BỘ NGOẠI GIAO	CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM Độc lập - Tự do - Hạnh phúc
Số: 44/2016/TB-LPQT	*Hà Nội, ngày 07 tháng 7 năm 2016*

THÔNG BÁO
Về việc điều ước quốc tế có hiệu lực

Thực hiện quy định tại Điều 56 của Luật Điều ước quốc tế năm 2016, Bộ Ngoại giao trân trọng thông báo:

Hiệp định giữa Chính phủ nước Cộng hòa xã hội chủ nghĩa Việt Nam và Chính phủ Hợp chúng quốc Hoa Kỳ để thực hiện Đạo luật tuân thủ thuế đối với các tài khoản ở nước ngoài của Hoa Kỳ, ký tại Hà Nội ngày 01 tháng 4 năm 2016, có hiệu lực kể từ ngày 07 tháng 7 năm 2016.

Bộ Ngoại giao trân trọng gửi bản sao Hiệp định theo quy định tại Điều 59 của Luật nêu trên./.

TL. BỘ TRƯỞNG
KT. VỤ TRƯỞNG
VỤ LUẬT PHÁP VÀ ĐIỀU ƯỚC QUỐC TẾ
PHÓ VỤ TRƯỞNG

Nguyễn Văn Ngự

Agreement between the Government of the Socialist Republic of Viet Nam and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA

Whereas, the Government of the Socialist Republic of Viet Nam and the Government of the United States of America (each, a "Party," and together, the "Parties") desire to conclude an agreement to improve international tax compliance;

Whereas, the United States of America enacted provisions commonly known as the Foreign Account Tax Compliance Act ("FATCA"), which introduce a reporting regime for financial institutions with respect to certain accounts;

Whereas, FATCA has raised a number of issues, including that Vietnamese Financial Institutions may not be able to comply with certain aspects of FATCA due to domestic legal impediments;

Whereas, an intergovernmental approach to FATCA implementation would address legal impediments and reduce burdens for Vietnamese financial institutions;

Whereas, the Parties desire to conclude an agreement to improve international tax compliance and provide for the implementation of FATCA based on domestic reporting and automatic exchange, subject to the confidentiality and other protections provided for herein, including the provisions limiting the use of the information exchanged;

Now, therefore, the Parties have agreed as follows:

Article 1
Definitions

1. For purposes of this agreement and any annexes thereto ("Agreement"), the following terms shall have the meanings set forth below:

a) The term **"United States"** means the United States of America, including the States thereof, but does not include the U.S. Territories. Any reference to a **"State"** of the United States includes the District of Columbia.

b) The term **"U.S. Territory"** means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.

c) The term **"IRS"** means the U.S. Internal Revenue Service.

d) The term **"Viet Nam"** means the Socialist Republic of Viet Nam.

e) The term **"Partner Jurisdiction"** means a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA. The IRS shall publish a list identifying all Partner Jurisdictions.

f) The term **"Competent Authority"** means:

(1) in the case of the United States, the Secretary of the Treasury or his delegate; and

(2) in the case of Viet Nam, the Governor of the State Bank of Viet Nam or his delegate.

g) The term **"Financial Institution"** means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

h) The term **"Custodial Institution"** means any Entity that holds, as a substantial portion of its business, financial assets for the account of others. An entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the entity's gross income during the shorter of: (i) the three-year period that ends on December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.

i) The term **"Depository Institution"** means any Entity that accepts deposits in the ordinary course of a banking or similar business.

j) The term **"Investment Entity"** means any Entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:

(1) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;

(2) individual and collective portfolio management; or

(3) otherwise investing, administering, or managing funds or money on behalf of other persons.

This subparagraph 1(j) shall be interpreted in a manner consistent with similar language set forth in the definition of "financial institution" in the Financial Action Task Force Recommendations.

k) The term **"Specified Insurance Company"** means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

l) The term **"Vietnamese Financial Institution"** means (i) any Financial Institution established under the laws of Viet Nam, but excluding any branch of such Financial Institution that is located outside Viet Nam, and (ii) any

branch of a Financial Institution not established under the laws of Viet Nam, if such branch is located in Viet Nam.

m) The term **"Partner Jurisdiction Financial Institution"** means (i) any Financial Institution established in a Partner Jurisdiction, but excluding any branch of such Financial Institution that is located outside the Partner Jurisdiction, and (ii) any branch of a Financial Institution not established in the Partner Jurisdiction, if such branch is located in the Partner Jurisdiction.

n) The term **"Reporting Vietnamese Financial Institution"** means any Vietnamese Financial Institution that is not a Non-Reporting Vietnamese Financial Institution.

o) The term **"Non-Reporting Vietnamese Financial Institution"** means any Vietnamese Financial Institution, or other Entity in Viet Nam, that is described in Annex II as a Non-Reporting Vietnamese Financial Institution or that otherwise qualifies as a deemed-compliant FFI or an exempt beneficial owner under relevant U.S. Treasury Regulations.

p) The term **"Nonparticipating Financial Institution"** means a nonparticipating FFI, as that term is defined in relevant U.S. Treasury Regulations, but does not include a Vietnamese Financial Institution or other Partner Jurisdiction Financial Institution other than a Financial Institution treated as a Nonparticipating Financial Institution pursuant to subparagraph 3(b) of Article 5 of this Agreement or the corresponding provision in an agreement between the United States and a Partner Jurisdiction.

q) The term **"Financial Account"** means an account maintained by a Financial Institution, and includes:

(1) in the case of an Entity that is a Financial Institution solely because it is an Investment Entity, any equity or debt interest (other than interests that are regularly traded on an established securities market) in the Financial Institution;

(2) in the case of a Financial Institution not described in subparagraph 1(q)(1) of this Article, any equity or debt interest in the Financial Institution (other than interests that are regularly traded on an established securities market), if (i) the value of the debt or equity interest is determined, directly or indirectly, primarily by reference to assets that give rise to U.S. Source Withholdable Payments, and (ii) the class of interests was established with a purpose of avoiding reporting in accordance with this Agreement; and

(3) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a noninvestment-linked, nontransferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account that is excluded from the definition of Financial Account in Annex II.

Notwithstanding the foregoing, the term "Financial Account" does not include any account that is excluded from the definition of Financial Account in Annex II. For purposes of this Agreement, interests are "regularly traded" if there is a meaningful volume of trading with respect to the interests on an ongoing basis, and an "established securities market" means an exchange that is officially recognized and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange. For purposes of this subparagraph 1(q), an interest in a Financial Institution is not "regularly traded" and shall be treated as a Financial Account if the holder of the interest (other than a Financial Institution acting as an intermediary) is registered on the books of such Financial Institution. The preceding sentence will not apply to interests first registered on the books of such Financial Institution prior to July 1, 2014, and with respect to interests first registered on the books of such Financial Institution on or after July 1, 2014, a Financial Institution is not required to apply the preceding sentence prior to January 1, 2016.

r) The term **"Depository Account"** includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.

s) The term **"Custodial Account"** means an account (other than an Insurance Contract or Annuity Contract) for the benefit of another person that holds any financial instrument or contract held for investment (including, but not limited to, a share or stock in a corporation, a note, bond, debenture, or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a nonfinancial index, a notional principal contract, an Insurance Contract or Annuity Contract, and any option or other derivative instrument).

t) The term **"Equity Interest"** means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Specified U.S. Person shall be treated as being a beneficiary of a foreign trust if such Specified U.S. Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.

u) The term **"Insurance Contract"** means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.

v) The term **"Annuity Contract"** means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

w) The term **"Cash Value Insurance Contract"** means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value greater than $50,000.

x) The term **"Cash Value"** means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term "Cash Value" does not include an amount payable under an Insurance Contract as:

(1) a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;

(2) a refund to the policyholder of a previously paid premium under an Insurance Contract (other than under a life insurance contract) due to policy cancellation or termination, decrease in risk exposure during the effective period of the Insurance Contract, or arising from a redetermination of the premium due to correction of posting or other similar error; or

(3) a policyholder dividend based upon the underwriting experience of the contract or group involved.

y) The term **"U.S. Reportable Account"** means a Financial Account maintained by a Reporting Vietnamese Financial Institution and held by one or more Specified U.S. Persons or by a Non-U.S. Entity with one or more Controlling Persons that is a Specified U.S. Person. Notwithstanding the foregoing, an account shall not be treated as a U.S. Reportable Account if such account is not identified as a U.S. Reportable Account after application of the due diligence procedures in Annex I.

z) The term **"Account Holder"** means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of this Agreement, and such other person is treated as holding the account. For purposes of the immediately preceding sentence, the term "Financial Institution" does not include a Financial

Institution organized or incorporated in a U.S. Territory. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.

aa) The term **"U.S. Person"** means a U.S. citizen or resident individual, a partnership or corporation organized in the United States or under the laws of the United States or any State thereof, a trust if (i) a court within the United States would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, and (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the United States. This subparagraph 1(aa) shall be interpreted in accordance with the U.S. Internal Revenue Code.

bb) The term **"Specified U.S. Person"** means a U.S. 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 member of the same expanded affiliated group, as defined in section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in clause (i); (iii) the United States or any wholly owned agency or instrumentality thereof; (iv) any State of the United States, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing; (v) any organization exempt from taxation under section 501(a) of the U.S. Internal Revenue Code or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code; (vi) any bank as defined in section 581 of the U.S. Internal Revenue Code; (vii) any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code; (viii) any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64); (ix) any common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code; (x) any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. Internal Revenue Code; (xi) a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State; (xii) a broker as defined in section 6045(c) of the U.S. Internal Revenue Code; or (xiii) any tax-exempt trust under a plan that is described in section 403(b) or section 457(g) of the U.S. Internal Revenue Code.

cc) The term **"Entity"** means a legal person or a legal arrangement such as a trust.

dd) The term **"Non-U.S. Entity"** means an Entity that is not a U.S. Person.

ee) The term **"U.S. Source Withholdable Payment"** means any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such payment is from sources within the United States. Notwithstanding the foregoing, a U.S. Source Withholdable Payment does not include any payment that is not treated as a withholdable payment in relevant U.S. Treasury Regulations.

ff) An Entity is a **"Related Entity"** of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50 percent of the vote or value in an Entity. Notwithstanding the foregoing, Viet Nam may treat an Entity as not a Related Entity of another Entity if the two Entities are not members of the same expanded affiliated group as defined in section 1471(e)(2) of the U.S. Internal Revenue Code.

gg) The term **"U.S. TIN"** means a U.S. federal taxpayer identifying number.

hh) The term **"Controlling Persons"** means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Persons" shall be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

2. Any term not otherwise defined in this Agreement shall, unless the context otherwise requires or the Competent Authorities agree to a common meaning (as permitted by domestic law), have the meaning that it has at that time under the law of the Party applying this Agreement, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 2
Obligations to Obtain and Exchange Information with Respect to U.S. Reportable Accounts

1. Subject to the provisions of Article 3 of this Agreement, Viet Nam shall obtain the information specified in paragraph 2 of this Article with respect to all U.S. Reportable Accounts and shall annually exchange this information with the United States on an automatic basis.

