

CHAPTER  
**14**

# Special circumstances

# 14. Special circumstances

## 14.1 Financial Institutions

### 14.1.1 Collective Investment Vehicles

Collective Investment Vehicles are the main type of entity covered by Investment Entities. However the definition is very wide and would include in addition to an investment fund, persons such as fund administrators, fund managers, fund distributors, custodians, transfer agents, depositories etc. Although such entities are Investment Entities in accordance with the definition, they will have reporting obligations, if they only maintain Financial Accounts.

The only Financial Accounts that are relevant to the Agreement are the Equity and Debt Interests in Collective Investment Schemes.

Where the Investment Entity is a Collective Investment Scheme constituted by a person, only the Collective Investment Vehicle will have reporting responsibilities in relation to the Financial Accounts (the Equity and Debt Interests) of that Collective Investment Vehicle. For example, a fund administrator of a Unit Trust will not be a Reporting Financial Institution by virtue of acting for a Collective Investment Vehicle. (However, by exception, a fund manager may be regarded as a Reporting Financial Institution where it acts on behalf of a Collective Investment Vehicle that is not constituted by a person, for example a Unit Trust.)

Therefore any Investment Entity other than:

- A Collective Investment Vehicle
- Or a manager or operator of a Collective Investment Vehicle that is not constituted as a person,

will not have any reporting responsibilities in relation to the interests in the Collective Investment Vehicle.

Nevertheless, an entity may have reporting responsibilities if it maintains Financial Accounts other than those of the Collective Investment Scheme – see Section 14.1.2 on fund distributors below.

### 14.1.2 Platforms and other distributors of funds

Fund distributors, which may include:

- Placement Agents/Distributors;

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- Independent financial advisers;
- Fund platforms;
- Wealth managers;
- Brokers (including execution-only brokers and prime brokers);
- Banks;
- Building societies; and
- Members of an Insurance group;

can all fall within the definition of an Investment Entity because of their role in distributing a Collective Investment Vehicle as defined for the purposes of the Agreement.

### There are two different types of fund distributors:

- Those that act as an intermediary in holding the legal title to the Collective Investment Vehicle (such as a nominee); and
- Those that act on an advisory only basis.

Where a customer appears on a Collective Investment Vehicle's register, the responsibility to report on that customer lies with the fund. As shown in the following example, if a customer invests in a fund via a fund platform, the responsibility to report on the customer may lie with the platform.



**Example 1** - Fund platforms typically hold legal title to Collective Investment Vehicle interests on behalf of their customers (the investors) as nominees. The customers access the platform in order to buy and sell investments and to manage their investment portfolio. The platform will back the customers' orders with holdings in the Collective Investment Vehicle, and possibly other assets. But only the platform will appear on the shareholders' register of the Collective Investment Vehicle. Where this is the case the platform will be responsible for reporting on its Financial Accounts.

Where financial advisers' activities do not go beyond the provision of investment advice to their customers and/or acting as an intermediary between the Collective Investment Scheme, or fund platform and the customer, then they will not hold legal title to the assets and therefore are not in the chain of legal ownership of a Collective Investment Vehicle. Such financial advisers will not be regarded as the Financial Institution that maintains the Financial Account in respect of the accounts they advise on.

A platform may have a 'mixed business' i.e. it acts as an adviser or 'pure intermediary' between the investor and the underlying Financial Institution (such as a Collective Investment Vehicle), on behalf of some customers. In addition, it also holds legal

title to interests on behalf of other customers. In the case where legal title is held, the platform will be a Financial Institution with a reporting obligation in respect of those interests.

From the platform's perspective it will not be treated as maintaining those accounts where it acts as an adviser or pure intermediary.

### **14.1.3 Fund nominees - Distributors in the chain of legal ownership**

Distributors that hold legal title to assets on behalf of customers and are part of the legal chain of ownership of interests in Collective Investment Vehicles are Financial Institutions. In most cases they will be Custodial Institutions because they will be holding assets on behalf of others.

