



Approved by the Shareholder's Resolution for  
Ben-Trei Fertilizer Company, L.L.C. as of 26.10.2017

**SANCTIONS POLICY**  
**Ben-Trei Fertilizer Company, L.L.C.**

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## I. INTRODUCTION

The United States of America (the “**US**”), the European Union (the “**EU**”), Switzerland and a number of other countries and sanctions authorities have imposed certain sanctions and export control restrictions targeting various countries, entities and individuals.

In 2014, the US, the EU and Switzerland and a number of other countries have imposed sanctions and export control restrictions targeting Ukraine/Russia.

This Sanctions Policy (the “**Policy**”) summarizes restrictive measures imposed by the US, the EU, and Switzerland (together, the “**Sanctions**”, as summarized in Annexes 1, 2 and 3 hereto) which restrict the ability of the Company to undertake any activity in specific territories or with specific persons targeted by the Sanctions. This Policy also outlines the restrictions and protective measures to be consistently followed by each Employee of the Company.

Notably, Sanctions may apply not only to transactions involving residents or companies of the US, EU, and Switzerland, but may also apply to Russian companies depending on the details of their transactions. It is important that all Employees (notwithstanding their place of living or employment) consult this Policy before engaging in any business activities.

***The scope and content of these Sanctions could be subject to further changes. This Policy contains general analysis of applicable Sanctions, and specific advice or clarifications may be required in connection to any particular transaction. Certain dealings/transactions described in this Policy would be permissible if the relevant Sanctions Authority (i.e. US Department of the Treasury’s Office of Foreign Assets Control) issues a specific license or other authorization. Any dealings or transactions subject to Sanctions or this Policy would be permissible only upon consultation with and sign off by the Group Legal and Compliance Officer.***

## 1. Definitions

- 1.1 **“Business Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business in Florida and United States of America.
- 1.2 **“Employee”, “Employees”** means officers, directors and employees of the Company.
- 1.3 **“Company’s Sanctions Obligations”** means any obligations of the Company, including, but not limited to, under any loan, facility, guarantee, suretyship or other similar agreement, with respect to Sanctions.
- 1.4 **“Legal and Compliance Officer”** means an Employee of the Company or, if appointed, committed to ensuring that the compliance policies (including the Policy) are consistently complied with throughout the Company.
- 1.5 **“OFAC”** means Office of Foreign Assets Control of the US Department of the Treasury ;
- 1.6 **“Sanctions Authority”** means:
- the United States of America; the United Nations;
  - the European Union (or the United Kingdom, Italy, Austria, Germany or France);
  - the jurisdiction of each finance party or each finance party’s facility office under any facility agreement to which the Company is a party;
  - the Hong Kong Monetary Authority; the World Bank;
  - the State Secretariat for Economic Affairs (SECO) of Switzerland;
  - the respective governmental institutions and agencies of any of the foregoing including the OFAC, the United States Department of State, the United States Department of Commerce and Her Majesty’s Treasury; or
  - and any other state, national or supranational authority or agency, as may be amended from time to time.
- 1.7 **“Sanctions Laws and Regulations”** means:
- any economic, sectoral, financial or trade sanctions laws, regulations, embargoes adopted, administered, enacted or enforced by any Sanctions Authority; or
  - any other law, enabling legislation, executive order or regulation in relation to paragraph (a) above;
- 1.8 **“Sanctions Restricted Country”** means any country which is subject to country-wide Sanctions Laws and Regulations as outlined in Annex 3 hereto;
- 1.9 **“Sanctions Restricted Person”** means a person:
- that is, or that is owned or controlled directly or indirectly by (as such terms are interpreted in the relevant Sanctions Laws and Regulations or any guidance in relation to such Sanctions Laws and Regulations), any person(s) or entity(ies) on any list (each as amended, supplemented or substituted from time to time) of restricted entities, persons or organizations (or equivalent) published by a Sanctions Authority and in effect at the relevant time, including:
    - the Sectoral Sanctions Identifications List, Specially Designated Nationals and Blocked Persons List and List of Foreign Sanctions Evaders issued by OFAC, Denied Persons List and Entities List issued by the US Department of Commerce; Debarred Parties List, the Foreign Terrorist Organisations List and Terrorist Exclusion List issued by the US Department of State;
    - the Consolidated List of Financial Sanctions Targets and Investment Ban List maintained by Her Majesty’s Treasury;
  - the European Union’s lists of restrictive measures against persons and entities issued pursuant to Council Regulation (EC) No. 881/2002 of 27 May 2002, Council Regulation (EC) No. 2580/2001 as of 27 December 2001, Council Common Position 2005/725/CFSP of 17 October 2005, Council Regulation (EU) No 269/2014 of 17 March 2014, Council Regulation (EU) No. 833/2014 of 31 July 2014 and Council Regulation (EU) No. 960/2014 of 8 September 2014;
  - the Al-Qaida Sanctions List established and maintained by the UN Security Council’s Al-Qaida Sanctions Committee; and