2. The information to be obtained and exchanged with respect to each U.S. Reportable Account of each Reporting Vietnamese Financial Institution is:

a) the name, address, and U.S. TIN of each Specified U.S. Person that is an Account Holder of such account and, in the case of a Non-U.S. Entity that, after application of the due diligence procedures set forth in Annex I, is

identified as having one or more Controlling Persons that is a Specified U.S. Person, the name, address, and U.S. TIN (if any) of such entity and each such Specified U.S. Person;

b) the account number (or functional equivalent in the absence of an account number);

c) the name and identifying number of the Reporting Vietnamese Financial Institution;

d) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year, immediately before closure;

e) in the case of any Custodial Account:

(1) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and

(2) the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Vietnamese Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;

f) in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and

g) in the case of any account not described in subparagraph 2(e) or 2(f) of this Article, the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Vietnamese Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

Article 3
Time and Manner of Exchange of Information

1. For purposes of the exchange obligation in Article 2 of this Agreement, the amount and characterization of payments made with respect to a U.S. Reportable Account may be determined in accordance with the principles of the tax laws of Viet Nam.

2. For purposes of the exchange obligation in Article 2 of this Agreement, the information exchanged shall identify the currency in which each relevant amount is denominated.

3. With respect to paragraph 2 of Article 2 of this Agreement, information is to be obtained and exchanged with respect to 2015 and all subsequent years, except that:

a) the information to be obtained and exchanged with respect to 2015 is the information described in subparagraphs 2(a) through 2(g) of Article 2 of this Agreement, except for gross proceeds described in subparagraph 2(e)(2) of Article 2 of this Agreement; and

b) the information to be obtained and exchanged with respect to 2016 and subsequent years is the information described in subparagraphs 2(a) through 2(g) of Article 2 of this Agreement;

4. Notwithstanding paragraph 3 of this Article, with respect to each U.S. Reportable Account maintained by a Reporting Vietnamese Financial Institution as of the Determination Date, and subject to paragraph 2 of Article 6 of this Agreement, Viet Nam is not required to obtain and include in the exchanged information the U.S. TIN of any relevant person if such U.S. TIN is not in the records of the Reporting Vietnamese Financial Institution. In such a case, Viet Nam shall obtain and include in the exchanged information the date of birth of the relevant person, if the Reporting Vietnamese Financial Institution has such date of birth in its records.

5. Subject to paragraphs 3 and 4 of this Article, the information described in Article 2 of this Agreement shall be exchanged by the later of nine months after the end of the calendar year to which the information relates, or the next September 30th following entry into force of this Agreement.

6. The Competent Authorities of Viet Nam and the United States shall enter into an agreement or arrangement under the mutual agreement procedure provided for in Article 8 of this Agreement, which shall:

a) establish the procedures for the automatic exchange obligations described in Article 2 of this Agreement;

b) prescribe rules and procedures as may be necessary to implement Article 5 of this Agreement; and

c) establish as necessary procedures for the exchange of the information reported under subparagraph 1(b) of Article 4 of this Agreement.

7. All information exchanged shall be subject to the confidentiality and other protections provided for in Article 9 of this Agreement, including the provisions limiting the use of the information exchanged.

Article 4
Application of FATCA to Vietnamese Financial Institutions

1. **Treatment of Reporting Vietnamese Financial Institutions.** Each Reporting Vietnamese Financial Institution shall be treated as complying with, and not subject to withholding under, section 1471 of the U.S. Internal Revenue Code if Viet Nam complies with its obligations under Articles 2 and 3 of this Agreement with respect to such Reporting Vietnamese Financial Institution, and the Reporting Vietnamese Financial Institution:

a) identifies U.S. Reportable Accounts and reports annually to the Vietnamese Competent Authority the information required to be reported in paragraph 2 of Article 2 of this Agreement in the time and manner described in Article 3 of this Agreement;

b) for each of 2015 and 2016, reports annually to the Vietnamese Competent Authority the name of each Nonparticipating Financial Institution to which it has made payments and the aggregate amount of such payments;

c) complies with the applicable registration requirements on the IRS FATCA registration website;

d) to the extent that a Reporting Vietnamese Financial Institution is (i) acting as a qualified intermediary (for purposes of section 1441 of the U.S. Internal Revenue Code) that has elected to assume primary withholding responsibility under chapter 3 of subtitle A of the U.S. Internal Revenue Code, (ii) a foreign partnership that has elected to act as a withholding foreign partnership (for purposes of both sections 1441 and 1471 of the U.S. Internal Revenue Code), or (iii) a foreign trust that has elected to act as a withholding foreign trust (for purposes of both sections 1441 and 1471 of the U.S. Internal Revenue Code), withholds 30 percent of any U.S. Source Withholdable Payment to any Nonparticipating Financial Institution; and

e) in the case of a Reporting Vietnamese Financial Institution that is not described in subparagraph 1(d) of this Article and that makes a payment of, or acts as an intermediary with respect to, a U.S. Source Withholdable Payment to any Nonparticipating Financial Institution, the Reporting Vietnamese Financial Institution provides to any immediate payor of such U.S. Source Withholdable Payment the information required for withholding and reporting to occur with respect to such payment.

Notwithstanding the foregoing, a Reporting Vietnamese Financial Institution with respect to which the conditions of this paragraph 1 are not satisfied shall not be subject to withholding under section 1471 of the U.S. Internal Revenue Code unless such Reporting Vietnamese Financial Institution is treated by the IRS as a Nonparticipating Financial Institution pursuant to subparagraph 3(b) of Article 5 of this Agreement.

2. **Suspension of Rules Relating to Recalcitrant Accounts.** The United States shall not require a Reporting Vietnamese Financial Institution to withhold tax under section 1471 or 1472 of the U.S. Internal Revenue Code with respect to an account held by a recalcitrant account holder (as defined in section 1471(d)(6) of the U.S. Internal Revenue Code), or to

close such account, if the U.S. Competent Authority receives the information set forth in paragraph 2 of Article 2 of this Agreement, subject to the provisions of Article 3 of this Agreement, with respect to such account.

3. **Specific Treatment of Vietnamese Retirement Plans.** The United States shall treat as deemed-compliant FFIs or exempt beneficial owners, as appropriate, for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code, Vietnamese retirement plans described in Annex II. For this purpose, a Vietnamese retirement plan includes an Entity established or located in, and regulated by, Viet Nam, or a predetermined contractual or legal arrangement, operated to provide pension or retirement benefits or earn income for providing such benefits under the laws of Viet Nam and regulated with respect to contributions, distributions, reporting, sponsorship, and taxation.

4. **Identification and Treatment of Other Deemed-Compliant FFIs and Exempt Beneficial Owners.** The United States shall treat each Non-Reporting Vietnamese Financial Institution as a deemed-compliant FFI or as an exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code.

5. **Special Rules Regarding Related Entities and Branches That Are Nonparticipating Financial Institutions.** If a Vietnamese Financial Institution, that otherwise meets the requirements described in paragraph 1 of this Article or is described in paragraph 3 or 4 of this Article, has a Related Entity or branch that operates in a jurisdiction that prevents such Related Entity or branch from fulfilling the requirements of a participating FFI or deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code or has a Related Entity or branch that is treated as a Nonparticipating Financial Institution solely due to the expiration of the transitional rule for limited FFIs and limited branches under relevant U.S. Treasury Regulations, such Vietnamese Financial Institution shall continue to be in compliance with the terms of this Agreement and shall continue to be treated as a deemed-compliant FFI or exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code, provided that:

a) the Vietnamese Financial Institution treats each such Related Entity or branch as a separate Nonparticipating Financial Institution for purposes of all the reporting and withholding requirements of this Agreement and each such Related Entity or branch identifies itself to withholding agents as a Nonparticipating Financial Institution;

b) each such Related Entity or branch identifies its U.S. accounts and reports the information with respect to those accounts as required under section 1471 of the U.S. Internal Revenue Code to the extent permitted under the relevant laws pertaining to the Related Entity or branch; and

c) such Related Entity or branch does not specifically solicit U.S. accounts held by persons that are not resident in the jurisdiction where such Related Entity or branch is located or accounts held by Nonparticipating Financial Institutions that are not established in the jurisdiction where such Related Entity or branch is located, and such Related Entity or branch is not used by the Vietnamese Financial Institution or any other Related Entity to circumvent the obligations under this Agreement or under section 1471 of the U.S. Internal Revenue Code, as appropriate.

6. **Coordination of Timing.** Notwithstanding paragraphs 3 and 5 of Article 3 of this Agreement:

a) Viet Nam shall not be obligated to obtain and exchange information with respect to a calendar year that is prior to the calendar year with respect to which similar information is required to be reported to the IRS by participating FFIs pursuant to relevant U.S. Treasury Regulations; and

b) Viet Nam shall not be obligated to begin exchanging information prior to the date by which participating FFIs are required to report similar information to the IRS under relevant U.S. Treasury Regulations.

7. **Coordination of Definitions with U.S. Treasury Regulations.** Notwithstanding Article 1 of this Agreement and the definitions provided in the Annexes to this Agreement, in implementing this Agreement, Viet Nam may use, and may permit Vietnamese Financial Institutions to use, a definition in relevant U.S. Treasury Regulations in lieu of a corresponding definition in this Agreement, provided that such application would not frustrate the purposes of this Agreement.

Article 5
Collaboration on Compliance and Enforcement

1. **General Inquiries.** Subject to any further terms set forth in a competent authority agreement concluded pursuant to paragraph 6 of Article 3 of this Agreement, the U.S. Competent Authority may make follow-up requests to the Vietnamese Competent Authority, pursuant to which the Vietnamese Competent Authority shall obtain and provide additional information with respect to a U.S. Reportable Account, including the account statements prepared in the ordinary course of a Reporting Vietnamese Financial Institution's business that summarize the activity (including withdrawals, transfers, and closures) of the U.S. Reportable Account.