In considering whether such a distributor meets the condition requiring 20% of the entity's gross income to derive from holding financial assets and from related financial services, consideration should be given as to whether the income derived from acting as nominee arises in another group company, or whether the income is derived from commission, discounts or other sources.

Fund nominees, fund intermediaries and fund platforms will nevertheless still be Financial Institutions because they would otherwise be within the definition of Investment Entity. In this case the Financial Accounts will be the Financial Accounts maintained by the distributor, and the distributor will be responsible for ensuring it meets its obligations in respect of those accounts.

QCB will treat fund nominees, fund intermediaries and fund platforms as Custodial Institutions unless specific factors indicate that their businesses are better characterized as falling within the definition of an Investment Entity. Normally, the primary business of a fund nominee, fund intermediary or fund platform will be to hold financial assets for the accounts of others.

For the purpose of aggregating accounts to determine whether any Pre-existing Custodial Accounts are below the de minimis threshold, a Custodial Institution will need to consider all the Financial Accounts of its customers without reference to whether the customers underlying interests are in different Collective Investment Vehicles.

### **14.1.4 Advisory only distributors**

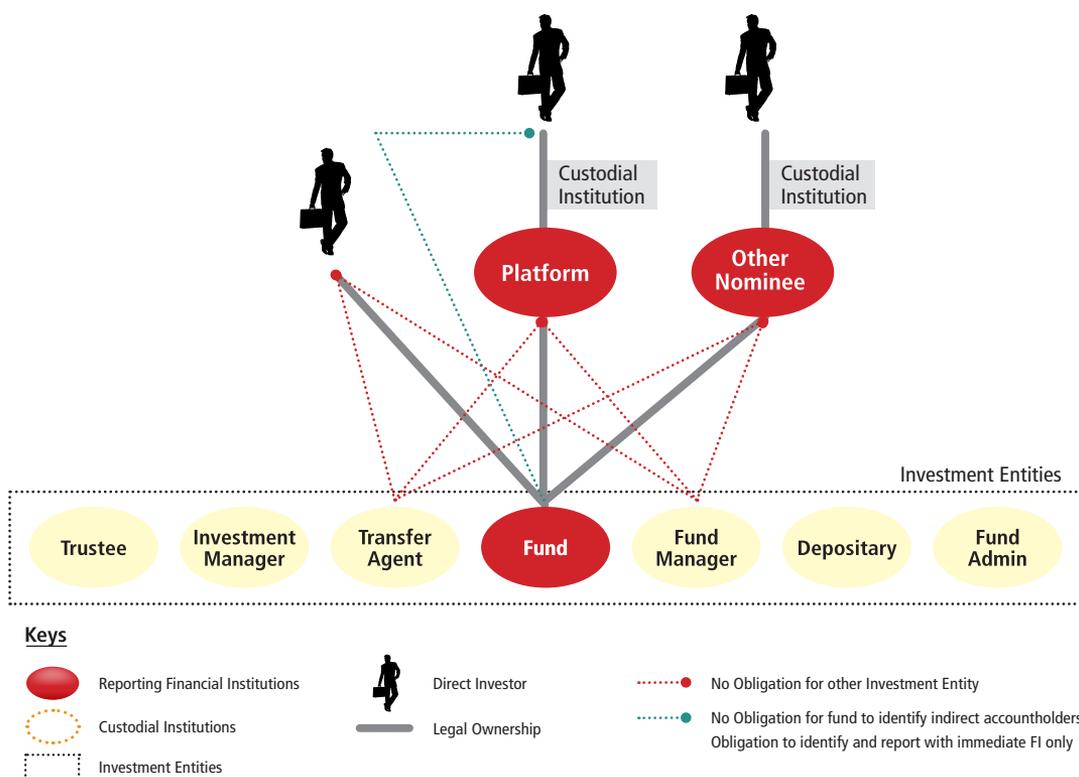
Such distributors, which may include financial advisers, may nevertheless be asked by Financial Institutions to provide assistance in identifying account holders and obtaining self-certifications.