- any other sectoral sanctions identification list as published by a Sanctions Authority;
- that is located in or organised under the laws of, or that is the government of, any Sanctions Restricted Country or Sanctions Restricted Territory;
- that is otherwise the target or subject of Sanctions Laws and Regulations;
- that is acting or purporting to act on behalf of any of the persons listed in paragraphs (a) to (c) above; or
- with which any finance party under any facility agreement, to which the Company is a party, is prohibited from dealing or otherwise engaging in any transaction pursuant to any Sanctions Laws and Regulations.

1.10 **“Sanctions Restricted Territory”** means any territory which is subject to territory-wide Sanctions Laws and Regulations other than the Council Regulation (EU) No. 833/2014 of 31 July 2014 and Executive Order 13662 of the United States of 16 July 2014 (and the associated Sectoral Sanctions Identifications List issued by OFAC) (as amended).

## **2. Purpose**

2.1 The Policy establishes the minimum Company’s expectations of risk management and compliance with Company’s Sanctions Obligations and sets out the approach of the Company towards:

- the meaning of the Sanctions;
- guidance on how to comply with applicable Sanctions Laws and Regulations or specific provisions of any Company’s Sanctions Obligations, with respect to Sanctions;
- principles and measures as to how to mitigate the risk associated with or arising from any potential breach of Sanctions Laws and Regulations in the jurisdictions of business operations of the Company;
- consequences of failing to comply with Company’s Sanctions Obligations and the Policy;
- regular reporting on violation (or risks of such violation) of applicable Sanctions Laws and Regulations;
- regular training of Employees with regard to applicable Sanctions Laws and Regulations.

2.2 The Company is committed to comply with Sanctions Laws and Regulations in all jurisdictions of its operations, via applying and consulting in its business practice with the Policy.

## **3. Applicability**

3.1 The Company shall apply and incorporate in its business practices the Policy.

3.2 Employees shall comply with the Policy and consult in their business practices with the Policy.

## **II. SANCTIONS COMPLIANCE**

### **4. General Principles**

4.1 The Company maintains a sanctions policy in order to meet its obligations under the Company’s Sanctions Obligations or Sanctions Laws and Regulations effective in relevant jurisdictions of business operations of the Company.

4.2 The Company invests due effort in ensuring that its business and transactions do not involve a breach of any applicable Company’s Sanctions Obligations or Sanctions Laws and Regulations applicable to it.

4.3 Employees are regularly informed on the updates in the applicable Company’s Sanctions Obligations and Sanctions Laws and Regulations.

4.4 Employees report about any breach or suspect of potential breach of any applicable Company’s Sanctions Obligations or Sanctions Laws and Regulations promptly after they become aware about any such breach or potential breach.

4.5 In case of conflict between the above mentioned principles and any business requirements, these principles shall prevail.

