The CRS provides jurisdictions with a number of implementation options. The Cook Islands is implementing the options listed below.

No.	OPTIONS	COMMENTS
1.	Alternative approach to calculating account balances	NO
2.	Use of another reporting period	NO
3.	Filing deadlines	31 May
4.	Filing Nil returns	YES
5.	Allowing third party service providers to fulfil the obligations on behalf of the financial institutions	YES
6.	Allowing the due diligence procedures for New Accounts to be used for Pre-existing Accounts	YES
7.	Allowing the due diligence procedures for High Value Accounts to be used for Lower Value Accounts	YES
8.	Option to apply Residence address test for Lower Value Accounts	YES
9.	Option for exclusion from Due Diligence for Pre-existing Entity Accounts of less than \$250,000	YES
11.	Allowing financial institutions to make greater use of existing standardized industry coding systems for the due diligence process	YES
12.	Currency translation	USD
13.	Allow a Financial Institution to treat certain new accounts held by pre-existing customers as a pre-existing Account for due diligence	YES
14.	Expanded definition of Related Entity by requiring ownership of the majority of both voting rights and shares	YES

KEY TIMELINES

The first reporting year for any reportable account is the 2017 calendar year.

The first reporting due date is 31 May 2018 and subsequently by 31 May of the year following each reporting period. Reporting is an annual event.

The following are the effective dates for the implementation of the CRS in the Cook Islands:

- Pre-existing Accounts to be subjected to due diligence procedures are those in existence as at 31 December 2016
- New Accounts to be subjected to due diligence procedures are those opened on or after 1 January 2017
- The first CRS reporting period ends on 31 December 2017
- The review of Pre-existing High Value Individual Accounts at 31 December 2016 must be completed by 31 December 2017
- The Reportable Pre-existing High Value Accounts need to be reported by 31 May 2018
- The review of Pre-existing Lower Value Individual Accounts at 31 December 2016 must be completed by 31 December 2018
- First exchanges of information by the RMD to the Reportable jurisdictions will occur on or before 30 September 2018.

For ease of reference, the key timelines are presented in the table below.

CRS EVENT	CRS TIMING
Cut-off between Pre-existing and New Accounts	New account 1 January 2017; a pre-existing account 31 December 2016
Start of New Account due Diligence procedures	1 January 2017
Due diligence deadline for high value individual accounts	31 December 2017
Due diligence deadline for low value individual accounts	31 December 2018
Timing deadline for review of pre-existing entity accounts	31 December 2016 for high value; 31 December 2018 for low value

First reporting year of Reportable Accounts to Revenue Management Division (RMD)	2017 calendar year
First returns to be submitted to RMD	31 May 2018
First exchange of Reportable Accounts with exchange partners	September 2018

ENTITIES

The definition of entities is broad and consists of legal persons and legal arrangements, such as corporations, partnerships, trusts and foundations. Individuals are excluded from the definition of RFI's.

Only Entities can be Reporting Financial Institutions (RFI's).

The general rule is that Entities resident in the Cook Islands, their branches located in the Cook Islands, and branches of foreign Entities that are located in the Cook Islands are included within the Cook Islands' reporting nexus.

The following table illustrates where the Entity is located for the purposes of the CRS:²

Entity	Location for the Purposes of the CRS
Tax resident Entities	Residence for tax purposes
Non-tax resident Entities, except trusts	Place where it is incorporated under the laws of, place of management, or where it is subject to financial supervision.
Multiple resident Entities, except trusts	Place where the accounts are maintained
Trusts	Where one or more trustees are resident, unless the required information is being reported elsewhere because the trust is treated as tax resident there

² Taken from the Standard For Automatic Exchange Implementation Handbook: Figure 1

FINANCIAL INSTITUTIONS (FI'S)

There are four types of Financial Institutions covered by the CRS:

- custodial institutions;
- depository institutions;
- investment entities; and
- Specified insurance companies.

These types of financial institutions are broadly similar to those covered by FATCA.

An FI will be either a Reporting or a Non-Reporting FI. Reporting FIs have due diligence, information collection, and reporting obligations.

If an entity is not a financial institution it will (by default) be a Non-Financial Entity (NFE).

There are also two categories of NFEs:

- Active NFEs and
- Passive NFEs.

The general rule is that a passive NFE is a NFE that is not an active NFE. The definition of Active NFE essentially excludes Entities that primarily receive passive income or hold amounts of assets that produce passive income.