**Example:** Financial advisers will often have the most in-depth knowledge of the investor and direct access to the customer so will be best placed to obtain self-certifications. However, as above QCB does not regard such advisory only distributors as Financial Institutions and they will only have obligations pursuant to contractual agreements with those Financial Institutions where they act as a third party service provider in relation to those Financial Accounts.

### 14.1.5 Identification and reporting on interest in a Collective Investment Vehicle

The diagram below illustrates how QCB believes the account identification and reporting obligations under the Agreement should work for Collective Investment Vehicles.



Depending on how the fund is structured, various entities may fall within the definition of Investment Entity. However, provided the fund is a Collective Investment Vehicle, only the fund has obligations under the Agreement. The fund itself will need to determine which entity carries out the obligations to identify, verify and report on account holders that are Specified US Persons, by reference to its own governance structure and contractual arrangements.



**Example 1** - Authorised funds in Qatar are required to have a fund manager that acts as the operator of the fund and is normally assigned responsibility for fulfilling the regulatory obligations of the fund.

Therefore, the fund manager will normally have responsibility for compliance with the obligations in relation to the Financial Accounts of the Fund under the Qatari IGA. In turn, fund operators typically use third party service providers to provide fund administration, including maintaining records of investors, account balances and transaction services provided by the transfer agent. In these cases the fund manager might appoint the third party service provider to fulfil account identification and reporting requirements as they will have the necessary records.

The fund's account identification and reporting obligations apply only to its immediate account holders. It is required to identify all direct individual account holders pursuant to the due diligence obligations outlined in this Guidance. Any indirect individual account will be held through a Financial Institution (for example a platform or other nominee), and the fund's obligation is to identify the direct account holder (such as the Financial Institution) only. In turn the intermediary Financial Institution will have its own obligation to identify and report on its account holders.

In the diagram the fund would only need to identify any direct individual account holders (shown on left hand side), and the Financial Institutions on the share register. It would be required to report information on any of these that are Specified US Persons.

In turn Custodial Institutions that act as distributors (and not the fund) would be required to identify and report on their direct account holders. The fund has no obligation to identify and report on accounts held indirectly through other Financial Institutions.

## 14.2 Qatar Central Securities Depository ("QCSD")

The QCSD will not be treated as a Financial Institution as it does not perform the activities of a Depository Institution, Custodial Institution, Specified Insurance Company or an Investment Entity. QCSD will not be treated as maintaining financial accounts. The participants of QCSD that hold interests recorded in the QCSD are either Financial Institutions in their own right, or they access the system through a Financial Institution (a sponsor). It is these Financial Institutions that maintain the accounts and it is these participants and/or sponsors that are responsible for undertaking any reporting obligations.

The relationship between QCSD and its participants is not a financial account and accordingly QCSD is not required to undertake any reporting required in connection with interests held by, or on behalf of, participants.

Notwithstanding the foregoing, in accordance with Article 5, paragraph 4 of the Agreement, QCS D may be allowed to report on behalf of such participants in respect of interests recorded as a third party service provider.

### 14.3 Personal Investment Companies

Personal Investment Companies will need to consider whether they are within the definition of Investment Entity. Where a Personal Investment Company is managed by a Financial Institution it will be an Investment Entity.

### 14.4 Securitisation Vehicles

The following relates to securitization vehicles established post 1 December 2012 and includes an example of a securitization cash flow.

For vehicles set up before 1 December 2012 please see Section 15.A.12.5. (Limited Life Debt Investment Entities) for transitional rules.

Securitization structures are typically legally remote from the Financial Institution in relation to which the risks and rewards of the structure are associated. Typically, a securitization structure will include an issuing entity, funding entity, seller, mortgage trustee and often counterparties.