2. **Minor and Administrative Errors.** The U.S. Competent Authority shall notify the Vietnamese Competent Authority when the U.S. Competent Authority has reason to believe that administrative errors or other minor errors may have led to incorrect or incomplete information reporting or resulted in other infringements of this Agreement. The Vietnamese Competent Authority shall apply its domestic law (including applicable penalties) to obtain corrected and/or complete information or to resolve other infringements of this Agreement.

3. **Significant Non-Compliance.**

a) The U.S. Competent Authority shall notify the Vietnamese Competent Authority when the U.S. Competent Authority has determined that there is significant non-compliance with the obligations under this Agreement with respect to a Reporting Vietnamese Financial Institution. The Vietnamese Competent Authority shall apply its domestic law (including applicable penalties) to address the significant non-compliance described in the notice.

b) If such enforcement actions do not resolve the non-compliance within a period of 18 months after notification of significant non-compliance is first provided by the U.S. Competent Authority, the United States shall treat the Reporting Vietnamese Financial Institution as a Nonparticipating Financial Institution pursuant to this subparagraph 3(b).

4. **Reliance on Third Party Service Providers.** Viet Nam may allow Reporting Vietnamese Financial Institutions to use third party service providers to fulfill the obligations imposed on such Reporting Vietnamese Financial Institutions by Viet Nam, as contemplated in this Agreement, but these obligations shall remain the responsibility of the Reporting Vietnamese Financial Institutions.

5. **Prevention of Avoidance.** Viet Nam shall implement as necessary requirements to prevent Financial Institutions from adopting practices intended to circumvent the reporting required under this Agreement.

Article 6
Mutual Commitment to Continue to Enhance the Effectiveness of Information Exchange and Transparency

1. **Treatment of Passthru Payments and Gross Proceeds.** The Parties are committed to work together, along with Partner Jurisdictions, to develop a practical and effective alternative approach to achieve the policy objectives of foreign passthru payment and gross proceeds withholding that minimizes burden.

2. **Documentation of Accounts Maintained as of the Determination Date.** With respect to U.S. Reportable Accounts maintained by a Reporting Vietnamese Financial Institution as of the Determination Date, Viet Nam commits to establish, by January 1, 2017, for reporting with respect to 2017 and subsequent years, rules requiring Reporting Vietnamese Financial Institutions to obtain the U.S. TIN of each Specified U.S. Person as required pursuant to subparagraph 2(a) of Article 2 of this Agreement.

Article 7
Consistency in the Application of FATCA to Partner Jurisdictions

1. Viet Nam shall be granted the benefit of any more favorable terms under Article 4 or Annex I of this Agreement relating to the application of FATCA to Vietnamese Financial Institutions afforded to another Partner Jurisdiction under a signed bilateral agreement pursuant to which the other Partner Jurisdiction commits to undertake the same obligations as Viet Nam described in Articles 2 and 3 of this Agreement, and subject to the same terms and conditions as described therein and in Articles 5, 6, 7, 10 and 11 of this Agreement.

2. The United States shall notify Viet Nam of any such more favorable terms, and such more favorable terms shall apply automatically under this Agreement as if such terms were specified in this Agreement and effective as of the date of signing of the agreement incorporating the more favorable terms, unless Viet Nam declines in writing the application thereof.

Article 8
Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Parties regarding the implementation, application, or interpretation of this Agreement, the Competent Authorities shall endeavor to resolve the matter by mutual agreement.

2. The Competent Authorities may adopt and implement procedures to facilitate the implementation of this Agreement.

3. The Competent Authorities may communicate with each other directly for purposes of reaching a mutual agreement under this Article.

Article 9
Confidentiality

1. The Vietnamese Competent Authority shall treat any information received from the United States pursuant to Article 5 of this Agreement as confidential and shall only disclose such information as may be necessary to carry out its obligations under this Agreement. Such information may be disclosed in connection with court proceedings related to the performance of the obligations of Viet Nam under this Agreement.

2. Information provided to the U.S. Competent Authority pursuant Articles 2 and 5 of this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) of the Government of the United States concerned with the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, U.S. federal taxes, or the oversight of such functions. Such persons or authorities shall use such information only for such purposes. Such persons may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person, entity, authority, or jurisdiction. Notwithstanding the foregoing, where Viet Nam provides prior, written consent, the information may be used for purposes permitted under the provisions of a mutual legal assistance treaty in force between the Parties that allows for the exchange of tax information.

Article 10
Consultations and Amendments

1. In case any difficulties in the implementation of this Agreement arise, either Party may, independently of the mutual agreement procedure described in paragraph 1 of Article 8 of this Agreement, request consultations to develop appropriate measures to ensure the fulfillment of this Agreement.

2. This Agreement may be amended by written mutual agreement of the Parties. Unless otherwise agreed upon, such an amendment shall enter into force through the same procedures as set forth in paragraph 1 of Article 12 of this Agreement.

Article 11
Annexes

The Annexes form an integral part of this Agreement.

Article 12
Term of Agreement

1. This Agreement shall enter into force on the date of Viet Nam's written notification to the United States that Viet Nam has completed its necessary internal procedures for entry into force of this Agreement.

2. Either Party may terminate this Agreement by giving notice of termination in writing to the other Party. Such termination shall become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination.

3. The Parties shall, prior to December 31, 2016, consult in good faith to amend this Agreement as necessary to reflect progress on the commitments set forth in Article 6 of this Agreement.

4. If this Agreement is terminated, both Parties shall remain bound by the provisions of Article 9 of this Agreement with respect to any information obtained under this Agreement.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Hanoi, in duplicate, in the English language, this 1st day of April, 2016.

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM:

Nguyễn Văn Bình

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

ANNEX I

DUE DILIGENCE OBLIGATIONS FOR IDENTIFYING AND REPORTING ON U.S. REPORTABLE ACCOUNTS AND ON PAYMENTS TO CERTAIN NONPARTICIPATING FINANCIAL INSTITUTIONS

I. **General.**

A. Viet Nam shall require that Reporting Vietnamese Financial Institutions apply the due diligence procedures contained in this Annex I to identify U.S. Reportable Accounts and accounts held by Nonparticipating Financial Institutions.

B. For purposes of the Agreement,

1. All dollar amounts are in U.S. dollars and shall be read to include the equivalent in other currencies.

2. Except as otherwise provided herein, the balance or value of an account shall be determined as of the last day of the calendar year or other appropriate reporting period.

3. Where a balance or value threshold is to be determined as of the Determination Date under this Annex I, the relevant balance or value shall be determined as of that day or the last day of the reporting period ending immediately before the Determination Date, and where a balance or value threshold is to be determined as of the last day of a calendar year under this Annex I, the relevant balance or value shall be determined as of the last day of the calendar year or other appropriate reporting period.

4. Subject to subparagraph E(1) of section II of this Annex I, an account shall be treated as a U.S. Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in this Annex I.

5. Unless otherwise provided, information with respect to a U.S. Reportable Account shall be reported annually in the calendar year following the year to which the information relates.

C. As an alternative to the procedures described in each section of this Annex I, Viet Nam may permit Reporting Vietnamese Financial Institutions to rely on the procedures described in relevant U.S. Treasury Regulations to establish whether an account is a U.S. Reportable Account or an account held by a Nonparticipating Financial Institution. Viet Nam may permit Reporting Vietnamese Financial Institutions to make such election separately for each section of this Annex I either with respect to all relevant Financial Accounts or, separately, with respect to any clearly identified group of such accounts (such as by line of business or the location of where the account is maintained).

II. **Preexisting Individual Accounts.** The following rules and procedures apply for purposes of identifying U.S. Reportable Accounts among Preexisting Accounts held by individuals ("Preexisting Individual Accounts").

A. **Accounts Not Required to Be Reviewed, Identified, or Reported.** Unless the Reporting Vietnamese Financial Institution elects otherwise, either with respect to all Preexisting Individual Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in Viet Nam provide for such an election, the following Preexisting Individual Accounts are not required to be reviewed, identified, or reported as U.S. Reportable Accounts:

1. Subject to subparagraph E(2) of this section, a Preexisting Individual Account with a balance or value that does not exceed $50,000 as of the Determination Date.

2. Subject to subparagraph E(2) of this section, a Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract with a balance or value of $250,000 or less as of the Determination Date.

3. A Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract, provided the law or regulations of Viet Nam or the United States effectively prevent the sale of such a Cash Value Insurance Contract or an Annuity Contract to U.S. residents (*e.g.*, if the relevant Financial Institution does not have the required registration under U.S. law, and the law of Viet Nam requires reporting or withholding with respect to insurance products held by residents of Viet Nam).

4. A Depository Account with a balance of $50,000 or less.

B. **Review Procedures for Preexisting Individual Accounts With a Balance or Value as of the Determination Date, that Exceeds $50,000 ($250,000 for a Cash Value Insurance Contract or Annuity Contract), But Does Not Exceed $1,000,000 ("Lower Value Accounts").**

1. **Electronic Record Search.** The Reporting Vietnamese Financial Institution must review electronically searchable data maintained by the Reporting Vietnamese Financial Institution for any of the following U.S. indicia:

a) Identification of the Account Holder as a U.S. citizen or resident;

b) Unambiguous indication of a U.S. place of birth;

c) Current U.S. mailing or residence address (including a U.S. post office box);

d) Current U.S. telephone number;

e) Standing instructions to transfer funds to an account maintained in the United States;

f) Currently effective power of attorney or signatory authority granted to a person with a U.S. address; or

g) An "in-care-of" or "hold mail" address that is the ***sole*** address the Reporting Vietnamese Financial Institution has on file for the Account Holder. In the case of a Preexisting Individual Account that is a Lower Value Account, an "in-care-of" address outside the United States or "hold mail" address shall not be treated as U.S. indicia.

2. If none of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more U.S. indicia being associated with the account, or the account becomes a High Value Account described in paragraph D of this section.

3. If any of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the electronic search, or if there is a change in circumstances that results in one or more U.S. indicia being associated with the account, then the Reporting Vietnamese Financial Institution must treat the account as a U.S. Reportable Account unless it elects to apply subparagraph B(4) of this section and one of the exceptions in such subparagraph applies with respect to that account.