REPORTING FINANCIAL INSTITUTIONS (RFI'S)

RFI's are defined as:

- **Depository institutions** - includes savings banks, commercial banks, savings and loan associations, and credit unions;
- **Custodial Institutions** - includes custodian banks, brokers, and central securities depositories;
- **Investment Entities** - includes entities investing, reinvesting or trading in financial instruments, portfolio management or investing, administering or managing Financial Assets;
- **Specified Insurance companies** - includes most life insurance companies.

But does **not** include

- Government Entities and their pension funds
- International organisations
- Central banks
- Certain retirement funds
- Trustee documented trusts
- Other low-risk Financial Institutions

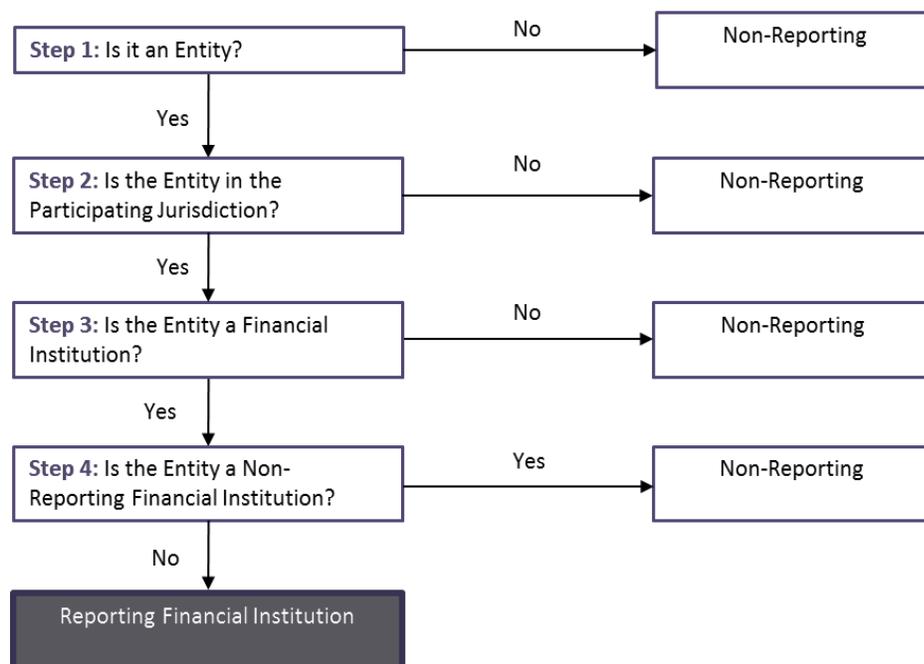
A RFI will be required to provide prescribed identity and financial account information to RMD about an account it maintains when:

- It has identified that an account is held (or 'controlled' if a Passive NFE) by a Reportable Person from a Reportable Jurisdiction; or
- The RFI has decided to adopt a wider approach to reporting and has identified that the account is held (or 'controlled' if a Passive NFE) by a relevant foreign tax resident.

The RFI must report:

1. **Identity information about the Account Holders or Controlling Persons (if a Passive NFE)** - including name, address, jurisdiction of residence, the account number (or functional equivalent) date of birth, Tax Information Number (TIN) or equivalent.
2. **Financial Account information** - including the account balance or value, the amount of dividends and income paid or credits to the account, the amount of interest paid or credited to the account, and payments made to the account holder. If an account is closed during the reporting period, the closure must be reported (there is no reporting of account balances, unlike FATCA which requires reporting of the balance immediately prior to closure).

The following chart illustrates whether an Entity is a Reporting Financial Institution (FI) or a Non-Reporting FI.³



THE WIDER APPROACH

The Cook Islands has opted for the “wider approach” under the CRS.

Under the wider approach to **due diligence**, Reporting Financial Institutions (RFI’s) must identify any relevant foreign tax resident irrespective of whether such persons are from Reportable Jurisdictions (jurisdictions that the Cook Islands will be providing AEOI information to).

This approach has the advantage of reducing costs for financial institutions because they don't need to perform additional due diligence each time a new jurisdiction joins the CRS. Therefore, without the wider approach to due diligence Reporting, FIs would need to constantly carry out their due diligence again each time a new jurisdiction becomes a Reportable Jurisdiction.