The common principles as to whether an entity meets the definition of a Financial Institution should be applied to all entities within a securitization structure. More specifically, the expectation would be that issuing entities are likely to be classified as Investment Entities on the basis of their activities.

A securitization vehicle that is a Financial Institution will need to consider if it has any Financial Accounts that may be reportable. If there are no Financial Accounts a nil return is still required.

### 14.5 Mergers or Bulk Acquisitions of Accounts

Where a Reporting Qatari Financial Institution acquires accounts by way of a merger or bulk acquisition, the Reporting Qatari Financial Institution should request new documentation on the status of the acquired account holders. However, the Reporting Qatari Financial Institution can rely on the status of account holders as determined by the predecessor Reporting Model 1 Financial Institution, US withholding agent, or a Participating Financial Institution only as an interim and for 6 months, provided that the predecessor Financial Institution had met its due diligence obligations.

Where a Non-Reporting Financial Institution becomes part of a group as the result of a merger or acquisition, the status of any account maintained by the Non-Reporting

Financial Institution can be relied upon unless there is a change in circumstance in relation to the account.

The Qatari Financial Institution may treat accounts acquired in a merger or bulk acquisition that takes place after 30 June 2014 as pre-existing accounts for the purposes of applying the identification and documentation procedures by treating the accounts as if they had been acquired on 30 June 2014.

### **14.5.1 Mergers of Investment Entities**

Mergers of Investment Entities can be different to mergers of Custodial Institutions or Depository Institutions. The Financial Accounts of Investment Entities are its Equity and Debt Interest, so the merger of two such entities creates a series of New Accounts in the surviving entity.

Mergers of Investment Entities will normally involve a surviving fund taking over the assets of the merging fund in exchange for issuing shares or units to the investors of the merging fund. The shares or units in the merging fund are then extinguished. The new shares in the surviving fund will be New Accounts except where both funds are sponsored by the same sponsor – see below.

So that fund mergers are not impeded, or held up by the requirement to perform due diligence on a series of New Accounts, special rules apply to the documentation of New Accounts on a merger of Investment Entities. There are a number of potential scenarios depending upon whether the merging fund (the investors of which will create the New Accounts in the surviving fund) is a Reporting Qatari Financial Institution and whether it is a Reporting or Participating Financial Institution, Deemed Compliant Financial Institution or Non-Participating Financial Institution. These are considered below.

### **14.5.2 More than one fund sponsored by the same Qatari sponsor**

Where both funds are sponsored Qatari funds with the same Qatari sponsor, no New Accounts are created. This is because for Sponsored Financial Institutions, whether a Financial Account is a New Account or not is determined by reference to whether it is new to the sponsor (for example the fund manager), and not whether it is new to the Sponsored Financial Institution (the fund).

### **14.5.3 Merging fund is a Reporting Financial Institution**

Where the merging fund is a Reporting Financial Institution (including a Sponsored Financial Institution, but where the funds do not share the same sponsor), a FATCA

Partner Jurisdiction Financial Institution or a Participating Foreign Financial Institution, the surviving fund can rely on the account identification and documentation performed by the merging fund and will not need to undertake any further account due diligence in order to comply with its FATCA obligations, to the extent provided in relevant US Treasury Regulations. The surviving fund can continue to use the same account classification as the merging fund until there is a change in circumstances for the Financial Account.

### **14.5.4 Merging fund is not a Reporting Financial Institution**

Where the merging fund is not a Reporting Financial Institution, a FATCA Partner Jurisdiction Financial Institution or a Participating Foreign Financial Institution (because it is a Deemed Compliant fund, a Non-Participating Qatari Financial Institution or a Non-Participating Foreign Financial Institution), the surviving fund will need to undertake account identification procedures on the New Accounts. However, in these circumstances the account identification procedures will be limited to those that are required for Pre-existing Accounts and should be carried out at the latest by the 31 December following the date of the merger or 31 December of the year following the year of the merger, if the merger takes place after 30 September of any calendar year.

