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April 7, 2022

MEMORANDUM FOR ABH HOLDINGS S.A.

Re: Implications of Recent US/EU/UK Sanctions

In response to recent events, the U.S., EU and UK (the “**Relevant States**”) have imposed significant new sanctions against Russia, including blocking sanctions/asset freezes against a number of Russian financial institutions and individuals. The situation is fluid and additional sanctions are possible. For ongoing updates of sanctions developments, we refer you to our website per the link in footnote 1 below.¹ This brief memorandum considers the practical implications for ABH Holdings S.A. (“**ABHH**”) of the sanctions imposed by the U.S., EU and UK (as applicable, the “**Relevant Sanctions**”).

Based on the information provided to us, ABHH should not be considered as subject to blocking sanctions by operation of law in the U.S., EU, and UK, including as a result of designations of Mr. M. Fridman and Mr. P. Aven under EU and UK sanctions because they do not own more than 50% of or control ABHH.

Blocked Persons

Factual Background

Based on, among other information, the documents and information provided to us by ABHH (listed in Annex I hereto), 40.96% of ABHH is owned by Mr. A. Kosogov, 32.86% of ABHH is owned by Mr. M. Fridman, 12.40% of ABHH is owned by Mr. P. Aven, 9.9% of ABHH is owned by Unicredit S.p.A., and 3.87% of ABHH is owned by The Mark Foundation for Cancer Research. Furthermore, neither Mr. Fridman nor Mr. Aven has the right to exercise the power to appoint or remove the majority of the members of administrative, management or supervisory body of ABHH (and has not appointed such majority as a result of the exercise of his voting rights), nor the right to exercise a dominant influence over ABHH. Also, there is no agreement between Mr. M. Fridman and Mr. P. Aven, or between Mr. Fridman or Mr. P. Aven and the other shareholders of ABHH, pursuant to which Mr. M. Fridman or Mr. P. Aven would be able to control the majority of shareholders’ voting rights in ABHH.

EU and UK

¹ Cleary Foreign Investment and International Trade Watch, Sanctions Developments Resulting from the Geopolitical Conflict in Ukraine, <https://www.clearytradewatch.com/2022/03/sanctions-developments-resulting-from-the-geopolitical-conflict-in-ukraine/>.

On February 28, 2022, the EU imposed asset freezes and travel bans on Mr. M. Fridman and Mr. P. Aven.² On March 15, 2022, the UK similarly imposed asset freezes and travel bans on Mr. M. Fridman and Mr. P. Aven.³ The imposition of EU and UK asset freeze sanctions result in the freezing of funds (including funds held in accounts, and securities) and economic resources (including movable and immovable property) held or controlled by Mr. M. Fridman and Mr. P. Aven which are subject to EU and UK jurisdictions, and the prohibition of EU or UK persons from providing (directly or indirectly) any funds or economic resources to or in favor of Mr. M. Fridman and Mr. P. Aven.

Under the EU approach, if the EU imposes sanctions under which the assets of X are frozen, those sanctions generally apply to entities that are (i) greater than 50% owned by (unlike the US rule, a 50% interest is not enough), or (ii) controlled by X (a case-by-case evaluation), even if those entities are not specifically designated (the assumption being that making economic resources available to an entity controlled by a sanctioned person is equivalent to making them available to the sanctioned person).⁴ On March 28, 2022, the EU issued its official guidance on “sanctioned person aggregation”, i.e., a rule requiring that the shareholdings or other “control-rights” of various sanctioned shareholders should be added up in determining whether a related company is also subject to sanctions, and there is now basis for an aggregation of sanctioned shareholders.⁵ Based on the information provided to us, we understand that Mr. M. Fridman and Mr. P. Aven collectively own 45.26%, and do not exercise control over ABHH, and, therefore, ABHH should not be considered as subject to the EU asset freeze sanctions that are applicable to Mr. M. Fridman and Mr. P. Aven.