4. Notwithstanding a finding of U.S. indicia under subparagraph B(1) of this section, a Reporting Vietnamese Financial Institution is not required to treat an account as a U.S. Reportable Account if:

a) Where the Account Holder information unambiguously indicates a ***U.S. place of birth***, the Reporting Vietnamese Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form);

(2) A non-U.S. passport or other government-issued identification evidencing the Account Holder's citizenship or nationality in a country other than the United States; ***and***

(3) A copy of the Account Holder's Certificate of Loss of Nationality of the United States or a reasonable explanation of:

(a) The reason the Account Holder does not have such a certificate despite relinquishing U.S. citizenship; ***or***

(b) The reason the Account Holder did not obtain U.S. citizenship at birth.

b) Where the Account Holder information contains a ***current U.S. mailing or residence address, or one or more U.S. telephone numbers that are the only telephone numbers associated with the account***, the Reporting Vietnamese Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); ***and***

(2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder's non-U.S. status.

c) Where the Account Holder information contains ***standing instructions to transfer funds to an account maintained in the United States***, the Reporting Vietnamese Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); ***and***

(2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder's non-U.S. status.

d) Where the Account Holder information contains ***a currently effective power of attorney or signatory authority granted to a person with a U.S. address, has an "in-care-of" address or "hold mail" address that is the sole address identified for the Account Holder, or has one or more U.S. telephone numbers (if a non-U.S. telephone number is also associated with the account)***, the Reporting Vietnamese Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); ***or***

(2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder's non-U.S. status.

C. **Additional Procedures Applicable to Preexisting Individual Accounts That Are Lower Value Accounts.**

1. Review of Preexisting Individual Accounts that are Lower Value Accounts for U.S. indicia must be completed within two years from the Determination Date.

2. If there is a change of circumstances with respect to a Preexisting Individual Account that is a Lower Value Account that results in one or more U.S. indicia described in subparagraph B(1) of this section being associated with the account, then the Reporting Vietnamese Financial Institution must treat the account as a U.S. Reportable Account unless subparagraph B(4) of this section applies.

3. Except for Depository Accounts described in subparagraph A(4) of this section, any Preexisting Individual Account that has been identified as a U.S. Reportable Account under this section shall be treated as a U.S. Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified U.S. Person.

D. **Enhanced Review Procedures for Preexisting Individual Accounts With a Balance or Value That Exceeds $1,000,000 as of the Determination Date, or December 31 of the year after the Determination Date, or Any Subsequent Year ("High Value Accounts").**

1. **Electronic Record Search.** The Reporting Vietnamese Financial Institution must review electronically searchable data maintained by the Reporting Vietnamese Financial Institution for any of the U.S. indicia described in subparagraph B(1) of this section.

2. **Paper Record Search.** If the Reporting Vietnamese Financial Institution's electronically searchable databases include fields for, and capture all of the information described in, subparagraph D(3) of this section, then no further paper record search is required. If the electronic databases do not capture all of this information, then with respect to a High Value Account, the Reporting Vietnamese Financial Institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Vietnamese Financial Institution within the last five years for any of the U.S. indicia described in subparagraph B(1) of this section:

a) The most recent documentary evidence collected with respect to the account;

b) The most recent account opening contract or documentation;

c) The most recent documentation obtained by the Reporting Vietnamese Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;

d) Any power of attorney or signature authority forms currently in effect; and

e) Any standing instructions to transfer funds currently in effect.

3. **Exception Where Databases Contain Sufficient Information.** A Reporting Vietnamese Financial Institution is not required to perform the paper record search described in subparagraph D(2) of this section if the Reporting Vietnamese Financial Institution's electronically searchable information includes the following:

a) The Account Holder's nationality or residence status;

b) The Account Holder's residence address and mailing address currently on file with the Reporting Vietnamese Financial Institution;

c) The Account Holder's telephone number(s) currently on file, if any, with the Reporting Vietnamese Financial Institution;

d) Whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Vietnamese Financial Institution or another Financial Institution);

e) Whether there is a current "in-care-of" address or "hold mail" address for the Account Holder; ***and***

f) Whether there is any power of attorney or signatory authority for the account.

4. **Relationship Manager Inquiry for Actual Knowledge.** In addition to the electronic and paper record searches described above, the Reporting Vietnamese Financial Institution must treat as a U.S. Reportable Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with such High Value Account) if the relationship manager has actual knowledge that the Account Holder is a Specified U.S. Person.

5. **Effect of Finding U.S. Indicia.**

a) If none of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the enhanced review of High Value Accounts described above, and the account is not identified as held by a Specified U.S. Person in subparagraph D(4) of this section, then no further action is required until there is a change in circumstances that results in one or more U.S. indicia being associated with the account.

b) If any of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the enhanced review of High Value Accounts described above, or if there is a subsequent change in circumstances that results in one or more U.S. indicia being associated with the account, then the Reporting Vietnamese Financial Institution must treat the account as a U.S. Reportable Account unless it elects to apply

subparagraph B(4) of this section and one of the exceptions in such subparagraph applies with respect to that account.

c) Except for Depository Accounts described in subparagraph A(4) of this section, any Preexisting Individual Account that has been identified as a U.S. Reportable Account under this section shall be treated as a U.S. Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified U.S. Person.

E. **Additional Procedures Applicable to High Value Accounts.**

1. If a Preexisting Individual Account is a High Value Account as of the Determination Date, the Reporting Vietnamese Financial Institution must complete the enhanced review procedures described in paragraph D of this section with respect to such account within one year from the Determination Date. If based on this review such account is identified as a U.S. Reportable Account on or before December 31 of the calendar year that includes the Determination Date, the Reporting Vietnamese Financial Institution must report the required information about such account with respect to that calendar year in the first report on the account and on an annual basis thereafter. In the case of an account identified as a U.S. Reportable Account after December 31 of the calendar year that includes the Determination Date, the Reporting Vietnamese Financial Institution is not required to report information about such account with respect to that year, but must report information about the account on an annual basis thereafter.

2. If a Preexisting Individual Account is not a High Value Account as of the Determination Date, but becomes a High Value Account as of the last day of the calendar year after the Determination Date or any subsequent calendar year, the Reporting Vietnamese Financial Institution must complete the enhanced review procedures described in paragraph D of this section with respect to such account within six months after the last day of the calendar year in which the account becomes a High Value Account. If based on this review such account is identified as a U.S. Reportable Account, the Reporting Vietnamese Financial Institution must report the required information about such account with respect to the year in which it is identified as a U.S. Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Specified U.S. Person.

3. Once a Reporting Vietnamese Financial Institution applies the enhanced review procedures described in paragraph D of this section to a High Value Account, the Reporting Vietnamese Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in subparagraph D(4) of this section, to the same High Value Account in any subsequent year.

4. If there is a change of circumstances with respect to a High Value Account that results in one or more U.S. indicia described in subparagraph B(1) of this section being associated with the account, then the Reporting Vietnamese Financial Institution must treat the account as a U.S. Reportable

Account unless it elects to apply subparagraph B(4) of this section and one of the exceptions in such subparagraph applies with respect to that account.

5. A Reporting Vietnamese Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in the United States, the Reporting Vietnamese Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply subparagraph B(4) of this section, is required to obtain the appropriate documentation from the Account Holder.

F. **Preexisting Individual Accounts That Have Been Documented for Certain Other Purposes.** A Reporting Vietnamese Financial Institution that has previously obtained documentation from an Account Holder to establish the Account Holder's status as neither a U.S. citizen nor a U.S. resident in order to meet its obligations under a qualified intermediary, withholding foreign partnership, or withholding foreign trust agreement with the IRS, or to fulfill its obligations under chapter 61 of Title 26 of the United States Code, is not required to perform the procedures described in subparagraph B(1) of this section with respect to Lower Value Accounts or subparagraphs D(1) through D(3) of this section with respect to High Value Accounts.

III. **New Individual Accounts.** The following rules and procedures apply for purposes of identifying U.S. Reportable Accounts among Financial Accounts held by individuals and opened after the Determination Date ("New Individual Accounts").

A. **Accounts Not Required to Be Reviewed, Identified, or Reported.** Unless the Reporting Vietnamese Financial Institution elects otherwise, either with respect to all New Individual Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in Viet Nam provide for such an election, the following New Individual Accounts are not required to be reviewed, identified, or reported as U.S. Reportable Accounts:

1. A Depository Account unless the account balance exceeds $50,000 at the end of any calendar year or other appropriate reporting period.

2. A Cash Value Insurance Contract unless the Cash Value exceeds $50,000 at the end of any calendar year or other appropriate reporting period.

B. **Other New Individual Accounts.** With respect to New Individual Accounts not described in paragraph A of this section, upon account opening (or within 90 days after the end of the calendar year in which the account ceases to be described in paragraph A of this section), the Reporting Vietnamese Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Vietnamese Financial Institution to determine whether the Account Holder is resident in the United States for tax purposes (for this purpose, a U.S. citizen is considered to be resident in the United States for tax purposes, even if the Account Holder is also a tax resident of another jurisdiction) and confirm the reasonableness of such self-certification based on the information obtained by the

Reporting Vietnamese Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

1. If the self-certification establishes that the Account Holder is resident in the United States for tax purposes, the Reporting Vietnamese Financial Institution must treat the account as a U.S. Reportable Account and obtain a self-certification that includes the Account Holder's U.S. TIN (which may be an IRS Form W-9 or other similar agreed form).

2. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Vietnamese Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Vietnamese Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes whether the Account Holder is a U.S. citizen or resident for U.S. tax purposes. If the Reporting Vietnamese Financial Institution is unable to obtain a valid self-certification, the Reporting Vietnamese Financial Institution must treat the account as a U.S. Reportable Account.

IV. **Preexisting Entity Accounts.** The following rules and procedures apply for purposes of identifying U.S. Reportable Accounts and accounts held by Nonparticipating Financial Institutions among Preexisting Accounts held by Entities ("Preexisting Entity Accounts").

A. **Entity Accounts Not Required to Be Reviewed, Identified or Reported.** Unless the Reporting Vietnamese Financial Institution elects otherwise, either with respect to all Preexisting Entity Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in Viet Nam provide for such an election, a Preexisting Entity Account with an account balance or value that does not exceed $250,000 as of the Determination Date, is not required to be reviewed, identified, or reported as a U.S. Reportable Account until the account balance or value exceeds $1,000,000.

B. **Entity Accounts Subject to Review.** A Preexisting Entity Account that has an account balance or value that exceeds $250,000 as of the Determination Date, and a Preexisting Entity Account that does not exceed $250,000 as of the Determination Date but the account balance or value of which exceeds $1,000,000 as of the last day of the calendar year after the Determination Date or any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D of this section.

C. **Entity Accounts With Respect to Which Reporting Is Required.** With respect to Preexisting Entity Accounts described in paragraph B of this section, only accounts that are held by one or more Entities that are Specified U.S. Persons, or by Passive NFFEs with one or more Controlling Persons who are U.S. citizens or residents, shall be treated as U.S. Reportable Accounts. In addition, accounts held by Nonparticipating Financial Institutions shall be treated as accounts for which aggregate payments as described in subparagraph 1(b) of Article 4 of the Agreement are reported to the Vietnamese Competent Authority.