### **14.5.5 Mergers and Acquisitions in relation to Pre-existing Cash Value Insurance Contracts**

Insurance Companies often sell off “backbooks” of business to another company, especially when the Insurance Company no longer sells that type of business. Where this relates to Pre-existing Accounts, the transferor can continue to rely on the original identification of the transferee company. Therefore provided the transferee company was prohibited from selling the business into the US the policies will remain out of scope, and the transferor company does not need to undertake any further due diligence checks.

## **14.6 Assignment or Sale of Cash Value Insurance Contract**

A cash value insurance contract such as an endowment policy may be the subject of assignment or sale by the beneficial owner of the policy. Such an assignment or sale will result in the Reporting Financial Institution having to consider the reportable status of the new beneficial owner of the policy.



**Example 1** - An individual holds a mortgage with lender A, and as part of their mortgage arrangements they hold an endowment policy. This endowment was taken out by the individual borrower and although the endowment is

part of the mortgage arrangements it is the individual who is beneficially entitled to receive sums payable on the surrender or redemption of the policy (for instance they may be able to keep amounts payable under the endowment if they are able to pay off the mortgage from an alternative source). The borrower takes out a mortgage with a new lender but under the terms of the mortgage agreement they keep their existing endowment. In this case the endowment policy has not been assigned, even if the policy is named in the underlying mortgage arrangement. The endowment is an individual account and continues to be held by the same beneficial owner (the borrower).



**Example 2** - The same individual holds a mortgage with lender B, and as part of their mortgage arrangements they have taken out an endowment policy. However in this case mortgage lender B (which is a financial institution) has the direct benefit of the endowment policy such that they are beneficially entitled to receive sums payable on the surrender or redemption of the policy, or the sum insured in the event of the death of the borrower. In this case mortgage lender B is an Entity Account Holder. The borrower takes out a new mortgage with mortgage lender C, repays the existing loan and the financial institution assigns the benefit of the policy to mortgage lender C. The account with mortgage lender C is treated as a new account; the Reporting Financial Institution must determine the status of the new account holder mortgage lender C. In all likelihood, mortgage lender C will also be a Qatari Financial Institution or other Partner Jurisdiction Financial Institution, which can be identified on the basis of publicly available information.



**Example 3** - Individual X holds an endowment policy with a Reporting Financial Institution. This is a Financial Account. Individual X sells the benefit of the policy to another person - Individual Y. Individual Y will be subject to the due diligence procedures as a new individual account holder. This is a different situation from a new account being opened where the Financial Institution has direct contact with the individual and if that individual does not provide the necessary information the Financial Institution can simply turn down the business. Where there is an assignment the Financial Institution has no choice in the matter and must therefore take reasonable steps to obtain the necessary information from the new owner of the policy. If the new owner fails to provide a valid self- certification, despite the reasonable efforts of the Financial Institution to obtain one, the account would become reportable.

## 14.7 Group Cash Value Insurance Contracts or Group Annuity Contracts

A Reporting Qatari Financial Institution can treat an account that is a group Cash Value Insurance Contract, and that meets the requirements set out below, as a non-US

account until the date on which an amount is payable to an employee/certificate holder or beneficiary, provided the Reporting Qatari Financial Institution obtains a certification from the employer that no employee/certificate holder (account holder) is a US Person.



A Reporting Qatari Financial Institution is not required to review all the account information collected by the employer to determine if an account holder's status is unreliable or incorrect.

The requirements are that:

- The group Cash Value Insurance Contract or group Annuity Contract is issued to an employer and covers twenty-five or more employees/certificate holders; and
- The employee/certificate holders are entitled to receive any contract value; and to name beneficiaries for the benefit payable upon the employee's death; and
- The aggregate amount payable to any employee/certificate holder or beneficiary does not exceed \$1,000,000.