The United Kingdom follows a similar rule as the European Union in that entities “owned or controlled directly or indirectly” by a sanctioned person are also subject to sanctions restrictions, including asset freezes and the prohibition on making available funds or other economic resources to the person.⁶ Those who own or control the entity include those with 50% or more of the shares or voting rights; those with the right to appoint a majority of the directors; or those who may have a dominant influence over the affairs of the entity. However, on March 22, 2022, the Office of Financial Sanctions Implementation (“OFSI”) clarified that, “when making an assessment on ownership and control, OFSI would not simply aggregate different designated persons’ holdings in a company, unless, for example, the shares or rights are subject to a joint arrangement between the designated parties or one party controls the rights of another. Consequently, if each of the designated person’s holdings falls below the 50% threshold in respect of share ownership and there is no evidence of a joint arrangement or that the shares are held jointly, the company would not be directly or indirectly owned by a designated person.”⁷

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:058:FULL&from=EN>.

³ HM Treasury Notice 15/03/2022, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1060784/Notice_Russia_150322.pdf.

⁴ Control is defined broadly. See, the latest opinion on this subject, Commission Opinion of 19.6.2020 on Article 2 of Council Regulation (EU) No 269/2014, https://ec.europa.eu/info/sites/default/files/200619-opinion-financial-sanctions_en.pdf. For the UK definition of “owned or controlled by,” see, The Russia (Sanctions) (EU Exit) Regulations 2019, <https://www.legislation.gov.uk/uksi/2019/855/regulation/7/made>.

⁵ https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions/sanctions-adopted-following-russias-military-aggression-against-ukraine_en.

⁶ See, U.K. Financial Sanctions: General guidance for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018 (Dec. 2020).

⁷ <https://www.gov.uk/government/publications/financial-sanctions-faqs#full-publication-update-history>.

Therefore, based on the information provided to us, ABHH should not be considered as subject to UK asset freeze sanctions that are applicable to Mr. M. Fridman and Mr. P. Aven.

On March 25, 2022, UK imposed asset freeze on Joint Stock Company Alfa-Bank, which does not affect ABHH.

US

The U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") administers list-based sanctions that identify certain individuals, groups, or entities for blocking sanctions (such persons are designated on the "SDN List"). Any dealings within U.S. jurisdiction directly or indirectly involving U.S. blocked persons are strictly prohibited, and any property in which such blocked persons have an interest that comes within the possession or control of a U.S. person or that is located in the United States is blocked by operation of law. These prohibitions are very broad and include indirect and contingent interests short of legal title. The U.S. has not, to date, imposed blocking sanctions on Mr. M. Fridman or Mr. P. Aven, nor has the U.S. imposed blocking sanctions against ABHH itself. Thus, ABHH is not subject to U.S. blocking sanctions.

On April 6, 2022, OFAC imposed blocking sanctions on Joint Stock Company Alfa-Bank and its six subsidiaries. Under OFAC's so-called 50 Percent Rule, entities that are 50 percent or more owned by one or more SDNs also are considered to be subject to blocking sanctions, even if the entities are not specifically designated on the SDN List. Because, under the 50 Percent Rule, blocking sanctions apply downwards, rather than upwards, ABHH is not affected by the imposition of blocking sanctions on Joint Stock Company Alfa-Bank and its six subsidiaries.

* * *

We are providing this memorandum to ABHH as our client, and it is not to be relied upon by (nor do we undertake any legal or professional duty toward) any other person. Nevertheless, we understand that you may show this memorandum to other persons to assist them and their counsel in conducting an independent analysis of the matters discussed herein, and that in so doing you do not intend to provide legal advice or waive any applicable privilege.

Should you have any questions regarding this memorandum, please contact Polina Lyadnova (plyadnova@cgsh.com) of the London office at +44 20 7614 2355, Mikhail Suvorov (msuvorov@cgsh.com) of the Moscow office at +7 495 660 8566, or Chase Kaniecki (ckaniecki@cgsh.com) of the Washington office at (202) 974-1792.

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Annex I

1. An extract from the Luxembourg Trade Register (RCS) dated March 8, 2022 with an apostille with respect to ABH Holdings S.A.
2. An extract from shareholders register dated March 14, 2022 with respect to ABH Holding S.A.