D. **Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required.** For Preexisting Entity Accounts described in paragraph B of this section, the Reporting Vietnamese Financial Institution must apply the following review procedures to determine whether the account is held by one or more Specified U.S. Persons, by Passive NFFEs with one or more Controlling Persons who are U.S. citizens or residents, or by Nonparticipating Financial Institutions:

1. **Determine Whether the Entity Is a Specified U.S. Person.**

a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is a U.S. Person. For this purpose, information indicating that the Account Holder is a U.S. Person includes a U.S. place of incorporation or organization, or a U.S. address.

b) If the information indicates that the Account Holder is a U.S. Person, the Reporting Vietnamese Financial Institution must treat the account as a U.S. Reportable Account unless it obtains a self-certification from the Account Holder (which may be on an IRS Form W-8 or W-9, or a similar agreed form), or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Specified U.S. Person.

2. **Determine Whether a Non-U.S. Entity Is a Financial Institution.**

a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is a Financial Institution.

b) If the information indicates that the Account Holder is a Financial Institution, or the Reporting Vietnamese Financial Institution verifies the Account Holder's Global Intermediary Identification Number on the published IRS FFI list, then the account is not a U.S. Reportable Account.

3. **Determine Whether a Financial Institution Is a Nonparticipating Financial Institution Payments to Which Are Subject to Aggregate Reporting Under Subparagraph 1(b) of Article 4 of the Agreement.**

a) Subject to subparagraph D(3)(b) of this section, a Reporting Vietnamese Financial Institution may determine that the Account Holder is a Vietnamese Financial Institution or other Partner Jurisdiction Financial Institution if the Reporting Vietnamese Financial Institution reasonably determines that the Account Holder has such status on the basis of the Account Holder's Global Intermediary Identification Number on the published IRS FFI list or other

information that is publicly available or in the possession of the Reporting Vietnamese Financial Institution, as applicable. In such case, no further review, identification, or reporting is required with respect to the account.

b) If the Account Holder is a Vietnamese Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution, then the account is not a U.S. Reportable Account, but payments to the Account Holder must be reported as contemplated in subparagraph 1(b) of Article 4 of the Agreement.

c) If the Account Holder is not a Vietnamese Financial Institution or other Partner Jurisdiction Financial Institution, then the Reporting Vietnamese Financial Institution must treat the Account Holder as a Nonparticipating Financial Institution payments to which are reportable under subparagraph 1(b) of Article 4 of the Agreement, unless the Reporting Vietnamese Financial Institution:

(1) Obtains a self-certification (which may be on an IRS Form W-8 or similar agreed form) from the Account Holder that it is a certified deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; ***or***

(2) In the case of a participating FFI or registered deemed-compliant FFI, verifies the Account Holder's Global Intermediary Identification Number on the published IRS FFI list.

4. **Determine Whether an Account Held by an NFFE Is a U.S. Reportable Account**. With respect to an Account Holder of a Preexisting Entity Account that is not identified as either a U.S. Person or a Financial Institution, the Reporting Vietnamese Financial Institution must identify (i) whether the Account Holder has Controlling Persons, (ii) whether the Account Holder is a Passive NFFE, and (iii) whether any of the Controlling Persons of the Account Holder is a U.S. citizen or resident. In making these determinations the Reporting Vietnamese Financial Institution must follow the guidance in subparagraphs D(4)(a) through D(4)(d) of this section in the order most appropriate under the circumstances.

a) For purposes of determining the Controlling Persons of an Account Holder, a Reporting Vietnamese Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.

b) For purposes of determining whether the Account Holder is a Passive NFFE, the Reporting Vietnamese Financial Institution must obtain a self-certification (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) from the Account Holder to establish its

status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFFE.

c) For purposes of determining whether a Controlling Person of a Passive NFFE is a U.S. citizen or resident for tax purposes, a Reporting Vietnamese Financial Institution may rely on:

(1) Information collected and maintained pursuant to AML/KYC Procedures in the case of a Preexisting Entity Account held by one or more NFFEs with an account balance or value that does not exceed $1,000,000; ***or***

(2) A self-certification (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) from the Account Holder or such Controlling Person in the case of a Preexisting Entity Account held by one or more NFFEs with an account balance or value that exceeds $1,000,000.

d) If any Controlling Person of a Passive NFFE is a U.S. citizen or resident, the account shall be treated as a U.S. Reportable Account.

E. **Timing of Review and Additional Procedures Applicable to Preexisting Entity Accounts.**

1. Review of Preexisting Entity Accounts with an account balance or value that exceeds $250,000 as of the Determination Date must be completed within two years from the Determination Date.

2. Review of Preexisting Entity Accounts with an account balance or value that does not exceed $250,000 as of the Determination Date, but exceeds $1,000,000 as of December 31 of the calendar year after the Determination Date or any subsequent year, must be completed within six months after the last day of the calendar year in which the account balance or value exceeds $1,000,000.

3. If there is a change of circumstances with respect to a Preexisting Entity Account that causes the Reporting Vietnamese Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Vietnamese Financial Institution must redetermine the status of the account in accordance with the procedures set forth in paragraph D of this section.

V. **New Entity Accounts.** The following rules and procedures apply for purposes of identifying U.S. Reportable Accounts and accounts held by Nonparticipating Financial Institutions among Financial Accounts held by Entities and opened after the Determination Date ("New Entity Accounts").

A. **Entity Accounts Not Required to Be Reviewed, Identified or Reported.** Unless the Reporting Vietnamese Financial Institution elects otherwise, either with respect to all New Entity Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in Viet Nam provide for such election, a credit card account or a revolving credit facility treated as a New Entity Account is not required to be reviewed, identified, or reported, provided that the Reporting Vietnamese Financial Institution maintaining such account implements policies and procedures to prevent an account balance owed to the Account Holder that exceeds $50,000.

B. **Other New Entity Accounts.** With respect to New Entity Accounts not described in paragraph A of this section, the Reporting Vietnamese Financial Institution must determine whether the Account Holder is: (i) a Specified U.S. Person; (ii) a Vietnamese Financial Institution or other Partner Jurisdiction Financial Institution; (iii) a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; or (iv) an Active NFFE or Passive NFFE.

1. Subject to subparagraph B(2) of this section, a Reporting Vietnamese Financial Institution may determine that the Account Holder is an Active NFFE, a Vietnamese Financial Institution, or other Partner Jurisdiction Financial Institution if the Reporting Vietnamese Financial Institution reasonably determines that the Account Holder has such status on the basis of the Account Holder's Global Intermediary Identification Number or other information that is publicly available or in the possession of the Reporting Vietnamese Financial Institution, as applicable.

2. If the Account Holder is a Vietnamese Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution, then the account is not a U.S. Reportable Account, but payments to the Account Holder must be reported as contemplated in subparagraph 1(b) of Article 4 of the Agreement.

3. In all other cases, a Reporting Vietnamese Financial Institution must obtain a self-certification from the Account Holder to establish the Account Holder's status. Based on the self-certification, the following rules apply:

a) If the Account Holder is ***a Specified U.S. Person***, the Reporting Vietnamese Financial Institution must treat the account as a U.S. Reportable Account.

b) If the Account Holder is ***a Passive NFFE***, the Reporting Vietnamese Financial Institution must identify the Controlling Persons as determined under AML/KYC Procedures, and must determine whether any such person is a U.S. citizen or resident on the basis of a self-certification from the Account Holder or such person. If any such person is a U.S. citizen or resident, the Reporting Vietnamese Financial Institution must treat the account as a U.S. Reportable Account.

c) If the Account Holder is: (i) a U.S. Person that is not a Specified U.S. Person; (ii) subject to subparagraph B(3)(d) of this section, a Vietnamese Financial Institution or other Partner Jurisdiction Financial Institution; (iii) a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; (iv) an Active NFFE; or (v) a Passive NFFE none of the Controlling Persons of which is a U.S. citizen or resident, then the account is not a U.S. Reportable Account, and no reporting is required with respect to the account.

d) If the Account Holder is a Nonparticipating Financial Institution (including a Vietnamese Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution), then the account is not a U.S. Reportable Account, but payments to the Account Holder must be reported as contemplated in subparagraph 1(b) of Article 4 of the Agreement.

VI. **Special Rules and Definitions.** The following additional rules and definitions apply in implementing the due diligence procedures described above:

A. **Reliance on Self-Certifications and Documentary Evidence.** A Reporting Vietnamese Financial Institution may not rely on a self-certification or documentary evidence if the Reporting Vietnamese Financial Institution knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable.

B. **Definitions.** The following definitions apply for purposes of this Annex I.

1. **AML/KYC Procedures.** "AML/KYC Procedures" means the customer due diligence procedures of a Reporting Vietnamese Financial Institution pursuant to the anti-money laundering or similar requirements of Viet Nam to which such Reporting Vietnamese Financial Institution is subject.

2. **NFFE.** An "NFFE" means any Non-U.S. Entity that is not an FFI as defined in relevant U.S. Treasury Regulations or is an Entity described in subparagraph B(4)(j) of this section, and also includes any Non-U.S. Entity that is established in Viet Nam or another Partner Jurisdiction and that is not a Financial Institution.

3. **Passive NFFE.** A "Passive NFFE" means any NFFE that is not (i) an Active NFFE, or (ii) a withholding foreign partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations.

4. **Active NFFE.** An "Active NFFE" means any NFFE that meets any of the following criteria:

a) Less than 50 percent of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting

period are assets that produce or are held for the production of passive income;

b) The stock of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;

c) The NFFE is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;

d) The NFFE is a government (other than the U.S. government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a U.S. Territory, an international organization, a non-U.S. central bank of issue, or an Entity wholly owned by one or more of the foregoing;

e) Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an entity shall not qualify for NFFE status if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;

f) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFFE;

g) The NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;

h) The NFFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution;

i) The NFFE is an "excepted NFFE" as described in relevant U.S. Treasury Regulations; ***or***

j) The NFFE meets all of the following requirements:

i. It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;

ii. It is exempt from income tax in its jurisdiction of residence;

iii. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

iv. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents do not permit any income or assets of the NFFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFFE has purchased; ***and***

v. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents require that, upon the NFFE's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organization, or escheat to the government of the NFFE's jurisdiction of residence or any political subdivision thereof.