### 14.8 Accounts held by beneficiaries of a Cash Value Insurance Contract that is a Life Insurance Contract

A Reporting Qatari Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract (that is a Life Insurance Contract) receiving a death benefit is a non-US Person and may treat such Financial Account as a non-US account unless the Reporting Qatari Financial Institution has actual knowledge, or reason to know, that the beneficiary is a US Person.

A Reporting Qatari Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract is a US Person if the information collected by the Reporting Qatari Financial Institution associated with the beneficiary contains US indicia. If a Reporting Qatari Financial Institution has actual knowledge, or reason to know, that the beneficiary is a US Person, the Reporting Qatari Financial Institution must treat the account as a US Reportable Account unless curing documentation is obtained.

### 14.9 Third Party Service Providers

A Reporting Qatari Financial Institution can rely on a third party service provider to fulfil its obligations under the IGA, but the obligations remain the responsibility of the Reporting Qatari Financial Institution. Therefore, any failure will be seen as a failure on the part of the Reporting Qatari Financial Institution.



**Example 1** - A Reporting Qatari Financial Institution may use a third party such as a business process outsourcing provider to fulfil its due diligence requirements or a fund may use a transfer agent, a Fund

Administrator (FA) or any other person to fulfil its due diligence requirements. However, in the event of any irregularities or failure to meet the IGA requirements, the Reporting Qatari Financial Institution will be held accountable.

### 14.10 Dormant Accounts

A Reporting Qatari Financial Institution may apply its existing normal operating procedures under QCB regulations, to classify an account as dormant. Where normal operating procedures are not applicable, then the Reporting Qatari Financial Institution may classify an account as dormant for the purposes of the Agreement where:

- There has been no activity on the account in the past three years; and
- The account holder has not contacted the Financial Institution regarding that account or any other account in the past six years; and
- The account is not linked to an active account belonging to the same account holder.

The Reporting Qatari Financial Institution should classify the account based upon existing documentation it already has in its possession for the account holder. Where this review determines that the dormant account is reportable, then the Reporting Qatari Financial Institution should make the appropriate report notwithstanding that there has been no contact with the account holder.

Where the Reporting Qatari Financial Institution has closed the account and transferred the customer's account balances to a pooled 'unclaimed balances account', maintained by the bank, there will be no customer account to report.

**An account will no longer be dormant or considered to be 'reactivated' where:**

- Under normal operating procedures the account is not considered dormant; or
- The account holder contacts the Reporting Qatari Financial Institution in relation to that account or any other account held by the account holder with that Financial Institution including a former account holder whose account balances have been transferred to an unclaimed balances account; or
- The account holder initiates a transaction with respect to the dormant account or other any other account held by the account holder with that Financial Institution.

Where the Reporting Qatari Financial Institution has closed the account and there is no customer account to report, 'reactivation' will be treated as the opening of a New Account. The Reporting Qatari Financial Institution would then have to establish the account holders' status as if the account were any other type of New Account (see Chapter 7 Due diligence (New Individual Accounts) and Chapter 9 Due Diligence (New Entity Accounts)).

## 14.11 Dormant Funds

When a fund is closed but there remain residual debtors and recovery actions are being pursued, the fund will be not an Investment Entity for the purposes of this Agreement.

## 14.12 Rollovers

Where some or all of the proceeds of a maturing fixed term product are rolled over, automatically or with the account holder's interaction, into a new fixed term product this shall not be deemed to be the creation of a New Account.