## **5. Employees' Obligations**

- 5.1 The Company shall not breach any Company's Sanctions Obligations or any Sanctions Laws and Regulations applicable to it.
- 5.2 The Company (or its Employees) shall not maintain, permit or undertake any activity or conduct which would result in breaching applicable Company's Sanctions Obligations or any Sanctions Laws and Regulations applicable to it.
- 5.3 The Company shall not directly or indirectly do business or enter into any transaction with any Sanctions Restricted Person, including any deposit activities, trade, investments and any other transactions. The Company shall ensure that its Employees refrain from doing business with (on behalf of their employer-company) any Sanctions Restricted Person in a manner that would be in breach of any applicable Sanctions Laws and Regulations.
- 5.4 The Company shall not directly or indirectly use or permit to be used any funds of, or received by, contribute or otherwise make available such funds directly or indirectly to any person or entity (whether or not related to the Company) for the purposes of, or with the effect of, financing the activities of any person or entity which is a Sanctions Restricted Person in a manner that would be in breach of any Sanctions Laws and Regulations.
- 5.5 The Company shall not use any revenue or payment that is directly or indirectly derived from transactions which would be prohibited by applicable Sanctions Laws and Regulations.
- 5.6 The Company shall not do business in the Sanctions Restricted Country or Sanction Restricted Territory (or with any person or entity located or incorporated thereunder) in a manner that would be in breach of any Sanctions Laws and Regulations applicable to it. The Company shall ensure that its Employees refrain from (a) making business trips to the Sanction Restricted Country or to the Sanction Restricted Territory with the business purpose, or (b) doing business with (on behalf of their employer-company) any person or entity located or incorporated within the Sanctions Restricted Country or Sanction Restricted Territory, in a manner that would be in breach of any applicable Sanctions Laws and Regulation.
- 5.7 Employee shall not breach any applicable Company's Sanctions Obligations or Sanctions Laws or Regulations.
- 5.8 Employee shall not maintain, permit or undertake any activity or conduct which would result in breaching applicable Company's Sanctions Obligations or any Sanctions Laws and Regulations applicable to it.
- 5.9 The Company shall, to the extent permitted by applicable laws, ensure that its Employees not breaching the Company's Sanctions Obligations or the Sanctions Laws or Regulations applicable to it.

## **6. Non-Compliance**

- 6.1 Employees shall immediately contact the Legal and Compliance Officer by any possible means of communication in case:
  - is "located" in any Sanctions Restricted Country or Sanctions Restricted Territory as described in paragraph (b) of the definition of Sanctions Restricted Person.
- 6.2 Upon becoming aware about any breach or suspected potential breach as reported by an Employee pursuant to Clause 6.1 above, the Legal and Compliance Officer shall immediately report about such breach or suspected potential breach to the Company's management.
- 6.3 In case any Employee knowingly or intentionally breaches any applicable Sanctions Laws and Regulations or Company's Sanctions Obligations, the management of the Company, after consultation with the Legal and Compliance Officer, shall immediately terminate the employment of such Employee, such termination be perfected in accordance with applicable labor or corporate rules or regulations.
- 6.4 In case any Employee intentionally breaches the provision of this Policy, the management of the Company, upon consultation with the Legal and Compliance Officer, shall have a right, at its sole discretion (i) to terminate the employment of such breaching Employee or (ii) to impose on such breaching Employee any disciplinary liability measures, to the extent permitted by applicable labor or corporate laws or regulations.

- 6.5 In case the Company is a party to a contract and, as a result of either (i) a change in Sanctions Laws and Regulations applicable to it or (ii) a change of control of the counterparty to such contract, the existence of such contract contravenes Sanctions Laws and Regulations applicable to it, the management of the Company shall immediately report thereof to the Legal and Compliance Officer.
- 6.6 Upon instructions of the Group Legal and Compliance Officer the Company being in breach of Sanctions Laws and Regulations, as mentioned in Clause 6.5, shall take all necessary steps to address such breach, including steps to suspend, freeze, cancel and/or terminate the relevant contract as to ensure that there's no contravention of applicable Sanctions Laws and Regulations.
- 6.7 The management of the Company being in breach of Sanctions Laws and Regulations, as mentioned in Clause 6.5, shall confirm to the Legal and Compliance Officer within fifteen (15) Business Days of becoming aware of such contravention that such contravention no longer exists.
- 6.8 As a matter of Policy, the Policy shall be brought to the attention of all Employees. Any future Employees shall be informed on the Policy at the time of signing the employment agreement. By signing the employment agreement (or amendments thereof) Employees confirm that they have read, understood and undertake to comply with the Policy.