5. **Preexisting Account**. A "Preexisting Account" means a Financial Account maintained by a Reporting Vietnamese Financial Institution as of the Determination Date.

6. **Determination Date**. The "Determination Date" means the date, which may be prior to entry into force of this Agreement, on which the Treasury Department determines not to apply withholding under section 1471 of the U.S. Internal Revenue Code to Vietnamese Financial Institutions. That date is: (a) June 30, 2014, in the case of (i) a jurisdiction that signed an agreement with the United States to implement FATCA or facilitate FATCA implementation on or before June 30, 2014, or (ii) a jurisdiction that the Treasury Department determined reached such an agreement in substance on or before June 30, 2014, and is included on the Treasury Department list of such jurisdictions, (b) November 30, 2014, in the case of a jurisdiction that the Treasury Department determined reached such an agreement in substance on or after July 1, 2014, and on or before

November 30, 2014, and is included on the Treasury Department list of such jurisdictions, or (c) the date of signature of such an agreement, in the case of any other jurisdiction. The Determination Date for Viet Nam is the date of signature of the Agreement.

C. **Account Balance Aggregation and Currency Translation Rules.**

1. **Aggregation of Individual Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Vietnamese Financial Institution is required to aggregate all Financial Accounts maintained by the Reporting Vietnamese Financial Institution, or by a Related Entity, but only to the extent that the Reporting Vietnamese Financial Institution's computerized systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this paragraph 1.

2. **Aggregation of Entity Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Vietnamese Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting Vietnamese Financial Institution, or by a Related Entity, but only to the extent that the Reporting Vietnamese Financial Institution's computerized systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated.

3. **Special Aggregation Rule Applicable to Relationship Managers.** For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a Financial Account is a High Value Account, a Reporting Vietnamese Financial Institution is also required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.

4. **Currency Translation Rule.** For purposes of determining the balance or value of Financial Accounts denominated in a currency other than the U.S. dollar, a Reporting Vietnamese Financial Institution must convert the U.S. dollar threshold amounts described in this Annex I into such currency using a published spot rate determined as of the last day of the calendar year preceding the year in which the Reporting Vietnamese Financial Institution is determining the balance or value.

D. **Documentary Evidence.** For purposes of this Annex I, acceptable documentary evidence includes any of the following:

1. A certificate of residence issued by an authorized government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident.

2. With respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes.

3. With respect to an Entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction (or U.S. Territory) in which it claims to be a resident or the jurisdiction (or U.S. Territory) in which the Entity was incorporated or organized.

4. With respect to a Financial Account maintained in a jurisdiction with anti-money laundering rules that have been approved by the IRS in connection with a QI agreement (as described in relevant U.S. Treasury Regulations), any of the documents, other than a Form W-8 or W-9, referenced in the jurisdiction's attachment to the QI agreement for identifying individuals or Entities.

5. Any financial statement, third-party credit report, bankruptcy filing, or U.S. Securities and Exchange Commission report.

E. **Alternative Procedures for Financial Accounts Held by Individual Beneficiaries of a Cash Value Insurance Contract.** A Reporting Vietnamese Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract receiving a death benefit is not a Specified U.S. Person and may treat such Financial Account as other than a U.S. Reportable Account unless the Reporting Vietnamese Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Specified U.S. Person. A Reporting Vietnamese Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract is a Specified U.S. Person if the information collected by the Reporting Vietnamese Financial Institution and associated with the beneficiary contains U.S. indicia as described in subparagraph (B)(1) of section II of this Annex I. If a Reporting Vietnamese Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Specified U.S. Person, the Reporting Vietnamese Financial Institution must follow the procedures in subparagraph B(3) of section II of this Annex I.

F. **Reliance on Third Parties.** Regardless of whether an election is made under paragraph C of section I of this Annex I, Viet Nam may permit Reporting Vietnamese Financial Institutions to rely on due diligence procedures performed by third parties, to the extent provided in relevant U.S. Treasury Regulations.

G. **Alternative Procedures for New Accounts Opened Prior to Entry Into Force of this Agreement.**

1. **Applicability.** If Viet Nam has provided a written notice to the United States prior to entry into force of this Agreement that, as of the Determination Date, Viet Nam lacked the legal authority to require Reporting Vietnamese Financial Institutions either: (i) to require Account Holders of New Individual Accounts to provide the self-certification specified in section III of this Annex I, or (ii) to perform all the due diligence procedures related to New Entity Accounts specified in section V of this Annex I, then Reporting Vietnamese Financial Institutions may apply the alternative procedures described in subparagraph G(2) of this section, as applicable, to such New Accounts, in lieu of the procedures otherwise required under this Annex I. The alternative procedures described in subparagraph G(2) of this section shall be available only for those New Individual Accounts or New Entity Accounts, as applicable, opened prior to the earlier of: (i) the date Viet Nam has the ability to compel Reporting Vietnamese Financial Institutions to comply with the due diligence procedures described in section III or section V of this Annex I, as applicable, which date Viet Nam shall inform the United States of in writing by the date of entry into force of this Agreement, or (ii) the date of entry into force of this Agreement. For all other New Accounts, Reporting Vietnamese Financial Institutions must apply the due diligence procedures described in section III or section V of this Annex I, as applicable, to determine if the account is a U.S. Reportable Account or an account held by a Nonparticipating Financial Institution.

2. **Alternative Procedures.**

a) Within one year after the date of entry into force of this Agreement, Reporting Vietnamese Financial Institutions must: (i) with respect to a New Individual Account described in subparagraph G(1) of this section, request the self-certification specified in section III of this Annex I and confirm the reasonableness of such self-certification consistent with the procedures described in section III of this Annex I, and (ii) with respect to a New Entity Account described in subparagraph G(1) of this section, perform the due diligence procedures specified in section V of this Annex I and request information as necessary to document the account, including any self-certification, required by section V of this Annex I.

b) Viet Nam must report on any New Account that is identified pursuant to subparagraph G(2)(a) of this section as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, by the date that is the later of: (i) September 30 next following the date that the account is identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, or (ii) 90 days after the account is identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable. The information required to be reported with respect to such a New Account is any

information that would have been reportable under this Agreement if the New Account had been identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, as of the date the account was opened.

c) By the date that is one year after the date of entry into force of this Agreement, Reporting Vietnamese Financial Institutions must close any New Account described in subparagraph G(1) of this section for which it was unable to collect the required self-certification or other documentation pursuant to the procedures described in subparagraph G(2)(a) of this section. In addition, by the date that is one year after the date of entry into force of this Agreement, Reporting Vietnamese Financial Institutions must: (i) with respect to such closed accounts that prior to such closure were New Individual Accounts (without regard to whether such accounts were High Value Accounts), perform the due diligence procedures specified in paragraph D of section II of this Annex I, or (ii) with respect to such closed accounts that prior to such closure were New Entity Accounts, perform the due diligence procedures specified in section IV of this Annex I.

d) Viet Nam must report on any closed account that is identified pursuant to subparagraph G(2)(c) of this section as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, by the date that is the later of: (i) September 30 next following the date that the account is identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, or (ii) 90 days after the account is identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable. The information required to be reported for such a closed account is any information that would have been reportable under this Agreement if the account had been identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, as of the date the account was opened.

ANNEX II

The following Entities shall be treated as exempt beneficial owners or deemed-compliant FFIs, as the case may be, and the following accounts are excluded from the definition of Financial Accounts.

This Annex II may be modified by a mutual written decision entered into between the Competent Authorities of Viet Nam and the United States: (1) to include additional Entities and accounts that present a low risk of being used by U.S. Persons to evade U.S. tax and that have similar characteristics to the Entities and accounts described in this Annex II as of the date of signature of the Agreement; or (2) to remove Entities and accounts that, due to changes in circumstances, no longer present a low risk of being used by U.S. Persons to evade U.S. tax. Any such addition or removal shall be effective on the date of signature of the mutual decision, unless otherwise provided therein. Procedures for reaching such a mutual decision may be included in the mutual agreement or arrangement described in paragraph 6 of Article 3 of the Agreement.

I. **Exempt Beneficial Owners other than Funds.** The following Entities shall be treated as Non-Reporting Vietnamese Financial Institutions and as exempt beneficial owners for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code, ***other than*** with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution.

A. **Governmental Entity.** The government of Viet Nam, any political subdivision of Viet Nam (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of Viet Nam or any one or more of the foregoing (each, a "Vietnamese Governmental Entity"). This category is comprised of the integral parts, controlled entities, and political subdivisions of Viet Nam.

1. An integral part of Viet Nam means any person, organization, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of Viet Nam. The net earnings of the governing authority must be credited to its own account or to other accounts of Viet Nam, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.

2. A controlled entity means an Entity that is separate in form from Viet Nam or that otherwise constitutes a separate juridical entity, provided that:

a) The Entity is wholly owned and controlled by one or more Vietnamese Governmental Entities directly or through one or more controlled entities;

b) The Entity's net earnings are credited to its own account or to the accounts of one or more Vietnamese Governmental Entities, with no portion of its income inuring to the benefit of any private person; and

c) The Entity's assets vest in one or more Vietnamese Governmental Entities upon dissolution.

3. Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental program, and the program activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.

B. **International Organization.** Any international organization or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organization (including a supranational organization) (1) that is comprised primarily of non-U.S. governments; (2) that has in effect a headquarters agreement with Viet Nam; and (3) the income of which does not inure to the benefit of private persons.

C. **Central Bank.** An institution that is by law or government sanction the principal authority, other than the government of Viet Nam itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of Viet Nam, whether or not owned in whole or in part by Viet Nam.

II. **Funds that Qualify as Exempt Beneficial Owners.** The following Entities shall be treated as Non-Reporting Vietnamese Financial Institutions and as exempt beneficial owners for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code.

A. **Broad Participation Retirement Fund.** A fund established in Viet Nam to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund:

1. Does not have a single beneficiary with a right to more than five percent of the fund's assets;

2. Is subject to government regulation and provides information reporting to the tax authorities in Viet Nam; and

3. Satisfies at least one of the following requirements:

a) The fund is generally exempt from tax in Viet Nam on investment income under the laws of Viet Nam due to its status as a retirement or pension plan;

b) The fund receives at least 50 percent of its total contributions (other than transfers of assets from other plans described in paragraphs A through C of this section or from retirement and pension accounts described in subparagraph A(1) of section V of this Annex II) from the sponsoring employers;

c) Distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in paragraphs A through C of this section or retirement and pension accounts described in subparagraph A(1) of section V of this Annex II), or penalties apply to distributions or withdrawals made before such specified events; or

d) Contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed $50,000 annually, applying the rules set forth in Annex I for account aggregation and currency translation.