Reporting FIs must report prescribed identity and financial information annually to the Revenue Management Division about accounts they have identified as being held (and/or, in certain circumstances, controlled) by a relevant foreign tax resident if the person is resident in a Reportable Jurisdiction (a jurisdiction that the Cook Islands will provide AEOI to).

³ Taken from the Standard For Automatic Exchange Implementation Handbook: Figure 5

Reporting FIs also have the option of adopting the “wider approach” to reporting to RMD all accounts that they have identified as being held (and/or, in certain circumstances, controlled) by a relevant foreign tax resident, irrespective of whether those persons are resident in Reportable Jurisdictions.

DUE DILIGENCE

The due diligence procedures in the CRS are designed to identify accounts which are held by residents of jurisdictions with which the Cook Islands exchanges information under the Standard.

Under the CRS, a Financial Account is classified either as a Pre-existing Account or New Account depending on the date of opening.

- The Cook Islands allows a Financial Institution to apply the due diligence procedures for New Accounts to Pre-existing Accounts. This means, for example, that a Financial Institution may elect to obtain a self-certification for all Pre-existing accounts held by individuals consistent with the due diligence procedures for New Individual Accounts.
- Certain New Accounts may be treated as Pre-existing Accounts, subject to four conditions. The conditions are:
 - I. the Account Holder also holds with the RFI (or with a Related Entity in the Cook Islands) a Financial Account that is a Pre-existing Account;
 - II. the RFI (and any Related Entity) treats both accounts, and any other Financial Accounts of the Account Holder that are treated as Pre-existing Accounts, as a single Financial Account for purposes of satisfying the standards of knowledge requirements and determining the balance or value of any of the Financial Accounts when applying any account thresholds;
 - III. for a Financial Account that is subject to AML/KYC procedures, the Reporting Financial Institution is permitted to satisfy such AML/KYC procedures for the Financial Account by relying upon the AML/KYC procedures performed for the Pre-existing Account;
 - IV. opening the Financial Account does not require the Account Holder to provide new, additional, or amended customer information, other than for purposes of the CRS.

The Cook Islands allows a Financial Institution to apply the due diligence procedures for High Value Accounts to Lower Value Accounts. A Financial Institution may wish to make such election because otherwise they must apply the due diligence procedure for Lower Value Accounts and then at the end of a subsequent calendar year when the account balance or value exceeds USD 1 million, apply the due diligence procedures for High Value Accounts.

The due diligence requirements are as follows:

For Pre-existing Lower Value Individual Accounts:	Reporting FIs must adopt a residential address test or search for foreign indicia as set out in the CRS.
For New Lower Value Individual Accounts:	Reporting FI's must obtain a self-certification for accounts opened on or after 1 January 2017 which allows the RFI to determine the Account Holder's residence for tax purposes and confirm the reasonableness of such self-certification based in the information obtained by the RFI in connection with the opening of an account;
For Pre-existing Higher Value Individual Accounts:	The Reporting FI must review electronically searchable data maintained by the Reporting FI for certain foreign indicia set out in the CRS. If the electronic data maintained by the Reporting FI does not include certain defined information about the Account Holder, the Reporting FI must conduct a paper record search for that information. If the relationship manager of the account has actual knowledge that the Account Holder is a Reportable Person, the Reporting FI must treat the account as a Reportable Account;
For New Higher Value Individual Accounts:	The Reporting FI will need to obtain a self-certification for accounts opened on or after 1 January 2017 and cross check the reasonableness of the certification against other information obtained in connection with opening the account;
For Pre-existing Lower Value Entity Accounts:	Accounts with an aggregate balance or value of less than USD250,000 as at 31 December 2016 are not required to be reviewed or reported as Reportable Accounts;
For Pre-existing Higher Value Entity Accounts:	Accounts with an aggregate balance or value of greater than USD250,000 as at 31 December 2016 are subject to review. The Reporting FI must: <ul style="list-style-type: none"> (a) Determine the residence of the Entity; (b) Determine if the Entity is a Passive NFE; (c) Determine the Controlling Persons of a Passive NFE; and (d) Determine the residence of the Controlling Person(s) (if a Passive NFE).

For New Entity Accounts (Higher and Lower Value):	The Reporting FI must: <ul style="list-style-type: none"> (a) Determine the residence of the Entity; (b) Determine if the Entity is a Passive NFE; (c) Determine the Controlling Person(s) of a Passive NFE; and (d) Determine the residence of the Controlling Persons) (if a Passive NFE).
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Due diligence requirements are on-going in nature and the CRS requires Reporting FIs to have in place procedures which ensure that changes in circumstances that may affect the classification of a Financial Account (e.g. a change in residence) are identified.

TRUSTS

A trust is defined in section VIII (E) (3) of the CRS as being an “entity”. All trusts will be entities irrespective of whether they are revocable or irrevocable.

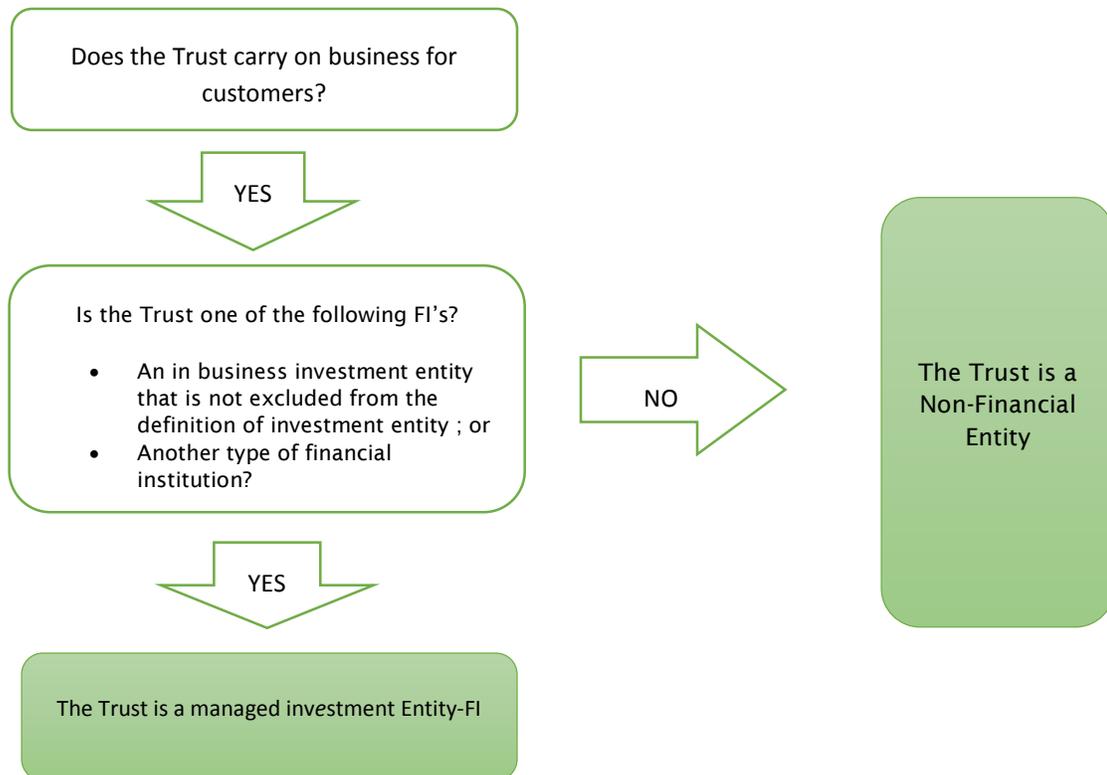
A trust will either be a:

- financial institution (commonly as an investment entity); or
- NFE (passive NFE or active NFE).

If a Trust falls within the definition of Investment Entity as described in Section VII, paragraph A(6)(b) of the CRS then it is likely it will be a FI. This is the case when a trust has gross income primarily attributable to investing, reinvesting, or trading in Financial Assets, and is managed by another Entity that is a FI.

If a Trust is not a FI it will be a Non-Financial Entity. NFE’s are either Active or Passive.

The following chart provides a summary of the circumstances when a trust will be a Financial Institution:



A trust that is a FI will be a Reporting FI if it is resident in a Participating Jurisdiction and does not qualify as a Non- Reporting Financial Institution.

If a trust is a Reporting FI it will have CRS due diligence and reporting obligations in the Cook Islands.

A Reporting FI trust will need to:

- Carry out due diligence on its financial accounts to identify accounts held (and/or, in the case of passive NFEs, controlled) by relevant foreign tax residents; and
- Report prescribed identity and financial account information to RMD about reportable accounts and undocumented accounts.