## **7. Compliance Reporting**

- 7.1 The Company shall appoint a qualified individual within its organization (the "**Legal and Compliance Officer**") to supervise any activity in relation to compliance with the Policy. If no compliance officer is appointed by the Company, a chief financial officer of relevant member of the Company shall take responsibility over this matter. He or she shall regularly issue the compliance certificate (the "**Compliance Certificate**") substantially in the form attached to this Policy in Annex 4 to be addressed to the Company's management bodies verifying the compliance during the reporting quarter of the Company and its Employees with the Policy and absence of any breach of any Company's Sanctions Obligations and applicable Sanctions Laws and Regulations.
- 7.2 The Compliance Certificate shall be provided on a regular basis, but not later than ten (10) Business days after the end of each financial quarter.

## **8. Training**

- 8.1 The Company shall provide training on the applicability of the Policy to Employees on a regular basis, but at least once in a twelve-month period.
- 8.2 The Legal and Compliance Officer shall determine the content of the training and the relevant Employees who will be required to complete the training.
- 8.3 The Legal and Compliance Officer shall ensure that the relevant Employees complete the training, in accordance with Clause 8.1 hereto.

## **III. POLICY GOVERNANCE**

### **9. Policy Review**

- 9.1 This Policy shall be reviewed by the Legal and Compliance Officer on a regular basis, but at least semi- annually in order to ensure that the Policy is up to date and reflects all changes to the Company's Sanctions Obligations or applicable Sanctions Laws and Regulations.
- 9.2 The proposed amendments may be provided to the Legal and Compliance Officer via Compliance Certificates from the Company.

### **10. Implementation of the Policy**

- 10.1 The Legal and Compliance Officer shall be responsible for implementation and incorporating of this Policy into the employee training program and relevant HR policies and standards.

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## Sanctions Description

### 1. Description of US Sanctions

#### 1.1 Applicable law

The bulk of the US Sanctions targeting Russia/Ukraine have been implemented pursuant to four Executive Orders: Executive Order 13660 of March 6, 2014 (“**EO 13660**”); Executive Order 13661 of March 17, 2014 (“**EO 13661**”); Executive Order 13662 of March 20, 2014 (“**EO 13662**”); and Executive Order 13685 of December 19, 2014 (“**EO 13685**”) (collectively, the “**EOs**”). In particular, the US “sectoral sanctions” (i.e., sanctions targeting persons operating in certain sectors of the Russian economy, including the financial services, energy, and defense and related materiel sectors) have been imposed pursuant to EO 13662.

The EOs established the legal framework for implementing sanctions and do not result in automatic designation on the Sanctions Designated nationals List (the “**SDN List**”) or the Sectoral Sanctions Identifications List (the “**SSI List**”). Rather, an affirmative determination must be made by OFAC, in consultation with other US government agencies, that a person meets the designation criteria and should therefore be added to the SDN List or SSI List.

In addition to the various EOs, the US President signed into law on December 18, 2014 the Ukraine Freedom Support Act of 2014 (the “**Act**”), which authorizes the President to impose additional sanctions related to Russia’s defense, energy, and financial sector. None of such additional measures have been imposed at this time.

#### 1.2 Persons obligated to comply with US Sanctions

The US Sanctions targeting Russia/Ukraine apply principally to “US persons,” defined as US citizens and permanent residents (“green card holders”), wherever located, entities organized under the laws of the United States (including foreign branches), and any person located within the US.<sup>1</sup>

The Sanctions can also apply to non-US persons when such persons are involved in transactions with a “US nexus” linking the activity to the United States, such as a transaction denominated in US dollars, which normally implicates the use of US financial system.

In addition, certain US Sanctions may apply to non-US persons even when there is no US nexus whatsoever. For example, the EOs prohibit transactions that evade or avoid, have the purpose of evading or avoiding, cause a violation of, or attempt to violate any of the prohibitions set forth in the EOs, including any conspiracy to violate any of the prohibitions. **Such prohibitions may apply to both US and non-US persons.**

#### 1.3 Prohibited actions

The US Sanctions targeting Russia/Ukraine consist of different restrictions depending on whether the sanctioned entity is designated on the SDN List or on the SSI List.

Placement on the SDN List means that all “property and interests in property” of the SDN that are or come within the possession or control of a US person or within the United States are blocked and may not be dealt in. Entities directly or indirectly owned 50% or greater by one or more blocked persons, either individually or in the aggregate, are also deemed blocked by operation of law. Absent a license or other authorization from OFAC, all transactions with a person on the SDN List (as well as with any entities that are 50% or greater owned, directly or indirectly, by one or more SDNs) are prohibited for US persons or any transaction involving a US nexus.

Please refer to Annex 2 to consult with the current SDN List.

In relation to financial institutions on the SSI List pursuant to Directive 1 under EO 13662, which targets the financial services sector, the following activities by a US person or within the United States are prohibited: all transactions in, provision of financing for, and other dealings in new debt of longer than 30 days maturity or new equity of persons determined to be subject to Directive 1, their property, or their interests in property. In contrast, for SSI entities designated pursuant to Directive 2, the applicable new debt tenor is 90 days, and there is no new equity prohibition. For any financial institutions designated pursuant to Directive 4 under EO 13662, the new debt and new equity prohibitions would not apply unless the financial institution is also

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<sup>1</sup> See 31 C.F.R. § 589.312.



designated pursuant to Directives 1-3 under EO 13662<sup>2</sup>.

These prohibitions also apply to entities in which one or more SSI entities hold a 50% or greater ownership interest. Moreover, the Directives under EO 13662 prohibit any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions contained in the Directives, as well as any conspiracy formed to violate any of the Directives' prohibitions.

OFAC has provided informal guidance that term deposits for a term of greater than 30 days at Directive 1 SSI banks or a term of greater than 90 days for Directive 2 SSI banks would likely qualify as "new debt." As a result, US persons would be prohibited from opening term deposit accounts at Directive 1 SSI banks for a term exceeding 30 days or at Directive 2 SSI banks for a term exceeding 90 days. The same prohibition would apply to the extent that this deposit activity involves a US nexus, directly or indirectly, of any kind.

Please refer to Annex 2 to consult with the current SSI List.

We note that with respect to both the SDN List and the SSI List, any entities in which SDNs or SSI entities, either individually or in the aggregate, hold a 50% or greater ownership interest, directly or indirectly, are considered SDNs or SSI entities by operation of law. These entities are not listed separately on the SDN List or the SSI List. **It is therefore important to conduct thorough due diligence regarding an entity's ownership structure to identify any designated ownership interests before proceeding with any transaction involving US persons or a US nexus.**

## 2. Description of EU Sanctions

### 2.1 Applicable legislation

On August 1, 2014, Regulation 833/2014 entered into force to impose Sanctions targeting, among others, the financial industry and the oil & gas sectors in Russia. These measures against Russia were strengthened on September 12, 2014 pursuant to Council Regulation 960/2014, and further amended as of December 6, 2014 pursuant to Council Regulation 1290/2014.<sup>3</sup>

Since March 2014, the EU has imposed an asset freeze (under Regulations 269/2014<sup>4</sup> and 208/2014<sup>5</sup>) against an increasing number of Russian (and Ukrainian) parties. As of October 20, 2015, this EU asset freeze targets 167 natural persons and 37 entities in Russia and Ukraine in total.<sup>6</sup> Certain Russian banks are also listed under other EU sanctions regimes, such as that imposed on Iran.<sup>7</sup>

It should further be noted that the EU has published a guidance document on certain measures against Russia outlined in Regulation 833/2014 (last updated on September 25, 2015).<sup>8</sup> This guidance note answers certain questions that have been brought to the European Commission's attention, and notably relate to the capital market and financial services related Sanctions. At the same time, it is important to note in this context that while the EU Sanctions are adopted at EU level, the competent Member State authorities are responsible for interpretation and enforcement of these Sanctions. Accordingly, the relevant focus, guidelines and

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<sup>2</sup> We do not discuss the prohibitions contained in Directive 3 because as of the date of this Policy, there are no financial institutions designated pursuant to Directive 3. However, if a financial institution were to become designated under this Directive in the future, the applicable new debt period would be 30 days (the same as Directive 1). We also note that Directive 4 does not impose capital market restrictions like Directives 1-3 but rather prohibits the following activities by US persons or within the United States: the provision, exportation, or re-exportation, directly or indirectly, of goods, services (except for financial services), or technology in support of exploration or production for deepwater, Arctic offshore, or shale projects that have the potential to produce oil in the Russian Federation, or in maritime area claimed by the Russian Federation and extending from its territory, and that involve any person determined to be subject to Directive 4, its property, or its interests in property.

<sup>3</sup> A consolidated version of Regulation 833/2014, which includes relevant amendments, is available here: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014R0833-20141206&from=EN>.

<sup>4</sup> The latest consolidated version of Regulation 269/2014, which targets parties considered responsible for actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, is available here: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02014R0269-20150916&from=EN>.

<sup>5</sup> The latest consolidated version of Regulation 208/2014, which targets parties considered responsible for the misappropriation of Ukrainian State funds and human rights violations in Ukraine, is available here: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014R0208-20150607&from=EN>.

<sup>6</sup> A consolidated list of all parties (covering all other relevant third countries in addition to Russia and Ukraine) subject to an EU asset freeze can be found here: [http://eeas.europa.eu/cfsp/sanctions/consol-list/index\\_en.htm](http://eeas.europa.eu/cfsp/sanctions/consol-list/index_en.htm).

<sup>7</sup> See Regulation 267/2012, as amended (latest consolidated version available here: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02012R0267-20150802&qid=1445429319430&from=EN>).

<sup>8</sup> See latest version of Commission Guidance Note on the implementation of certain provisions of Regulation (EU) No 833/2014, available at: [http://europa.eu/newsroom/files/pdf/1\\_act\\_part1\\_v2\\_en.pdf](http://europa.eu/newsroom/files/pdf/1_act_part1_v2_en.pdf).

experience may vary greatly from one Member State to another. While the below overview describes the overall framework of relevant EU Sanctions and certain generally recognized principles, it will in many cases be necessary to check any national practice or even consult the individual Member State authority if there is, for example, uncertainty as to whether the EU Sanctions apply to a particular transaction.

## 2.2 Persons obligated to comply with EU Sanctions

EU Sanctions are not extraterritorial, but only apply when there is EU jurisdiction, i.e., a 'nexus' linking a certain activity to the EU. There are five situations in which EU Sanctions apply:

- within the EU territory, including its airspace;
- on board of any aircraft or any vessel under the jurisdiction of an EU Member State;
- to any person that is a national of an EU Member State, regardless of whether that person is inside or outside the territory of the EU;
- to any legal person, entity or body, inside or outside the territory of the EU, which is incorporated or constituted under the law of an EU Member State; and
- to any non-EU legal person, entity or body in respect of any business being done in whole or in part within the EU.

This means EU companies (including EU subsidiaries of non-EU companies) and EU Member State nationals must comply with the Sanctions. It also means that even non-EU companies can be covered by EU Sanctions depending on the particular circumstances under which they perform their business activities in the EU and how they are connected to any activities restricted by these Sanctions. EU Sanctions will apply to Employees who are nationals of EU Member States regardless of where those employees are based. (Below, all parties subject to EU jurisdiction under the above principles are described as "EU parties".) Conversely, if a transaction involves only non-EU entities and there is otherwise no EU nexus under the principles above, then EU Sanctions do not apply.

## 2.3 Prohibited actions

The EU Sanctions apply different restrictions or prohibitions depending on whether the sanctioned entity is designated as subject to the EU asset freeze (i.e., featured on the "**Asset Freeze List**") or subject to financial sector restrictions targeting Russia (i.e., featured on the "**Sectoral List**").

### ***Asset Freeze List***

All funds and economic resources that belong to, are owned, held, or controlled by the parties on the Asset Freeze List must be frozen in the EU. Most importantly, it is also prohibited for all EU parties to directly or indirectly make funds or economic resources available to or for the benefit of these listed parties. The "funds" and "economic resources" concepts are interpreted broadly to include anything that can be used to obtain funds, goods or services. Funds or economic resources will as a general rule (but there are certain exceptions as the relevant analysis is fact-sensitive) be made "indirectly" available if they are provided to persons or entities that are "owned or controlled" by the designated party. Certain factual elements should be considered when determining whether a party is "owned or controlled" by a designated party, such as shareholdings, and participation in the decision making process <sup>9</sup>

In other words, if the Company is considered an EU party (as discussed in Part A above) cannot directly or indirectly do business with any party on the Asset Freeze List. The same prohibition applies to Employees who are EU Member State nationals. Because it is prohibited to make funds and economic resources "indirectly" available to or for the benefit of designated parties, the Company (if it qualifies as an EU party) and/or EU Member State national Employees (regardless of where such employees are located) will also need to exercise care when doing business with third parties that are somehow connected to or affiliated with entities on the Asset Freeze List.

Please refer to Annex 2 to consult the updated Asset Freeze List.

### ***Sectoral List***

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<sup>9</sup> With respect to violation of the asset freeze measures through third parties, the EU Council has issued a guidance document (available at: <http://data.consilium.europa.eu/doc/document/ST-7383-2015-REV-1/en/pdf>) as regards the specific terms of making funds and economic resources "indirectly" available through persons or entities owned or controlled by listed parties, referring to these (and other) factual elements.

As part of sectoral sanctions imposed on Russia, the EU prohibits the direct or indirect purchase, sale, provision of investment services for or assistance in the issuance of, or other dealings with **transferable securities**<sup>10</sup> and **money market instruments**<sup>11</sup> in relation to certain specified Russian entities. More specifically, the transferable securities and money market instruments falling under the prohibition are those (i) with a maturity exceeding 90 days which were issued between 1 August 2014 and 12 September 2014 by five specified Russian state-owned banks and certain affiliates; or (ii) with a maturity exceeding 30 days which were issued after 12 September 2014 by these five Russian banks and certain affiliates (as well as six listed Russian defense and energy companies and certain affiliates).

With respect to the listed Russian entities (including the five listed banks) and their affiliates, it is also prohibited to **directly or indirectly make, or be part of any arrangement to make, new loans or credit with a maturity exceeding 30 days** to them after 12 September 2014 (although certain exceptions apply here, e.g. with respect to trade financing for certain non-prohibited trade transactions).<sup>12</sup>

We note that these current sectoral sanctions imposed by the EU in relation to capital markets are targeted in that they only prohibit transactions that fall within the description provided above. In other words, sanctioned entities are not considered subject to an asset freeze and EU parties are therefore not prohibited from directly or indirectly engaging in transactions with these parties that fall outside the scope of relevant new “transferable securities”, “money market instruments” or loan and credit transactions. Such allowed transactions include payment, deposit and insurance services as well as loans from the listed Russian entities and certain affiliates.<sup>13</sup> In addition, the EU guidance note confirms that deposit services (including term deposits) are not as such covered by these prohibitions. For completeness, we note that the guidance note also more generally confirms that term deposits may not be used to circumvent the sanctions (e.g., with respect to the prohibition on new loans to sanctioned entities), as that would be in violation of the anti-circumvention provision in Regulation 833/2014.<sup>14</sup>

### 3. Description of Swiss Sanctions

#### 3.1 Applicable legislation

On 27 August 2014 Switzerland issued the “Ordinance on measures to prevent the circumvention of international sanctions in connection with the situation in Ukraine” (amended on 6 March 2015 and 1 July 2015) (“**Ordinance**”).

#### 3.2 Persons obligated to comply with Swiss Sanctions

Neither the Swiss Federal Embargo Act (“**EmbA**”) nor the Ordinance contain any indication on the personal and territorial scopes of the embargo measures adopted by Switzerland. According to some authors, this means that the principle of territoriality must be interpreted strictly, i.e. that the Swiss sanctions regulations only apply to individuals and legal entities residing and/or accomplishing their commercial activities in Switzerland. However, a Swiss judge could possibly also follow a different reasoning and apply Swiss Sanctions to a specific transaction if that transaction results from a contract referring to Swiss law or providing for a dispute resolution forum in Switzerland.

#### 3.3 Prohibited actions

The Ordinance provides, inter alia, for the following financial sector restrictions:

- issue of financial instruments (with a term exceeding 30 days) are subject to authorization for some banks and companies; and
- the granting of loans (with a term exceeding 30 days) to some banks and companies are subject to authorization.

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<sup>10</sup> ‘Transferable securities’ are defined in Regulation 833/2014 as “the following classes of securities which are negotiable on the capital market, with the exception of instruments of payment: (i) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares, (ii) bonds or other forms of securitised debt, including depositary receipts in respect of such securities, (iii) any other securities giving the right to acquire or sell any such transferable securities”.

<sup>11</sup> ‘Money market instruments’ are defined in Regulation 833/2014 as “those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment”.

<sup>12</sup> Article 5(3) of Regulation 833/2014.

<sup>13</sup> See Recital (5) to Regulation 833/2014.

<sup>14</sup> See Article 12 of Regulation 833/2014.

**Sanctions Lists**

1. **US SDN List** (for an updated list of SDNs, please consult the SDN List on OFAC's website, available at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>);
2. **US SSI List** (for an updated list of SSI entities, please consult the SSI List on OFAC's website, available at: [https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/ssi\\_list.aspx](https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/ssi_list.aspx));
3. **EU Asset Freeze List** (for an updated list of all parties subject to an EU asset freeze, please consult the EEAS website: [http://eeas.europa.eu/cfsp/sanctions/consol-list/index\\_en.htm](http://eeas.europa.eu/cfsp/sanctions/consol-list/index_en.htm));
4. **EU Sectoral List** (for an updated list of all relevant parties subject to the EU's sectoral sanctions, please see Regulation 833/2014, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0833>);
5. **Swiss List** (for an updated list of sanctioned individuals, entities and organizations please consult the website of State Secretariat for Economic Affairs at: <http://www.seco.admin.ch/themen/00513/00620/index.html?lang=en>).

***The relevant lists must be consulted on their respective government websites before proceeding with any transaction.***

**Sanctions Restricted Counties**

A. As of the date of this Policy country-wide Sanctions have been imposed only by the US in respect of the following countries:

1. Burma
2. Cuba
3. Iran
4. North Korea
5. Sudan
6. Syria

Before proceeding with any transaction please consult the updated list at: <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>

***This Annex 3 is subject to amendment from time to time and must be consulted with before proceeding with any transaction.***

**Form of Compliance Certificate**

\_\_\_\_\_

(Name of the addressee's unit)

Attn.: \_\_\_\_\_

(The addressee's position)

**Compliance Certificate**

We hereby inform you that in the period from [●] to [●] there have not been any breaches of any Company's Sanctions Obligations and applicable Sanctions Laws and Regulations by EuroChem Antwerpen NV and its Employees.

\_\_\_\_\_

(The Drafter's Position)

\_\_\_\_\_

Name and initials)

(Personal signature)

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