B. **Narrow Participation Retirement Fund.** A fund established in Viet Nam to provide retirement, disability, or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that:

1. The fund has fewer than 50 participants;

2. The fund is sponsored by one or more employers that are not Investment Entities or Passive NFFEs;

3. The employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in subparagraph A(1) of section V of this Annex II) are limited by reference to earned income and compensation of the employee, respectively;

4. Participants that are not residents of Viet Nam are not entitled to more than 20 percent of the fund's assets; and

5. The fund is subject to government regulation and provides information reporting to the tax authorities in Viet Nam.

C. **Pension Fund of an Exempt Beneficial Owner.** A fund established in Viet Nam by an exempt beneficial owner to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the exempt beneficial owner (or persons designated by such employees), or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the exempt beneficial owner.

D. **Investment Entity Wholly Owned by Exempt Beneficial Owners.** An Entity that is a Vietnamese Financial Institution solely because it is an Investment Entity, provided that each direct holder of an Equity Interest in the Entity is an exempt beneficial owner, and each direct holder of a debt interest in such Entity is either a Depository Institution (with respect to a loan made to such Entity) or an exempt beneficial owner.

III. **Small or Limited Scope Financial Institutions that Qualify as Deemed-Compliant FFIs.** The following Financial Institutions are Non-Reporting Vietnamese Financial Institutions that shall be treated as deemed-compliant FFIs for purposes of section 1471 of the U.S. Internal Revenue Code.

A. **Financial Institution with a Local Client Base.** A Financial Institution satisfying the following requirements:

1. The Financial Institution must be licensed and regulated as a financial institution under the laws of Viet Nam;

2. The Financial Institution must have no fixed place of business outside of Viet Nam. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the Financial Institution performs solely administrative support functions;

3. The Financial Institution must not solicit customers or Account Holders outside Viet Nam. For this purpose, a Financial Institution shall not be considered to have solicited customers or Account Holders outside Viet Nam merely because the Financial Institution (a) operates a website, provided that the website does not specifically indicate that the Financial Institution provides Financial Accounts or services to nonresidents, and does not otherwise target or solicit U.S. customers or Account Holders, or (b) advertises in print media or on a radio or television station that is distributed or aired primarily within Viet Nam but is also incidentally distributed or aired in other countries, provided that the advertisement does not specifically indicate that the Financial Institution provides Financial Accounts or services to nonresidents, and does not otherwise target or solicit U.S. customers or Account Holders;

4. The Financial Institution must be required under the laws of Viet Nam to identify resident Account Holders for purposes of either information reporting or withholding of tax with respect to Financial Accounts held by residents or for purposes of satisfying Viet Nam's AML due diligence requirements;

5. At least 98 percent of the Financial Accounts by value maintained by the Financial Institution must be held by residents (including residents that are Entities) of Viet Nam ;

6. Beginning on or before the Determination Date, the Financial Institution must have policies and procedures, consistent with those set forth in Annex I, to prevent the Financial Institution from providing a Financial Account to any Nonparticipating

Financial Institution and to monitor whether the Financial Institution opens or maintains a Financial Account for any Specified U.S. Person who is not a resident of Viet Nam (including a U.S. Person that was a resident of Viet Nam when the Financial Account was opened but subsequently ceases to be a resident of Viet Nam) or any Passive NFFE with Controlling Persons who are U.S. residents or U.S. citizens who are not residents of Viet Nam;

7. Such policies and procedures must provide that if any Financial Account held by a Specified U.S. Person who is not a resident of Viet Nam or by a Passive NFFE with Controlling Persons who are U.S. residents or U.S. citizens who are not residents of Viet Nam is identified, the Financial Institution must report such Financial Account as would be required if the Financial Institution were a Reporting Vietnamese Financial Institution (including by following the applicable registration requirements on the IRS FATCA registration website) or close such Financial Account;

8. With respect to a Preexisting Account held by an individual who is not a resident of Viet Nam or by an Entity, the Financial Institution must review those Preexisting Accounts in accordance with the procedures set forth in Annex I applicable to Preexisting Accounts to identify any U.S. Reportable Account or Financial Account held by a Nonparticipating Financial Institution, and must report such Financial Account as would be required if the Financial Institution were a Reporting Vietnamese Financial Institution (including by following the applicable registration requirements on the IRS FATCA registration website) or close such Financial Account;

9. Each Related Entity of the Financial Institution that is a Financial Institution must be incorporated or organized in Viet Nam and, with the exception of any Related Entity that is a retirement fund described in paragraphs A through C of section II of this Annex II, satisfy the requirements set forth in this paragraph A; and

10. The Financial Institution must not have policies or practices that discriminate against opening or maintaining Financial Accounts for individuals who are Specified U.S. Persons and residents of Viet Nam.

B. **Local Bank.** A Financial Institution satisfying the following requirements:

1. The Financial Institution operates solely as (and is licensed and regulated under the laws of Viet Nam as) (a) a bank or (b) a credit union or similar cooperative credit organization that is operated without profit;

2. The Financial Institution's business consists primarily of receiving deposits from and making loans to, with respect to a bank, unrelated retail customers and, with respect to a credit union or similar cooperative credit organization, members, provided that no member has a greater than five percent interest in such credit union or cooperative credit organization;

3. The Financial Institution satisfies the requirements set forth in subparagraphs A(2) and A(3) of this section, provided that, in addition to the limitations on the website described in subparagraph A(3) of this section, the website does not permit the opening of a Financial Account;

4. The Financial Institution does not have more than $175 million in assets on its balance sheet, and the Financial Institution and any Related Entities, taken together, do not have more than $500 million in total assets on their consolidated or combined balance sheets; and

5. Any Related Entity must be incorporated or organized in Viet Nam, and any Related Entity that is a Financial Institution, with the exception of any Related Entity that is a retirement fund described in paragraphs A through C of section II of this Annex II or a Financial Institution with only low-value accounts described in paragraph C of this section, must satisfy the requirements set forth in this paragraph B.

C. **Financial Institution with Only Low-Value Accounts.** A Vietnamese Financial Institution satisfying the following requirements:

1. The Financial Institution is not an Investment Entity;

2. No Financial Account maintained by the Financial Institution or any Related Entity has a balance or value in excess of $50,000, applying the rules set forth in Annex I for account aggregation and currency translation; and

3. The Financial Institution does not have more than $50 million in assets on its balance sheet, and the Financial Institution and any Related Entities, taken together, do not have more than $50 million in total assets on their consolidated or combined balance sheets.

D. **Qualified Credit Card Issuer.** A Vietnamese Financial Institution satisfying the following requirements:

1. The Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and

2. Beginning on or before the Determination Date, the Financial Institution implements policies and procedures to either prevent a customer deposit in excess of $50,000, or to ensure that any customer deposit in excess of $50,000, in each case applying the rules set forth in Annex I for account aggregation and currency translation, is refunded to the customer within 60 days. For this purpose, a customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

IV. **Investment Entities that Qualify as Deemed-Compliant FFIs and Other Special Rules.** The Financial Institutions described in paragraphs A through E of this section are Non-Reporting Vietnamese Financial Institutions that shall be treated as deemed-compliant FFIs for purposes of section 1471 of the U.S. Internal Revenue Code. In addition, paragraph F of this section provides special rules applicable to an Investment Entity.

A. **Trustee-Documented Trust.** A trust established under the laws of Viet Nam to the extent that the trustee of the trust is a Reporting U.S. Financial Institution, Reporting Model 1 FFI, or Participating FFI and the trustee reports all information required to be reported pursuant to the Agreement as would be required if the trust were a Reporting Vietnamese Financial Institution (including by following the applicable registration requirements on the IRS FATCA registration website).

B. **Sponsored Investment Entity and Controlled Foreign Corporation.** A Financial Institution described in subparagraph B(1) or B(2) of this section having a sponsoring entity that complies with the requirements of subparagraph B(3) of this section.

1. A Financial Institution is a sponsored investment entity if (a) it is an Investment Entity established in Viet Nam that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations; and (b) an Entity has agreed with the Financial Institution to act as a sponsoring entity for the Financial Institution.

2. A Financial Institution is a sponsored controlled foreign corporation if (a) the Financial Institution is a controlled foreign corporation[1] organized under the laws of Viet Nam that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations; (b) the Financial Institution is wholly owned, directly or indirectly, by a Reporting U.S. Financial Institution that agrees to act, or requires an affiliate of the Financial Institution to act, as a sponsoring entity for the Financial Institution; and (c) the Financial Institution shares a common electronic account system with the sponsoring entity that enables the sponsoring entity to identify all Account Holders and payees of the Financial Institution and to access all account and customer information maintained by the Financial Institution including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to the Account Holder or payee.

[1] A "controlled foreign corporation" means any foreign corporation if more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, or the total value of the stock of such corporation, is owned, or is considered as owned, by "United States shareholders" on any day during the taxable year of such foreign corporation. The term a "United States shareholder" means, with respect to any foreign corporation, a United States person who owns, or is considered as owning, 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.

3. The sponsoring entity complies with the following requirements:

   a) The sponsoring entity is authorized to act on behalf of the Financial Institution (such as a fund manager, trustee, corporate director, or managing partner) to fulfill applicable registration requirements on the IRS FATCA registration website;

   b) The sponsoring entity has registered as a sponsoring entity with the IRS on the IRS FATCA registration website;

   c) If the sponsoring entity identifies any U.S. Reportable Accounts with respect to the Financial Institution, the sponsoring entity registers the Financial Institution pursuant to applicable registration requirements on the IRS FATCA registration website on or before the later of December 31, 2016 and the date that is 90 days after such a U.S. Reportable Account is first identified;

   d) The sponsoring entity agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting Vietnamese Financial Institution;

   e) The sponsoring entity identifies the Financial Institution and includes the identifying number of the Financial Institution (obtained by following applicable registration requirements on the IRS FATCA registration website) in all reporting completed on the Financial Institution's behalf; and

   f) The sponsoring entity has not had its status as a sponsor revoked.