## 14.13 Electronic money issuers (E-money)

The following table details some types of E-Money formats and provides guidance as to whether these fall within the definition of a Financial Account under FATCA:

Product	'Financial Account' Under FATCA?	Comments
<b>E-voucher</b>	No	None
<b>Pay card</b>	Yes	Where cash is retained in credit, this causes the arrangement to fall within scope of financial account. This is a depository account, and could only benefit from an exemption if the manufacturing FFI meets the qualified credit card issuers exemption (see Section 15.A.11.5).
<b>Prepaid credit card</b>	Yes	Where cash is retained in credit, this causes the arrangement to fall within scope of financial account. This is a depository account, and could only benefit from an exemption if the manufacturing FFI meets the qualified credit card issuers exemption (see Section 15.A.11.5).
<b>«Merchant services» account</b>		If cash is retained within a merchant «account» then this is not a depository account, but may be a custodial account. If merchant services payments simply flow through systems but are not retained in an account, such payments would not be financial accounts. If in scope, the only comparable exemption in the US legislation is «escrow account» exemption, but these are not «escrow» accounts.

In addition to the above, any account that would otherwise fall within the definition of a financial account (depository, investment, custodial, insurance) shall not fail to qualify as a financial account just because it is maintained in an e-Money format. For example, an online depository account (sometimes known as an 'e-wallet') is treated the same way as a traditional depository account.

### 14.14 Document sharing

Documentation is required to support the status of each Financial Account held. However in the following circumstances documentation obtained by a Reporting Qatari Financial Institution can be used in relation to more than one Financial Account.



**Single Branch System** - A Reporting Qatari Financial Institution may rely on documentation furnished by a customer where an existing customer opens a new Financial Account with the same Reporting Qatari Financial Institution and where both accounts are treated as a single account or obligation for due diligence and reporting purposes.



**Universal Account Systems** - A Reporting Qatari Financial Institution may rely on documentation furnished by a customer for an account held at another branch location of the same Reporting Qatari Financial Institution or at a branch location of a related entity of the Financial Institution if:

- The Reporting Qatari Financial Institution treats all accounts that share documentation as a single account for due diligence and reporting purposes, and
- The Reporting Qatari Financial Institution and the other branch location or related entity are part of a universal account system that uses a customer identifier that can be used to retrieve systematically all other accounts of the customer.

In this scenario a Reporting Qatari Financial Institution must be able to produce to QCB the necessary records and documentation relevant to the status claimed.



**Shared Account Systems** - A Financial Institution may rely on documentation provided by a customer for an account held at another branch location of the same Financial Institution, or at a branch location of a member of the related entity group of the Financial Institution, if:

- The Financial Institution treats all accounts that share documentation as consolidated accounts, and
- The Financial Institution and the other branch location or related entity group member share an information system, electronic or otherwise, that is described below.

A shared account system must allow the Financial Institution to easily access

data about the nature of the documentation, the information contained in the documentation (including a copy of the documentation itself) and the validity status of the documentation.

If the Financial Institution becomes aware of any fact that may affect the reliability of the documentation, the information system must allow the Financial Institution to easily record this data in the system.

Additionally the Financial Institution must be able to show how and when it transmitted data regarding such facts into the information system and demonstrate that any data it has transmitted to the information system has been processed and the validity of the documentation subjected to appropriate due diligence.

A Financial Institution that opts to rely upon the status designated for the account holder in the shared account system, without obtaining and reviewing copies of the documentation supporting the status, must be able to produce upon request by QCB all documentation relevant to the status claimed.

### **14.15 Recalcitrant Accounts**

Under the US-Qatar IGA the term 'Recalcitrant Account Holder' is not defined. This is a term pre-dominantly used in the US Treasury Regulations.

Broadly under the Agreement, where an FI has identified a pre-existing account with US indicia, the account is treated as a US Reportable Account and information as per Article 2 of the Agreement (and as per Chapter 11 of these Guidance Notes) is required to be reported to the Competent Authority.

For new accounts, if the FI determines that the account holder is a Specified US Person, the account shall be treated as a US Reportable Account and information as per Article 2 of the Agreement (and as per Chapter 11 of these Guidance Notes) is required to be reported to the Competent Authority.

An account holder that would typically be treated as a Recalcitrant Account Holder under the US Treasury Regulations, would be treated as a US Reportable Account under the Agreement and would therefore be reported on an individual basis and not on a pooled basis.