C. **Sponsored, Closely Held Investment Vehicle.** A Vietnamese Financial Institution satisfying the following requirements:

1. The Financial Institution is a Financial Institution solely because it is an Investment Entity and is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations;

2. The sponsoring entity is a Reporting U.S. Financial Institution, Reporting Model 1 FFI, or Participating FFI, is authorized to act on behalf of the Financial Institution (such as a professional manager, trustee, or managing partner), and agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting Vietnamese Financial Institution;

3. The Financial Institution does not hold itself out as an investment vehicle for unrelated parties;

4. Twenty or fewer individuals own all of the debt interests and Equity Interests in the Financial Institution (disregarding debt interests owned by Participating FFIs and deemed-compliant FFIs and Equity Interests owned by an Entity if that Entity owns 100 percent of the Equity Interests in the Financial Institution and is itself a sponsored Financial Institution described in this paragraph C); and

5. The sponsoring entity complies with the following requirements:

   a) The sponsoring entity has registered as a sponsoring entity with the IRS on the IRS FATCA registration website;

   b) The sponsoring entity agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting Vietnamese Financial Institution and retains documentation collected with respect to the Financial Institution for a period of six years;

   c) The sponsoring entity identifies the Financial Institution in all reporting completed on the Financial Institution's behalf; and

   d) The sponsoring entity has not had its status as a sponsor revoked.

D. **Investment Advisors and Investment Managers.** An Investment Entity established in Viet Nam that is a Financial Institution solely because it (1) renders investment advice to, and acts on behalf of, or (2) manages portfolios for, and acts on behalf of, a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a Financial Institution other than a Nonparticipating Financial Institution.

E. **Collective Investment Vehicle.** An Investment Entity established in Viet Nam that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle (including debt interests in excess of $50,000) are held by or through one or more exempt beneficial owners, Active NFFEs described in subparagraph B(4) of section VI of Annex I, U.S. Persons that are not Specified U.S. Persons, or Financial Institutions that are not Nonparticipating Financial Institutions.

F. **Special Rules.** The following rules apply to an Investment Entity:

1. With respect to interests in an Investment Entity that is a collective investment vehicle described in paragraph E of this section, the reporting obligations of any Investment Entity (other than a Financial Institution through which interests in the collective investment vehicle are held) shall be deemed fulfilled.

2. With respect to interests in:

   a) An Investment Entity established in a Partner Jurisdiction that is regulated as a collective investment vehicle, all of the interests in which (including debt interests

in excess of $50,000) are held by or through one or more exempt beneficial owners, Active NFFEs described in subparagraph B(4) of section VI of Annex I, U.S. Persons that are not Specified U.S. Persons, or Financial Institutions that are not Nonparticipating Financial Institutions; or

b) An Investment Entity that is a qualified collective investment vehicle under relevant U.S. Treasury Regulations;

the reporting obligations of any Investment Entity that is a Vietnamese Financial Institution (other than a Financial Institution through which interests in the collective investment vehicle are held) shall be deemed fulfilled.

3. With respect to interests in an Investment Entity established in Viet Nam that is not described in paragraph E or subparagraph F(2) of this section, consistent with paragraph 4 of Article 5 of the Agreement, the reporting obligations of all other Investment Entities with respect to such interests shall be deemed fulfilled if the information required to be reported by the first-mentioned Investment Entity pursuant to the Agreement with respect to such interests is reported by such Investment Entity or another person.

V. **Accounts Excluded from Financial Accounts.** The following accounts are excluded from the definition of Financial Accounts and therefore shall not be treated as U.S. Reportable Accounts.

A. **Certain Savings Accounts.**

1. Retirement and Pension Account. A retirement or pension account maintained in Viet Nam that satisfies the following requirements under the laws of Viet Nam.

a) The account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);

b) The account is tax-favored (*i.e.*, contributions to the account that would otherwise be subject to tax under the laws of Viet Nam are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);

c) Annual information reporting is required to the tax authorities in Viet Nam with respect to the account;

d) Withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and

e) Either (i) annual contributions are limited to $50,000 or less, or (ii) there is a maximum lifetime contribution limit to the account of $1,000,000 or less, in each

case applying the rules set forth in Annex I for account aggregation and currency translation.

2. Non-Retirement Savings Accounts. An account maintained in Viet Nam (other than an insurance or Annuity Contract) that satisfies the following requirements under the laws of Viet Nam.

   a) The account is subject to regulation as a savings vehicle for purposes other than for retirement;

   b) The account is tax-favored (*i.e.*, contributions to the account that would otherwise be subject to tax under the laws of Viet Nam are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);

   c) Withdrawals are conditioned on meeting specific criteria related to the purpose of the savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and

   d) Annual contributions are limited to $50,000 or less, applying the rules set forth in Annex I for account aggregation and currency translation.

B. **Certain Term Life Insurance Contracts.** A life insurance contract maintained in Viet Nam with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:

   1. Periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;

   2. The contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;

   3. The amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and

   4. The contract is not held by a transferee for value.

C. **Account Held By an Estate.** An account maintained in Viet Nam that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate.

D. **Escrow Accounts.** An account maintained in Viet Nam established in connection with any of the following:

1. A court order or judgment.

2. A sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:

   a) The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;

   b) The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;

   c) The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;

   d) The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and

   e) The account is not associated with a credit card account.

3. An obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.

4. An obligation of a Financial Institution solely to facilitate the payment of taxes at a later time.

E. **Partner Jurisdiction Accounts.** An account maintained in Viet Nam and excluded from the definition of Financial Account under an agreement between the United States and another Partner Jurisdiction to facilitate the implementation of FATCA, provided that such account is subject to the same requirements and oversight under the laws of such other Partner Jurisdiction as if such account were established in that Partner Jurisdiction and maintained by a Partner Jurisdiction Financial Institution in that Partner Jurisdiction.

VI. **Definitions.** The following additional definitions shall apply to the descriptions above:

A. **Reporting Model 1 FFI.** The term Reporting Model 1 FFI means a Financial Institution with respect to which a non-U.S. government or agency thereof agrees to obtain and exchange information pursuant to a Model 1 IGA, other than a Financial Institution

treated as a Nonparticipating Financial Institution under the Model 1 IGA. For purposes of this definition, the term Model 1 IGA means an arrangement between the United States or the Treasury Department and a non-U.S. government or one or more agencies thereof to implement FATCA through reporting by Financial Institutions to such non-U.S. government or agency thereof, followed by automatic exchange of such reported information with the IRS.

B. **Participating FFI.** The term Participating FFI means a Financial Institution that has agreed to comply with the requirements of an FFI Agreement, including a Financial Institution described in a Model 2 IGA that has agreed to comply with the requirements of an FFI Agreement. The term Participating FFI also includes a qualified intermediary branch of a Reporting U.S. Financial Institution, unless such branch is a Reporting Model 1 FFI. For purposes of this definition, the term FFI Agreement means an agreement that sets forth the requirements for a Financial Institution to be treated as complying with the requirements of section 1471(b) of the U.S. Internal Revenue Code. In addition, for purposes of this definition, the term Model 2 IGA means an arrangement between the United States or the Treasury Department and a non-U.S. government or one or more agencies thereof to facilitate the implementation of FATCA through reporting by Financial Institutions directly to the IRS in accordance with the requirements of an FFI Agreement, supplemented by the exchange of information between such non-U.S. government or agency thereof and the IRS.

MEMORANDUM OF UNDERSTANDING REGARDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA TO IMPROVE INTERNATIONAL TAX COMPLIANCE AND TO IMPLEMENT FATCA

At the signing today of the Agreement Between the Government of the Socialist Republic of Viet Nam and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA (hereinafter the "Agreement"), the representatives of the Socialist Republic of Viet Nam and the United States of America wish to confirm their understanding of the following:

1. In reference to subparagraph 1(r) of Article 1 (Definitions) of the Agreement, it is understood that an "investment certificate" generally means an investment product, similar to a certificate of deposit, that offers a fixed or guaranteed rate of return on the amount that is deposited.

2. It is understood that a "trust" means, in general, an arrangement created either by a will or by an inter vivos declaration whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts.

3. In reference to paragraph 2 of Article 1 (Definitions) of the Agreement, it is understood that the paragraph is intended to provide a rule of interpretation with respect to terms that are otherwise not defined in the Agreement.

4. In reference to paragraph 5 of Article 3 (Time and Manner of Exchange of Information) of the Agreement, it is understood that the first exchange of information described in Article 2 of the Agreement is the first September 30 that occurs after the Agreement enters into force.

5. In reference to paragraph 2 and subparagraph 3(a) of Article 5 (Collaboration on Compliance and Enforcement) of the Agreement, it is understood that "applicable penalties" would be applied by Viet Nam's Competent Authority only to the extent that such penalties exist under Vietnamese domestic law.

6. In reference to Annex I, it is understood that "standing instructions" means current instructions provided by the account holder, or an agent of the account holder, that will repeat without further instructions being provided by the account holder.

7. In reference to paragraph II.F of Annex I, it is understood that "qualified intermediary" has the meaning set forth in U.S. Treasury regulation section 1.1441-1T(e)(5)(ii) (or any successor regulation). In general, under these regulations a qualified intermediary is an intermediary that is a party to a

qualified intermediary withholding agreement with the Internal Revenue Service, and that meets other conditions for qualified intermediary status described in U.S. Treasury regulations and administrative guidance.

8. It is understood that: (i) Policy Banks, including Social Policy Bank and Vietnam Development Bank, are established and operated under Vietnamese Law on credit institutions to conduct an operation for non-profit making purposes, aimed at implementing the socio-economic policies of the State; (ii) People's Credit Funds, including the Co-operative Bank of Vietnam, are established and operated under Vietnamese Law on credit institutions in the form of co-operatives by legal entities, individuals and households with the main purposes of mutually assisting each other in developing production, doing business and improving living standards; and (iii) Microfinance institutions are established and operated under Vietnamese Law on credit institutions to mainly conduct a number of banking activities aimed at serving low-income individuals, households and microenterprises. The entities described in this paragraph should be treated as deemed-compliant FFIs or exempt beneficial owners, as the case may be, to the extent that they satisfy the relevant conditions described in Annex II of the Agreement.

9. It is understood that, in the case of securities registered in the Vietnam Securities Depository (VSD) as defined in Chapter 5 of the Securities Law that are held by or through one or more other Reporting Vietnamese Financial Institutions, the relevant Financial Accounts are to be treated as held by such other Reporting Vietnamese Financial Institutions, and such other Reporting Vietnamese Financial Institutions are to be responsible for any reporting required with respect to such Financial Accounts. It is also understood that in accordance with paragraph 4 of Article 5 of the Agreement, such entity acting as a Vietnam Securities Depository may report on behalf of such other Financial Institutions.

For the Government of the Socialist Republic of Viet Nam:

Nguyễn Văn Bình

[City], [date (month, day, year format)].

Hanoi, April 1st, 2016.

For the Government of the United States of America: