

ICSID ARBITRATION NO. [●]

**IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF THE
INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

BETWEEN

ABH HOLDINGS S.A.

(Claimant)

-AND-

UKRAINE

(Respondent)

CLAIMANT'S REQUEST FOR ARBITRATION

29 December 2023

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I. INTRODUCTION

1. ABH Holdings S.A. (“**ABHH**” or “**Claimant**”) hereby submits this Request for Arbitration (“**Request**”) of a legal dispute with Ukraine (“**Ukraine**”, the “**State**” or “**Respondent**”) in accordance with Article 9 of the Agreement between the Belgo-Luxembourg Economic Union and the Government of Ukraine on the Reciprocal Promotion and Protection of Investments dated 20 May 1996 and entering into force on 27 July 2001 (the “**Treaty**”).¹ This Request is accompanied by Exhibits (numbered **C-001** to **C-095**) to which reference will be made, as well as an Index thereto.
2. ABHH hereby elects to proceed with this arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States dated 18 March 1965 and entering into force on 14 October 1966 (the “**ICSID Convention**”) and in accordance with the ICSID Rules of Procedure for Arbitration Proceedings dated 1 July 2022 (the “**ICSID Arbitration Rules**”), as provided for under Article 9(3) of the Treaty.

II. EXECUTIVE SUMMARY OF THE CLAIM

3. Claimant owned and operated JSC “Alfa-Bank” (renamed JSC “Sense Bank” on 1 December 2022) (the “**Bank**”),² a leading commercial and retail bank in Ukraine, until the Bank’s unlawful expropriation by the State on 22 July 2023.
4. In Claimant’s hands, the Bank was a business generating significant profit prior to its expropriation and demonstrating immense potential for the future. In the year ended 31 December 2021, the last full calendar year of operation before Ukraine commenced its Treaty breaches, the Bank reported a profit of about UAH 3.32 billion (about US\$ 123 million) in 2021. Those profits had increased year-on-year due to a successful strategic drive commenced in 2019 to invest heavily in, *inter alia*, technological innovation.

¹ Agreement between the Belgo-Luxembourg Economic Union and the Government of Ukraine on the reciprocal promotion and protection of investments 2154 U.N.T.S. 113 (**C-001**); Law of Ukraine No. 118/97-BP on Ratification of Agreement between the Belgo-Luxembourg Economic Union and the Government of Ukraine on the reciprocal promotion and protection of investments (**C-002**); Agreement between the Belgo-Luxembourg Economic Union and the Government of Ukraine on the reciprocal promotion and protection of investments, ratified by Law of Ukraine, dated 26 February 1997 (**C-003**); Extract from website of the Kingdom of Belgium’s Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation evidencing Belgium’s ratification of the BLEU-Ukraine BIT on behalf of the BLEU, accessed 28 December 2023 (**C-004**).

² Securities Register of JSC “Sense Bank”, dated 12 May 2023 (**C-005**); Certificate of ABH Ukraine Limited Issued by the Cypriot Registrar of Companies, dated 15 June 2023 (**C-006**); Register of Members of ABH Ukraine Limited (**C-007**).

5. Beyond that, the Bank had a Western-style governance structure and operational hierarchy. As a result, it was seen by its expanding customer base as a trusted, innovative, Ukrainian bank. Moreover, with its strategic investment in technology in particular, along with its stable ownership and management structure, the Bank was forecasted to continue its profitability throughout 2022 and beyond. Indeed, the long-term credit rating of the Bank was affirmed on 29 June 2023 (right before its expropriation by the State on 22 July 2023) as “uaAAA” according to the national Ukrainian scale by rating agency Expert-Rating, the largest operator of the voluntary rating market in Ukraine.³
6. Put simply, taking 31 December 2021 as a germane snapshot, the Bank was on a distinctly upward trajectory as gauged by virtually all relevant performance markers.
7. Unfortunately, that trajectory was to change dramatically. Following the commencement of the armed conflict between Russia and Ukraine in February 2022, the State initiated a campaign to victimise the Bank by imposing on it, its shareholders, and ultimate beneficial owners unfair, discriminatory, arbitrary, and disproportionate restrictions. The State also passed laws aimed at providing it a veneer of legal cover to take the Bank, and mounted a media campaign aimed at undermining the Bank’s reputation and dampening international reaction against its eventual expropriation. The final nail in the coffin came when the State formally expropriated the Bank on 22 July 2023 by forcibly taking 100% of its shares from Claimant in exchange for a solitary hryvnia.

III. PARTIES

A. Claimant

8. ABHH is a company organised and existing under the laws of Luxembourg. It was originally incorporated in the British Virgin Islands in 2004 (as ABH Holdings Corp), before being redomiciled to Luxembourg on 31 December 2009.⁴ Its registered address is Boulevard du prince Henri 3, L-1724 Luxembourg. It is a multinational banking group focused on CIS and European markets, as well as rapidly emerging economies. Before the events described below, ABHH owned banking operations in

³ Expert Rating Confirmation for JSC Sense Bank, dated 29 June 2023 (C-008).

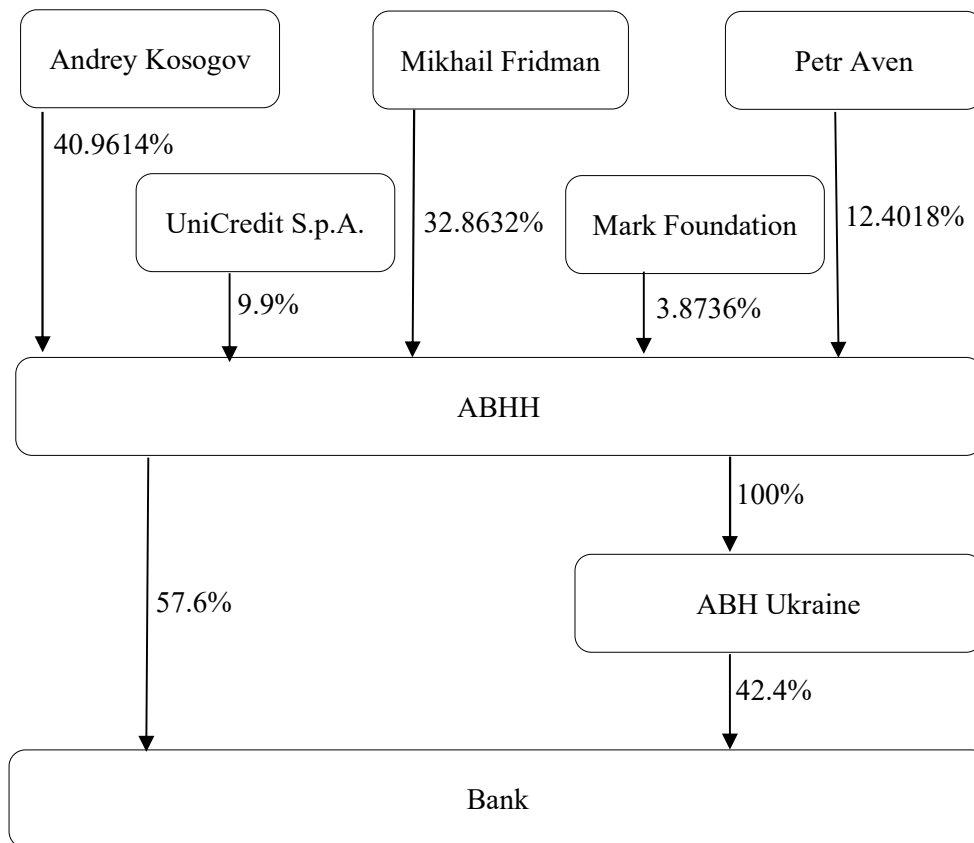
⁴ Extract from Registre de Commerce et des Sociétés of Luxembourg for ABH Holdings S.A., dated 28 December 2023 (C-009).

multiple countries, including Ukraine, Russia, Kazakhstan, Belarus, and the Netherlands, as well as operated fintech start-ups within the United Kingdom.

9. As stated above, ABHH owned and operated the Bank in Ukraine. ABHH owned 100% of the Bank: it directly owned 57.6% shares in the Bank, with the remaining 42.4% of the Bank owned indirectly through its wholly-owned Cypriot subsidiary, ABH Ukraine Limited (“**ABH Ukraine**”).⁵
10. ABHH is owned by natural persons holding Russian, Israeli, and Latvian citizenships, and Italian and American legal persons in the following proportions, as reflected in the formal Luxembourg Trade and Companies Register: Mr. Andrey Kosogov, an Estonian-born national of Russia (40.9614%); Mr. Mikhail Fridman, a Ukrainian-born national of Russia and Israel (32.8632%); Mr. Petr Aven, a Russian-born national of Russia and Latvia (12.4018%); UniCredit S.p.A, an Italian banking group with international operations headquartered in Milan, Italy (9.9%); and The Mark Foundation for Cancer Research Ltd, a US company with Section 501(c)(3) (charitable non-profit) status that advances breakthroughs in cancer research, detection, prevention, and cures (3.8736%).⁶
11. The shareholding structure of ABHH was therefore as follows at the time of the expropriation on 22 July 2023:

⁵ Securities Register of JSC “Sense Bank”, dated 12 May 2023 (C-005); Certificate of ABH Ukraine Limited Issued by the Cypriot Registrar of Companies, dated 15 June 2023 (C-006); Register of Members of ABH Ukraine Limited (C-007).

⁶ Register of Shareholders of ABH Holdings S.A. (C-010).



12. Claimant has taken all necessary internal actions to authorise the filing of this arbitration by its attorneys, including through a Power of Attorney.⁷ Claimant is represented in this arbitration by:

Mr. Baiju S. Vasani
 Mr. Alexander Yean
 Twenty Essex
 London WC2R 3AL
 United Kingdom
 Email: bvasani@twentyessex.com
 Email: ayea@twentyessex.com
 Telephone: +44 (0) 20 7842 1200

B. Respondent

13. Respondent in this arbitration is Ukraine, a sovereign state. While Respondent will act in these proceedings through the authority designated by it, interim contact details for communications in relation to this matter are as follows:

⁷ ABH Holdings S.A Power of Attorney authorising Baiju Vasani, dated 28 December 2023 (C-011).

Ministry of Justice of Ukraine,
13, Architect Horodetsky St.
01001, Kyiv, Ukraine
Email: legal@minjust.gov.ua

IV. FACTUAL BASIS FOR THE CLAIM

14. The State's unlawful actions and omissions against the Bank began in February 2022, mere days after the start of the armed conflict with Russia. To demonstrate the adverse effects suffered by the Bank (as well as Claimant) as a result of the State's unlawful interference, it would be instructive to revisit the history of the Bank, its corporate governance structure, the state of the Bank's financial health as of 31 December 2021, and its projected prospects. This information is primarily based on the contemporaneous corporate documents and key performance indicators current at the moment immediately preceding the State's delicts.
 - A. **ABHH owned and professionally operated the Bank through a Western-Style management structure**
 - 1) **The Bank was originally established in 1993, before being acquired in 2000 by Alfa-Bank Russia**
15. The Bank was originally founded as a limited liability company under the laws of Ukraine on 18 November 1992, and was registered with the National Bank of Ukraine (the "NBU") on 24 March 1993. It began its operations under the name Commercial Bank for Consumer's Co-operation "Vito". In 1995, the Bank was reorganised into Limited Liability Company Commercial Bank "Kyivinvestbank", which in turn was reorganised into Stock Commercial Bank "Kyivsky Investytsiyny Bank" in 1997.
16. In or around 2000, the Bank was acquired by Alfa-Bank Russia and renamed from "Kyivsky Investytsiyny Bank" to "Alfa-Bank Ukraine", providing universal banking operations under the "Alfa-Bank" brand. As Alfa-Bank Russia was already a successful business that its shareholders owned and operated in the Russia since 1990, it made sense for this entity to lead the original purchase. Indeed, this concept is entirely unsurprising; any new business within any sector in which its shareholders already have a successful business will, as much as possible, both replicate and borrow that which makes the original business successful. Thus, it was intended that Alfa-Bank Russia's reputation and balance sheet would support the growth of the Bank in Ukraine in its early years. It made prudent business sense to share the Russian bank's know-how, technology, management, and operations with the fledgling

Ukrainian entity so as to create economies of scale and employ existing internal resources as an efficient method of fuelling the Bank's growth.

2) By 2009, the Bank was reorganised under ABHH and had its own professional, Western-style operating and governance structure

17. The Bank's original model of simply replicating and adopting the same systems and financial structure as Alfa-Bank Russia ceased at the end of 2005. At that point the Alfa group undertook a lengthy restructuring process, following the recommendations of various international consulting companies, including McKinsey.⁸ The restructuring severed the Bank from Alfa-Bank Russia in terms of both corporate ownership and operations, in line with other Alfa group banks outside Russia. Each banking entity was now designed to run as an independent unit, owned by and through a European holding company with professional management in place. While the Bank and its sister banks in other countries — including the one in Russia — might share the prefix “Alfa”, or have consolidated earnings at a certain high level, each unit would rise and fall independently of the others.
18. Relatedly, ABHH was redomiciled to Luxembourg in December 2009 for the purpose of, *inter alia*, becoming the owner and operator of the Bank; at first, through intermediate holding companies (including ABH Ukraine), before later becoming a majority direct shareholder (with a 57.6% shareholding) in 2019, with ABH Ukraine holding the remaining 42.4% stake.⁹ Also in 2009, ABH Ukraine registered and became the owner of the “Alfa-Bank” trademark and related trademarks in Ukraine, which have all now been arrested by the State.¹⁰ Simply put, by the end of 2009 the Bank had become a Ukrainian enterprise, with European shareholding, and with its own independent corporate and financial structure.
19. Thereafter, the Bank continued to expand and thrive in Ukraine. In 2016, ABHH reached a deal with the UniCredit group (a pan-European commercial bank operating in Italy, Germany, and Central and Eastern Europe) whereby ABHH acquired 100% of the shares in the UniCredit group's Ukrainian subsidiary PJSC UkrSotsbank in exchange for the UniCredit group acquiring a 9.9% shareholding in ABHH. The merger of the Bank and PJSC UkrSotsbank was completed in 2019, making the Bank

⁸ See McKinsey Slides on Alfa Banking Group Governance, dated 7 July 2008, pp. 23–24 (C-012).

⁹ Securities Register of JSC “Sense Bank”, dated 12 May 2023 (C-005); Certificate of ABH Ukraine Limited Issued by the Cypriot Registrar of Companies, dated 15 June 2023 (C-006); Register of Members of ABH Ukraine Limited (C-007).

¹⁰ Decisions of Ukrainian Institute for Intellectual Property (Ukrpatent) Regarding Trademarks Having Certificate Numbers 101669, 90691, 34464 and 34465, each dated 22 June 2021 (C-013).

one of the largest and most successful in Ukraine. Indeed, the Bank was so important to Ukraine that it was deemed to be a “systemically important bank”, meaning one whose activity has an impact on the stability of the entire banking system.¹¹ Systemically important banks are identified annually by the NBU.

3) Up to and including 31 December 2021, the Bank was professionally operated and managed by a hierarchy of checks and balances

20. Up to and including 31 December 2021, the Bank’s governance structure as to its operation and management was split among three bodies: the General Meeting of Shareholders as the supreme governance body; the Supervisory Board; and the Executive (Management) Board. Each body had segregated functions and distinct compositions to promote independence.¹²
21. The General Meeting of Shareholders (*i.e.*, ABHH and ABH Ukraine) was the supreme decision-making body that could decide on any issue concerning the Bank’s management and operation, except those assigned by law to the exclusive competence of the Supervisory Board. However, the General Meeting of Shareholders rarely met — 1 Annual General Meeting and 3 Extraordinary General Meetings were held in 2021, for instance — and was not involved in the day-to-day running of the Bank.¹³ Its role was — as is common for such high-level bodies, and in accordance with Luxembourgish and European laws and regulations — restricted only to essential events of the utmost material importance requiring shareholder intervention, such as ratifying the Bank’s official financial statements and approving the remuneration of the Supervisory Board.¹⁴
22. The Supervisory Board of the Bank represented the interests of shareholders, protected their rights, and oversaw the activities of the Executive (Management) Board. The Supervisory Board, pursuant to Luxembourgish and European laws and regulations, did not take charge of the Bank’s day-to-day operations, however, and instead functioned as more of an oversight body that superintended and where

¹¹ Decision of the Board of the National Bank of Ukraine No. 438-RSH, dated 27 June 2019 “On Determination of Systemically Important Banks” (C-014); National Bank of Ukraine’s 2021 List of Systemically Important Banks, dated 1 March 2021 (C-015); Decision of the Board of the National Bank of Ukraine No. 120-RSH, dated 9 March 2022 “On Determination of Systemically Important Banks” (C-016); Decision of the Board of the National Bank of Ukraine No. 95-RSH, “On Determination of Systemically Important Banks”, dated 8 March 2023 (C-017).

¹² JSC “Alfa-Bank” Financial Statements (in accordance with IFRS) for Year Ended 31 December 2021, p. 6 (C-018).

¹³ *Ibid.*

¹⁴ *Ibid.*

appropriate ratified the actions and decisions of the Executive (Management) Board, such as approving the Bank's external auditor(s).¹⁵

23. The Executive (Management) Board of the Bank was in charge of the vast majority of the Bank's day-to-day operations (except those under the exclusive ambit of the General Meeting of Shareholders and the Supervisory Board), including the planning of the Bank's income and expenses, implementing its strategic and business plans, implementing credit policies, implementing risk management strategies, approving new products and other significant changes in the Bank's operations, making decisions on the acquisition or disposition of immovable and movable property, and making decisions on the Bank's international borrowings and refinancing loans from the NBU.¹⁶
24. To more efficiently discharge these functions, the Executive (Management) Board established numerous sub-committees to which decision-making power was delegated, such as the assets and liabilities management committee, the operational risks sub-committee, the planning and budget committee, and the human resources committee.¹⁷ The Executive (Management) Board held regular meetings, at which the majority of its members participated; over the course of 2021, the Executive (Management) Board held 314 meetings in total, in which a total of 406 issues were considered.¹⁸
- 4) **The nationalities of the persons within the Bank's hierarchy ensured the Bank had a strong Ukrainian and international backbone throughout its structure**
25. In the 31 December 2021 snapshot, the Bank had strong Ukrainian and international representation across its governing bodies to reflect the Bank's operational independence as a Ukrainian bank.
26. As at 31 December 2021, the Supervisory Board had the following composition; out of 10 members, 4 were independent (not otherwise affiliated with the ABHH group), and in terms of nationalities, 4 were Ukrainian and 3 were non-Russian.¹⁹

¹⁵ *Id.*, pp. 9–10.

¹⁶ *Id.*, pp. 10–11.

¹⁷ *Id.*, p. 17.

¹⁸ *Ibid.*

¹⁹ *Id.*, p. 6.

<u>Name</u>	<u>Nationality</u>
Roman Shpek	Ukrainian
Petr Aven	Russian and Latvian
Adnan Anachali (Independent)	Turkish
Andrew Baxter	South African and British
David Brawn	British
Ernest Galiev (Independent)	Ukrainian
Ildar Karimov	Russian
Volodymyr Voeykov	Russian
Viktor Lysenko (Independent)	Ukrainian
Yevhen Davydovych (Independent)	Ukrainian

27. As at 31 December 2021, the Executive (Management) Board had the following composition; out of 8 members, 3 were Ukrainian and 3 were non-Russian nationals; further, no one on ABHH's Board of Directors or the Bank's Supervisory Board sat on the Executive (Management) Board of the Bank.²⁰

<u>Name</u>	<u>Nationality</u>
Rafal Juszcak	Polish
Dmitry Serezhin	Russian
Aleksandr Lukanov	Russian and Cypriot

²⁰ JSC "Alfa-Bank" Financial Statements (in accordance with IFRS) for Year Ended 31 December 2021, p. 10 (C-018).

Vitaly Dydyshko	Belarussian
Robert Dzialak	Polish
Rostyslav Matyash	Ukrainian
Polina Kharchenko	Ukrainian
Andrii Gritsenyuk	Ukrainian

28. Thus, the Bank was in many ways truly international in character, with a core Ukrainian presence at supervisory, management, and operational level. Non-Russian persons were present throughout — from some of the ultimate beneficial owners to the three distinct bodies that operated the Bank. With no overlap in personnel between the Supervisory Board and the Executive (Management) Board, each layer functioned autonomously, ensuring tangible separation of powers.

B. The Bank was operationally and financially separate from any ultimate beneficial owner or Alfa-Bank Russia

29. The Bank’s structure adumbrated above deliberately guaranteed that no ultimate beneficial owner had any ability to dictate the Bank’s operations and strategy outside of the strict processes and procedures mandated by that very structure.

30. Moreover, although the Bank was in its original founding strongly associated with Alfa-Bank Russia, the Bank had soon become a separate Ukrainian business entity with its own governance structure, management team, strategic direction, and operations. Before (and certainly by) 31 December 2021, the Bank had become essentially a Western-style operation of “checks and balances” made up of international and Ukrainian professionals intent on running a prosperous and professional enterprise in Ukraine.

31. Such was the Bank’s standing in Ukraine that even the advent of Russia’s jurisdiction over Crimea in March 2014 and the increase in Ukrainian-Russian tensions did not derail the Bank despite its Russian origins. Its continued rise after 2014 is a testament to the fact that the Bank was viewed by the market as a trusted Ukrainian bank with a significant international, European element of ownership and management rather than

a Russian bank. Indeed, by 17 April 2014, the Bank had closed all its branches in Crimea.

C. ABHH’s investment in the Bank resulted in significant profits between 2019 and 2021, and future projections of even further profits beyond 2021

1) ABHH successfully revised its investment strategy and strategic focus for the Bank in September 2019

32. In the decade prior to 2019, the Bank was well set in most banking segments and had a loyal and growing client base. Furthermore, the shareholders (ABHH and ABHU) believed that by focusing on specific sectors and investing in cutting-edge technology, the Bank could outperform its competitors and significantly improve profitability.

33. From 2019 onwards, therefore, the Bank took the strategic step of investing heavily in technology. This inflection point was underlined by the appointment of Mr. Rafal Juszczak as the new CEO of the Bank. Mr. Juszczak is a Polish national who had demonstrated tangible value to ABHH as CEO of Alfa-Bank Belarus, another of ABHH’s investments. ABHH believed that Mr. Juszczak could replicate the Belarussian success in Ukraine, especially considering his extensive bank leadership experience in Eastern European markets. As the new CEO of the Bank, therefore, he spearheaded the Bank’s revised strategic pivot towards investment in digitisation and mobile banking.

34. This new strategic direction saw substantial pay-offs almost immediately. The Bank’s market share grew rapidly, particularly in digital and mobile retail banking, and the Bank acquired a robust reputation for innovation.

35. The Bank’s sales in its mobile retail banking app “Sense SuperApp” increased tenfold from 8.5% to 82.5% from 2019 to 2021,²¹ and boasted over 1.2 million users by December 2021.²² The Bank’s percentage of digital clients grew from 47% in 2019 to 67% in 2021.²³

36. These initiatives, coupled with the Bank’s strong overall performance, led to the Bank winning numerous awards and recognitions, including:

- i. Winning “Best Ukrainian Bank of the Year 2021” by The Banker;²⁴

²¹ ABH Holdings S.A. Board Meeting Slides, dated 7 April 2022, p. 44 (C-019).

²² ABH Holdings S.A. Board Meeting Slides, dated 13 December 2021, p. 41 (C-020).

²³ ABH Holdings S.A. Board Meeting Slides, dated 7 April 2022, p. 44 (C-019).

²⁴ ABH Holdings S.A. Board Meeting Slides, dated 13 December 2021, p. 41 (C-020).

- ii. Winning “Best Consumer Digital Bank in Ukraine 2021”²⁵ and “Best Bank in Ukraine 2021”²⁶ by Global Finance magazine;
 - iii. Winning “Best Ukrainian Digital Bank 2021” by the Ukrainian Fintech Awards;²⁷
 - iv. Winning 5 awards in different categories (“Best Investment Offer”, “Best Payment Card”, “Leading Technology and Innovation”, “Best Mobile Application” and “Best Premium Card”) at the FinAwards 2022;²⁸
 - v. Winning “Best SME Bank in Ukraine 2022” by Global Finance;²⁹ and
 - vi. Being nominated for “Innovative Bank of the Year” (Central and Eastern Europe) and “CIO of the Year” (globally) by The Banker in 2022.³⁰
37. Indeed, such was the success of the Bank’s digital offerings that even in 2023 the Bank was *still* winning awards. It won 2nd place in the “Best Loyalty Program” category and 3rd place in the “Best Mobile App” category at the FinAwards 2023. The continuous recognition of the Bank’s achievements took place in the face of the State’s adverse publicity campaign and the escalation of arbitrary restrictions that had already caused significant damage to the Bank’s reputation, financial standing, client base, and market share (as detailed below).³¹
- 2) The revised strategy led to significant profits and capitalisation by the end of 2021**
38. The Bank’s strategic pivot towards technology in 2019 resulted in significant profits and improved capitalisation within 2 years.
39. According to the Bank’s audited financial statements of the year ended 31 December 2021, the Bank had about UAH 115.71 billion in assets (about US\$ 4.28 billion based on the USD/UAH rate of 27.0268 as at 31 December 2023), an 18.57% increase from the year ended 2020.³² The Bank also made a profit of about UAH 3.32 billion in 2021

²⁵ *Ibid.*

²⁶ “Press Release: Global Finance Announces its 28th Annual Best Bank Awards and Names the Best Banks in Central & Eastern Europe 2021”, Global Finance Magazine, dated 18 March 2021 (C-021).

²⁷ ABH Holdings S.A. Board Meeting Slides, dated 7 July 2022, p. 34 (C-022).

²⁸ “FinAwards 2022: Alfa-Bank Ukraine received 5 awards”, Financial Club, dated 29 August 2022 (C-023).

²⁹ World’s Best SME Banks 2022”, Global Finance Magazine, dated 6 December 2021 (C-024).

³⁰ ABH Holdings S.A. Board Meeting Slides, dated 29 September 2022, p. 35 (C-025).

³¹ ABH Holdings S.A. Board Meeting Slides, dated 26 June 2023, p. 46 (C-026).

³² See JSC “Alfa-Bank” Financial Statements (in accordance with IFRS) for Year Ended 31 December 2021, p. 21 (C-018).

(about US\$ 123 million based on the average USD/UAH rate throughout 2021 of 27.0201), up 187.42% from the year ended 2020.³³

40. At 1 January 2022, the Bank was the 6th largest bank in Ukraine by assets; further, the Bank held the 2nd-largest market share in retail loans (12.2%), the 3rd-largest market share in retail deposits (6.7%), and the 5th-largest market share in retail current accounts (6.2%).³⁴

3) The projections for 2022 and beyond were just as, if not even more positive

41. At the beginning of 2022 (even after the armed conflict in Ukraine had begun), notwithstanding an anticipated one-off increase in credit losses (client defaults), the Bank's revised projections for 2022 were for continued operational profitability.
42. Without the State's unlawful actions against the Bank, the Bank would have continued to perform well, the armed conflict notwithstanding. Indeed, virtually all other banks operating in Ukraine, both foreign and local, performed extremely well throughout 2022 and beyond, seeing significant gains in both equity and profitability. For its part, the Bank continued to innovate throughout 2022 despite being hampered by increasingly severe restrictions. For instance, it was the first bank in Ukraine to offer the sale of war bonds to retail clients within its digital app,³⁵ and launched a 24-hour video chat feature in its digital app, the first of its kind in Ukraine.³⁶

D. The Bank's relationship with the State's regulators was cooperative and interactive

43. One important aspect of any bank operating in any state is its relationship with its regulator. Indeed, until the appointment of current NBU head Andriy Pyshnyy in October 2022, the Bank and the NBU had always sought and maintained a cordial and mutually-cooperative relationship, which is to be expected given the NBU's official designation of the Bank as a "systemically important bank".³⁷
44. Moreover, considering the knowledge and experience of ABHH in owning banks in different jurisdictions, the NBU had welcomed the Bank's input on policy and

³³ *Id.*, p. 22.

³⁴ ABH Holdings S.A. Board Meeting Slides, dated 7 April 2022, p. 43 (C-019).

³⁵ ABH Holdings S.A. Board Meeting Slides, dated 7 July 2022, p. 34 (C-022).

³⁶ ABH Holdings S.A. Board Meeting Slides, dated 29 September 2022, p. 35 (C-025).

³⁷ Decision of the Board of the National Bank of Ukraine No. 438-RSH, dated 27 June 2019 "On Determination of Systemically Important Banks" (C-014); National Bank of Ukraine's 2021 List of Systemically Important Banks, dated 1 March 2021 (C-015); Decision of the Board of the National Bank of Ukraine No. 120-RSH, dated 9 March 2022 "On Determination of Systemically Important Banks" (C-016); Decision of the Board of the National Bank of Ukraine No. 95-RSH, "On Determination of Systemically Important Banks", dated 8 March 2023 (C-017).

regulatory implementation to ensure that its work met best international practices. In turn, the Bank consciously had among its employees those versed in Ukrainian banking regulation (often hired from those previously on the regulatory side) to ensure that the Bank met — indeed exceeded — the regulations required for proper banking operations in Ukraine.

E. The Bank was objectively viewed as a leading, Western-style organisation in an otherwise difficult jurisdiction

45. Ukraine’s banking system has long been plagued by corruption and scandal, making the jurisdiction known for questionable banking practices. A recent, significant example of this is the scandal involving PrivatBank, with its former owners now being accused by Ukraine of having misappropriated close to US\$2 billion.³⁸ The corruption and mismanagement surrounding PrivatBank, according to press reports, triggered the nationalisation of PrivatBank in 2016.³⁹ Another example is State-run Oschadbank, headed for a time by the current NBU head, Andriy Pyshnyy. Significant losses to the State were reported to have occurred on Mr Pyshnyy’s watch, leading to a string of investigations and negative publicity.⁴⁰

46. It was within this problematic, scandal-ridden sector that the Bank managed to operate privately, professionally, and profitably in the period until 31 December 2021. Global Finance magazine, a prestigious American publication, recognised this feat by awarding the Bank the “Best Bank in Ukraine” award in 2021.⁴¹

F. The State’s *volte-face* after February 2022

47. As detailed above, in the period up to and including 31 December 2021, the Bank operated successfully. It had an increasing customer base of largely retail Ukrainian clients, had a cooperative relationship with the NBU, and was on a clear upwards trajectory in terms of key performance metrics such as market share, profitability, and equity.

48. All this changed after February 2022, when, after the start of the armed conflict with Russia and the ensuing political consolidation of the Ukrainian State around the executive, the State underwent a complete *volte-face* in its treatment of the Bank. By

³⁸ “Ukraine’s PrivatBank alleges \$2 billion fraud by former owners”, Reuters, dated 12 June 2023 (C-027).

³⁹ “What is evident by the Kroll report on PrivatBank and why we are talking about systemic abuses”, Mind.UA, dated 19 January 2018 (C-028).

⁴⁰ “State-owned Oschadbank accused of fraud, squandering Hr 550 million”, Kyiv Post, dated 22 April 2018 (C-029)

⁴¹ “Press Release: Global Finance Announces its 28th Annual Best Bank Awards and Names the Best Banks in Central & Eastern Europe 2021”, Global Finance Magazine, dated 18 March 2021 (C-021).

falsely associating the Bank with Russian hostilities on account of the nationality of some of its ultimate beneficial owners, the State seized on the opportunity to separate the Bank from its owner, ABHH, and to keep the Bank's assets and profits for itself. Thus began an organised campaign of arbitrary, discriminatory, and disproportionate restrictions, a public relations drive to provide a semblance of international legitimacy to the creeping expropriation, and a series of laws designed to expropriate the Bank. This all culminated in the Bank's expropriation by the State on 22 July 2023.

49. It did not matter that Mr. Fridman, a minority shareholder of ABHH, publicly deplored the armed conflict in the media. Nor did it matter that the Bank, pursuant to the autonomous decisions of its Ukrainian management, supported the Ukrainian troops with money and their families with material and other help, and assisted in the financial transactions needed to finance the military defence on the frontlines. The State was intent on the Bank's expropriation come what may.

1) Ukraine's history of kleptocracy has only been exacerbated by the war

50. There is no doubt that Ukraine is one of the most corrupt countries in the world. In 2015, The Guardian named Ukraine "the most corrupt nation in Europe".⁴² Indeed, Transparency International, universally recognised as the leading global indicator of public sector corruption, ranked Ukraine a staggering 116 out of 180 ranked countries in 2022, with a point score of 33.⁴³ That puts Ukraine in the same bracket as Algeria, Angola, Zambia, Mongolia, El Salvador and the Philippines, and more corrupt than Gambia, Malawi, Nepal, and Sierra Leone which occupy the places immediate above it. No other nation in Eastern Europe is more corrupt on that ranking.
51. Notwithstanding their continuing massive political, military, and economic support for Ukraine, key Ukrainian allies including the United States⁴⁴ and the European Union⁴⁵ have gone on record in expressing concern over corruption by the State (and State officials) in Ukraine. Ukraine continues to struggle to keep corruption and kleptocracy in check.⁴⁶ For instance, the Chief Justice of the Ukrainian Supreme Court was arrested for allegedly accepting a bribe in May 2023,⁴⁷ and corruption scandals

⁴² "Welcome to Ukraine, the most corrupt nation in Europe", The Guardian, dated 6 February 2015 (C-093).

⁴³ Transparency International Corruption Perception Index for Ukraine, 2022 (C-030).

⁴⁴ See "Leaked U.S. strategy on Ukraine sees corruption as the real threat", Politico, dated 2 October 2023 (C-031).

⁴⁵ See "Corruption accusations continue to plague top Zelenskiy aides", Reuters, dated 19 September 2023 (C-032).

⁴⁶ "Discontent grows over wartime corruption in Ukraine", Euronews, dated 8 September 2023 (C-033).

⁴⁷ "Head of Ukraine's supreme court held in anti-corruption investigation", The Guardian, dated 16 May 2023 (C-034).

in Ukrainian State departments such as those in charge of military recruitment have recently been exposed.⁴⁸ Moreover, the so-called Pandora Papers leak also exposed offshore holdings of the Ukrainian President and several of his inner circle with property portfolios in London worth several tens of millions of dollars.⁴⁹

52. This history of corruption at the highest levels of the Ukrainian public sector through to the present day is a material backdrop for the following sections that portray how the Ukrainian State used the armed conflict with Russia as a pretext to expropriate the Bank from Claimant's ownership. The revolving door between State agencies and private businesses in Ukraine ensured that the governmental operators instrumental in the egregious taking of the Bank were well-versed in corrupt corporate raiding techniques.

2) The State targeted the Bank, its shareholders, and its ultimate beneficial owners with disproportionate and discriminatory restrictions

Direct Restrictions against the Bank

53. In an effort to undermine the Bank's financial health (in particular, its solvency) such as to create the conditions for its eventual expropriation, the State imposed numerous arbitrary and discriminatory restrictions against the Bank.

54. From February 2022 to July 2023, for example, the NBU had enacted severe restrictions against the Bank, in the form of, *inter alia*.⁵⁰

- caps on deposit and loan growth;
- caps on interest rates for deposits;
- limitations on asset sales and loan restructuring;
- limitations on raising funding;
- limitations on the taking of deposits; and
- limitations on the making of loans.

55. Each of these restrictions were arbitrary, discriminatory, disproportionate, and unreasonable. There was no legitimate rationale for any such restrictions. The Bank

⁴⁸ "Ukraine cracks down on corrupt army recruiters", Financial Times, dated 11 August 2023 (C-035).

⁴⁹ "Revealed: 'anti-oligarch' Ukrainian president's offshore connections", The Guardian, dated 3 October 2021 (C-036).

⁵⁰ ABH Holdings S.A. Board Meeting Slides, dated 30 March 2023, p. 33 (C-037); ABH Holdings S.A. Board Meeting Slides, dated 26 June 2023, p. 7 (C-026).

was targeted specifically. It became subject to more onerous restrictions than other banks of comparable size or financial standing. There can only be one explanation for why the State placed these restrictions on the Bank: to affect its business adversely with a view to using the solvency issues expected to ensue to expropriate it. As demonstrated in Section IV.F.6 below, however, the Bank proved much more resilient than was expected by the State, and the State's plan did not succeed in the manner it envisaged.

The Kosogov transactions and the State's subsequent restrictions

56. On 14 March 2022, Mr. German Khan and Mr. Alexey Kuzmichev, then shareholders in ABHH, sold their shares in ABHH to Mr. Kosogov, another existing shareholder, and exited the company. The transaction, making Mr. Kosogov the largest shareholder in ABHH, was governed by English law. It was acknowledged by the Luxembourgish regulators, with the appropriate changes made to the Luxembourg Trade and Companies Register to reflect the new shareholding structure.
57. On 15 April 2022, however, the NBU formally declared Mr. Kosogov to be in violation of the Ukrainian Law "On Banks and Banking" (the "**Banking Law**")⁵¹ for his acquisition of the shares of Mr. Khan and Mr. Kuzmichev in ABHH. The NBU claimed that the acquisition was in breach of Article 34 of the Banking Law for having been executed without the NBU's approval.⁵² Pursuant to this alleged violation, the NBU imposed a fine on Mr. Kosogov in the amount of UAH 57,452,495.10 (about US\$ 1,944,192 at the time) and imposed a six-month bar preventing him from exercising his newly-acquired voting rights in the Bank.⁵³ Mr. Kosogov paid the fine, thus complying with the imposed sanction, and in all later correspondence it is clear that the NBU from then on regarded Mr. Kosogov as the owner of the shares that had previously belonged to Messrs. Khan and Kuzmichev.
58. The compliance with the imposed sanction should have settled the matter under the applicable law, but the Ukrainian authorities decided otherwise. On 26 April 2022, pursuant to the transactions involving Mr. Kosogov, the NBU further held the Bank to be in breach of Article 34 of the Banking Law and the Ownership Structure

⁵¹ Law of Ukraine "On Banks and Banking", dated 7 December 2000 (C-038).

⁵² Decision of National Bank of Ukraine Regarding Violation of Banking Legislation by A. Kosogov, dated 15 April 2022 (C-039).

⁵³ Decision of National Bank of Ukraine Regarding Imposition of Fine on A. Kosogov for Violation of Banking Legislation, dated 15 April 2022, p. 5 (C-040).

Regulation (approved by Resolution No. 328 of the NBU Management Board on 21 May 2015) for failing to meet “transparency requirements”, and set a deadline of 15 October 2022 for the Bank’s “ownership structure to be brought into compliance with the requirements for its transparency”.⁵⁴ This was so, notwithstanding that the NBU was evidently already fully aware of the Bank’s ownership structure and that Mr. Kosogov was already an existing shareholder of ABHH prior to his purchases from Messrs. Khan and Kuzmichev that increased his shareholding. Furthermore, the NBU did not provide any instructions or guidance on how to comply with the “transparency requirements”.

59. On 13 October 2022, following an application by the Bank, the NBU extended the deadline for the Bank’s ownership structure to be brought into “compliance” with the requirements for its “transparency” and for Mr. Kosogov’s alleged violation to be “remedied” by 6 months (until 15 April 2023).⁵⁵

The restrictions against Mr. Aven and Mr. Fridman

60. On 2 March 2022, the NBU formally imposed a one-year ban preventing Mr. Aven and Mr. Fridman from exercising their “indirect voting rights in the Bank”. The ban, as formulated, affected the proportion of ABHH and ABHU voting rights that arithmetically corresponded to the voting rights of the said individuals in ABHU. This absurd formulation, without any foundation in law, effectively nullified the legal personality of ABHH. The 100% shares of ABHH in the Bank, of course, could not be divided into portions that corresponded to the arithmetical proportion of shares of its own shareholders. NBU did not provide any legal justification for this imposition, since there was none. The alleged basis of this sanction was Mr. Aven’s and Mr. Fridman’s purported failure to meet the criterion of having an “impeccable business reputation” applicable to substantial shareholders in Ukrainian banks pursuant to Article 14(2) of the Banking Law, and the NBU gave Mr. Aven and Mr. Fridman a one-year deadline to remedy their alleged failure to comply with the Banking Law.⁵⁶ The factual allegations did not concern any actual defects of reputation, but consisted

⁵⁴ Letter from National Bank of Ukraine to JSC “Alfa-Bank”, dated 26 April 2022, p. 2 (C-041).

⁵⁵ Letter from National Bank of Ukraine to JSC “Alfa-Bank”, dated 24 October 2022 (C-042); Decision of National Bank of Ukraine Regarding Revision of its Decision on Appointment of S. Djankov as Proxy, dated 13 October 2022 (C-043).

⁵⁶ Decision of National Bank of Ukraine Regarding Dubious Business Reputation of P. Aven and M. Fridman, dated 2 March 2022 (C-044); Letter from National Bank of Ukraine to Authorised Representative of M. Fridman and P. Aven, dated 3 March 2022 (C-0045).

of egregiously false political charges against Mr Fridman and Mr Aven. The full text of the regulation is attached hereto.⁵⁷

61. On 21 April 2022, the NBU approved the Bank’s application for Mr. Simeon Djankov, a Bulgarian national and former Bulgarian government minister, to be appointed as voting proxy for Mr. Aven, Mr. Fridman, and Mr. Kosogov for 6 months.⁵⁸ This proxy was subsequently extended on 13 October 2022 until such time as the NBU determined that the violations of Mr. Aven, Mr. Fridman, and Mr. Kosogov for which their voting rights had been curtailed are remedied.⁵⁹
62. On 19 October 2022, by a Presidential Decree (No. 726/2022), President Zelenskyy gave effect to the Resolution of the Ukrainian National Security and Defence Council (also dated 19 October 2022) that sanctioned, *inter alia*, Mr. Aven and Mr. Fridman for 10 years.⁶⁰ These sanctions prevented any dealing with (including selling or disposing of) a proportion of shares in the Bank that corresponded with Messrs. Aven’s and Fridman’s shareholding in ABHH.⁶¹ The logic of this decree was in consonance with the odd and unlawful NBU letter described in paragraph 60 above, but again, was against the basic provisions of Ukrainian law on separate corporate personalities and, again, effectively nullified the legal personality of ABHH as the 100% direct and indirect shareholder in the Bank.

The restrictions against ABHH and ABH Ukraine

63. On 20 March 2023, the NBU formally imposed bans preventing ABHH and ABH Ukraine from exercising their voting rights in the Bank, on the basis of their alleged failure to meet the criterion of having an “impeccable business reputation” applicable to substantial shareholders in Ukrainian banks pursuant to Article 14(2) of the Banking Law, and gave ABHH and ABH Ukraine a 3-month deadline to remedy their alleged failure to comply with the Banking Law.⁶²

⁵⁷ Law of Ukraine “On Banks and Banking”, dated 7 December 2000, Article 14 (C-038).

⁵⁸ Decision of National Bank of Ukraine Regarding Appointment of S. Djankov as Proxy, dated 21 April 2022 (C-046).

⁵⁹ Decision of National Bank of Ukraine Regarding Revision of its Decision on Appointment of S. Djankov as Proxy, dated 13 October 2022, p. 4 (C-043).

⁶⁰ Decree of President of Ukraine on Imposition of Sanctions on G. Khan, P. Aven, M. Fridman and A. Kuzmichev, dated 19 October 2022, pp. 7, 9 (C-047).

⁶¹ Letter from National Bank of Ukraine to ABH Holdings S.A., dated 9 June 2023 (C-048).

⁶² Decision of the National Bank of Ukraine Regarding Ban on ABH Holdings S.A. Exercising Voting Rights in JSC “Sense Bank”, dated 20 March 2023 (C-094); Decision of the National Bank of Ukraine Regarding Ban on ABH Ukraine Limited Exercising Voting Rights in JSC “Sense Bank”, dated 20 March 2023 (C-095).

64. On 8 May 2023, the Commission on Supervision and Regulation of Bank Activities declared the Bank’s ownership structure to be “opaque” and contrary to Article 73 of the Banking Law.⁶³
65. On 5 July 2023, by a Presidential Decree (No. 371/2023), President Zelenskyy gave effect to the Resolution of the Ukrainian National Security and Defence Council (also dated 5 July 2023) that sanctioned ABHH and ABH Ukraine (and various affiliated companies) for a period of 10 years.⁶⁴

3) The State commenced a public relations campaign against the Bank

66. Throughout 2022 and 2023, the State undertook what can only be described as a concerted smear campaign against the Bank, with various State officials making public statements that the Bank was associated with Russian hostilities and drumming up public support for the nationalisation of the Bank, and making clear that it was the State’s intention to do so.
67. Examples of the State’s public statements against the Bank include (but are not limited to):
 - i. On 1 November 2022, PaySpace Magazine (a Ukrainian financial industry focused resource) reported that “it [was] obvious that the law on the withdrawal of systemic banks from the market [i.e., Law No. 2463-IX⁶⁵ detailed in Section IV.F.6 below] was adopted specifically for the nationalisation of Alfa-Bank Ukraine”. PaySpace further reported that, according to Roksolana Pidlasa (a Ukrainian politician and current chairperson of the Verkhovna Rada budget committee), “the National Bank [of Ukraine] formally recognises Alfa as insolvent, capitalises it and nationalises it”.⁶⁶
 - ii. On 5 December 2022, Mr. Mykhailo Podolyak (adviser to the head of Office of the President of Ukraine) expressly stated in an interview on TSN, a

⁶³ See Letter from ABH Holdings S.A. to National Bank of Ukraine, dated 8 June 2023, p. 1 (C-049).

⁶⁴ Decree of President of Ukraine on Imposition of Sanctions on ABH Holdings S.A., ABH Ukraine Limited and Other Alfa Entities, dated 5 July 2022 (C-050).

⁶⁵ Law of Ukraine No. 2463-IX “On amendments to certain legislative acts of Ukraine on the peculiarities of activities of the financial sector in connection with the introduction of martial law in Ukraine”, dated 27 July 2022 (C-051).

⁶⁶ “Will Alfa Bank Ukraine go to the State, repeating the fate of Privat. How the Ukraine’s systemic bank will lose its Russian roots”, Payspace Magazine, dated 1 November 2022 (C-052).

Ukrainian news channel, that “the nationalisation procedure [for the Bank] is already underway”.⁶⁷

- iii. On 6 December 2022, Forbes Ukraine reported that “at the end of October [2022], six interlocutors in the State structure talked about the nationalisation of [the Bank] as a settled matter.”⁶⁸
- iv. On 9 February 2023, Andriy Pyshnyy, the Head of the NBU, expressly stated in an interview with LB.UA (a news outlet) that the NBU would “seek the termination of the activities” of banks that continue to work in Russia, on the basis that “the Russian market is toxic, and their money is poisonous”, such that “the presence on the market of [Russia]... poisons even those businesses that are not directly related to Russia”. This was understood by the interviewer to be a thinly-veiled allusion to the Bank, which the interviewer then expressly named and alleged was “actually owned by Russian oligarchs”. The interviewer further noted that “the law allowing [the Bank’s] nationalisation was recently passed”, which statement was accepted by Andriy Pyshnyy.⁶⁹
- v. In an interview with Ekonomichna Pravda (a media outlet) published on 21 February 2023, in response to a statement by the interviewer that Law No. 2463-IX “was supposed to help nationalise Alfa Bank, now called Sense”, Danylo Hetmantsev (a high-ranking tax official) stated that “we never pass laws for specific banks, but we understood what it was about”, and stated that “everyone agreed to it”.⁷⁰
- vi. On 28 February 2023, Katerina Rozhkov, Chairperson of the NBU, stated in an interview with Delo.ua (a business news outlet) that the State’s intended nationalisation of the Bank “is about basic principles, about moral hygiene, if you will”.⁷¹

⁶⁷ “Russian Oligarchs - Beware! Podoliak warned Putin’s friends!”, TSN Official YouTube channel, interview dated 5 December 2022 (relevant extract timed 0:33-0:36 minutes), available at: <https://youtu.be/qM8s6tdoUsg> (accessed 16 June 2023) (C-053).

⁶⁸ “The nationalisation of the former Alfa-Bank may be postponed to 2023. What's going on around Fridman’s bank”, Forbes Ukraine, dated 6 December 2022 (C-054).

⁶⁹ “Head of the National Bank of Ukraine Andriy Pyshnyy: Ukraine’s experience is material for anti-crisis management textbooks and an incentive for international structures”, LB.UA, dated 9 February 2023 (C-055).

⁷⁰ “Danylo Hetmantsev: If I am silent, it means that I am ‘on topic’. Or ‘in fate’. Or ‘in the subject’ and ‘in fate’”, Ekonomichna Pravda, dated 21 February 2023 (C-056).

⁷¹ “Selection of problem loans and the likelihood of bank bankruptcy - an interview with the first deputy head of the National Bank Ekaterina Rozhkova”, Delo.UA, dated 28 February 2023 (C-057).

- 4) **The State commenced unfounded, discriminatory, and procedurally unfair criminal actions against ABHH and a minority shareholder and harassed the Bank's key employees and officers**
68. While there is no stated relationship between the Bank and the criminal investigations into Mr. Fridman, it is clear that the overall targeting of the Bank, its shareholders, and its ultimate beneficial owners are part and parcel of the same overall campaign of creeping expropriation and *ex post facto* justification for the taking of the Bank; as such, Claimant will address them here.
69. Around April 2022, Ukrainian law enforcement authorities commenced criminal proceedings against a group of prominent businessmen, including Mr. Fridman and other ultimate beneficiaries of the Bank.⁷² These proceedings are unfounded, discriminatory, and obviously politically motivated.
70. On 4 October 2023, the Shevchenkivskyi District Court in Kyiv granted a motion filed by the Prosecutor General's Office for the seizure of various properties, including shares, ultimately owned by Mr. Fridman, as interim relief in the criminal proceedings against Mr. Fridman.⁷³
71. The State also harassed key employees and officers of the Bank. Demands were sent by the NBU to the Bank demanding that certain key employees and officers be dismissed due to not being fit and proper, which demand is contrary to ABHH's statutory right to take part in the management of the Bank under Ukrainian law. The following demands to dismiss the following persons were sent by the NBU, all on 19 June 2023: (i) in respect of Ms. A.V. Komisarenko (head of the Executive (Management) Board), N 24/1134-rk; (ii) in respect of Ms. P. S. Kharchenko (member of the Executive (Management) Board, and Compliance and Financial Monitoring Director), N 24/1137-rk; (iii) in respect of Mr. R. V. Shpek (head of the Supervisory Board and representative of a shareholder), N 24/1135-rk; and (iv) in respect of Mr. A. Baxter (a member of the Supervisory Board and representative of a shareholder), N 24/1136-rk.⁷⁴

⁷² See Letter from Prosecutor General's Office of Ukraine to M. Motruk, dated 14 September 2023 (C-058).

⁷³ Ruling of Investigating Judge of Shevchenkivskyi District Court of Kyiv Regarding M. Fridman, dated 4 October 2023 (C-059).

⁷⁴ See Letter from Pavel Nazariyan (ABH Holdings S.A.) to President Volodymyr Zelenskyy, Minister for Foreign Affairs Dmytro Kuleba, Minister of Finance Sergii Marchenko, and Governor of the National Bank of Ukraine Andriy Pyshnyy, dated 18 July 2023, p. 2, ¶ 4 (C-060).

72. Further, as of 17 December 2023, Mr. Fridman has been placed on the wanted list of the Security Service of Ukraine (SSU).⁷⁵
- 5) The State thwarted the Bank’s effort to restructure itself as way of saving some shareholding for ABHH in the face of State attack**
73. In late May-early June 2023, it became clear that the restrictions on the Bank placed by the NBU would lead to severe liquidity issues if kept in place, assuming that the State did not first nationalise the Bank or withdraw the Bank’s banking licence on the basis of it being “untransparent” (due to Mr. Aven’s and Mr. Fridman’s proportion of shareholding as ultimate beneficial owners).
74. As such, from the perspective of ABHH, the only way to have the Bank continue (in some form) as a going concern in private ownership and avoid having the Bank become a total loss was to make a last-ditch effort to restructure the Bank to comply with the State’s “transparency” requirements by attempting to have Mr. Aven, Mr. Kosogov, and Mr. Fridman reduce their proportion of shareholding in the Bank (held through ABHH) to below 10% each, through the sale of shares to Karswell Limited (a Cypriot company) (“**Karswell**”) for 1 Euro.⁷⁶ Karswell is owned by a reputable Polish banking group that was seeking a foothold in the Ukrainian market to assist the hundreds of thousands of Ukrainians who were living in Poland as a result of the Russian invasion. Considering the market-leading technology that the Bank already possessed for its clients, Karswell saw an opportunity to service those non-resident Ukrainians, facilitate the Ukraine-Poland trade corridor for those clients, and open up new avenues of business between Ukraine and the EU.
75. For ABHH, this was a way — indeed, the only, last-ditch way — to stop (it was hoped) the relentless attacks on the Bank and at least rescue a small portion of the Bank for itself, instead of simply waiting for its inevitable expropriation that the State had long been threatening and was clearly in the process of executing. Such a sale under manifest coercion at significantly less than the Bank’s fair market value was far from ideal, but in the circumstances it was better than nothing, and the buyer’s plans for the business were promising from a commercial perspective.

⁷⁵ “ABHH reacts: the Ukrainian state continues its unfounded persecution of our minority shareholder, escalating the dispute over the expropriated Sense Bank”, press release of ABH Holdings S.A., 20 December 2023 (C-061).

⁷⁶ Draft of the Framework Agreement between ABH Holdings S.A. and Karswell Limited, dated 22 May 2023 (C-062).

76. In this regard, both Karswell and ABHH made every attempt to engage with the NBU in good faith and to execute the intended transaction in compliance with regulatory requirements, for instance:
- i. On 17 February 2023, Karswell (by its attorney Mr. Tomasz Szelag)⁷⁷ wrote to both the Office of the President of Ukraine and the NBU to inform them of the intended transaction, to seek clarification on whether there would be regulatory constraints in relation to the intended transaction, and to offer to discuss the intended transaction further.⁷⁸
 - ii. On 3 March 2023, Karswell (by its attorney Mr. Szelag) sent the Office of the President of Ukraine and the NBU a copy of the memorandum of understanding between ABHH and Karswell in relation to the intended transaction.⁷⁹
 - iii. In response to the NBU's concerns in relation to sanctions against Mr. Aven and Mr. Fridman set out in two letters from the NBU dated 11 March 2023 and 25 May 2023,⁸⁰ Karswell replied to the NBU by way of two letters dated 16 March 2023 (by Karswell's attorney Mr. Szelag) and 30 May 2023 explaining that ABHH was not subject to any relevant sanctions (appending legal opinions by 3 different international law firms confirming this), and expressing Karswell's intention to fully cooperate with the NBU and to seek the approval of the NBU in respect of the intended transaction.⁸¹
 - iv. On 22 May 2023, Karswell submitted the framework agreement of the intended transaction as well as documents confirming Karswell's independence to the NBU.⁸²

⁷⁷ Karswell Limited Power of Attorney authorising Tomasz Szelag, dated 2 March 2023 (C-063).

⁷⁸ Letter from Tomasz Szelag to Governor of the National Bank of Ukraine Andriy Pyshnyy, dated 17 February 2023 (C-064); Letter from Tomasz Szelag to Deputy Head of Office of President of Ukraine Rostyslav Shurma, dated 17 February 2023 (C-065).

⁷⁹ Letter from Tomasz Szelag to Deputy Head of Office of President of Ukraine Rostyslav Shurma, dated 3 March 2023 (C-066); Letter from Tomasz Szelag to Governor of the National Bank of Ukraine Andriy Pyshnyy, dated 3 March 2023 (C-067).

⁸⁰ Letter from National Bank of Ukraine to Tomasz Szelag, dated 11 March 2023 (C-068) ; Letter from National Bank of Ukraine to Tomasz Szelag and Ms. Elia, dated 25 May 2023 (C-069).

⁸¹ Letter from Tomasz Szelag to Deputy Governor of the National Bank of Ukraine Dmytro Oliinyk, dated 16 March 2023, with annexures thereto (legal opinions from Arendt and Cleary Gottlieb Steen & Hamilton) (C-070); Letter from Joanna Elia (Karswell Limited) to Deputy Governor of the National Bank of Ukraine Dmytro Oliinyk, dated 30 May 2023, with annexure thereto (legal opinion from DLA Piper) (C-071).

⁸² Letter from Joanna Elia (Karswell Limited) to Deputy Governor of the National Bank of Ukraine Dmytro Oliinyk, dated 22 May 2023 (C-072).

- v. On 8 June 2023, ABHH wrote to the NBU to assure the NBU that ABHH intended to comply fully with its obligations under Ukrainian law and that it “will not proceed with the Transaction unless it is permitted to do so under the applicable law”.⁸³
77. However, notwithstanding Karswell’s and ABHH’s efforts and assurances made in good faith, the NBU thwarted the intended transaction. Throughout the process of Karswell and ABHH attempting to engage constructively with the NBU, the NBU refused to reciprocate in engaging constructively with either Karswell and ABHH, and insisted that “the position of the NBU is that any attempts to alienate the shares of the Bank... contain signs of actions aimed at circumventing the established sanctions regime”.⁸⁴ The NBU also made public statements announcing its opposition to the intended transaction.⁸⁵ On 29 June 2023, the NBU formally informed Karswell that “there are no grounds to commence the procedure for consideration of intention to acquire a substantial interest in the Bank”.⁸⁶
78. Despite these setbacks, both Karswell and ABHH continued to attempt to engage constructively with the NBU in good faith and to assure the NBU of their intention to fully comply with regulatory requirements. On 6 July 2023, Karswell again wrote to the NBU to express its intention to “act in accordance with the law and taking into account the restrictions and sanctions imposed by Ukraine and the international community”, and to “not proceed with the transaction until all issues and concerns are resolved”.⁸⁷ On 19 July 2023 and 24 July 2023, Karswell submitted additional supporting documents to the NBU.⁸⁸
79. In the event, despite Karswell’s and ABHH’s best efforts made in good faith, the intended transaction was thwarted by the NBU and could not be completed before the Bank’s expropriation on 22 July 2023,⁸⁹ as detailed below. Of course, that is not

⁸³ Letter from ABH Holdings S.A. to National Bank of Ukraine, dated 8 June 2023, p. 2. (C-049)

⁸⁴ Letter from National Bank of Ukraine to ABH Holdings S.A., dated 9 June 2023, p. 2. (C-048). *See also* Letter from National Bank of Ukraine to Tomasz Szlag and Ms. Elia, dated 25 May 2023 (C-069).

⁸⁵ “NBU’s Official Statement Regarding Potential Investor for SENSE BANK JSC”, National Bank of Ukraine, dated 17 March 2023 (C-073).

⁸⁶ Letter from Joanna Elia (Karswell Limited) to Pavel Nazariyan (ABH Holdings S.A.), dated 29 June 2023 attaching Letter from National Bank of Ukraine to Karswell Limited, dated 29 June 2023, p. 4 (C-074).

⁸⁷ Letter from Joanna Elia (Karswell Limited) to Deputy Governor of the National Bank of Ukraine Dmytro Oliinyk, dated 6 July 2023 (C-075).

⁸⁸ *See* Letter from Joanna Elia (Karswell Limited) to Pavel Nazariyan (ABH Holdings S.A.), dated 21 July 2023 (C-076); Letter from Joanna Elia (Karswell Limited) to Pavel Nazariyan (ABH Holdings S.A.), dated 24 July 2023 (C-077).

⁸⁹ Letter from National Bank of Ukraine to Karswell Limited, dated 31 August 2023 (C-078).

surprising — the truth is that the State was never going to agree to the transaction. It wanted the Bank for itself.

6) The State passed a series of laws with a view to expropriating the Bank

80. The State passed a series of laws with a view to expropriating the Bank. These laws could not have been applied to any other bank; indeed, public statements by State officials confirmed that the Bank was the specific target, and it was also widely so understood by the media.
81. On 6 October 2022, the State promulgated Law No. 2463-IX “On Making Changes to the Tax Code of Ukraine and Other Laws of Ukraine regarding the Peculiarities of Withdrawing a Systemically Important Bank from the Market under Martial Law”.⁹⁰ Law No. 2463-IX facilitated the nationalisation of systemically important banks by providing that such banks could be categorised as insolvent without requiring recapitalisation by the State, such that they could be “sold” to the NBU for a nominal price without provision for the shareholders receiving compensation from the State.
82. The passing of Law No. 2463-IX was clearly intended to create a “legal” basis for the expropriation of the Bank. Public statements by State officials signalled at the time that the Bank would be nationalised (see Section IV.F.3 above). Coupled with the extraordinarily harsh, arbitrary, and discriminatory restrictions placed on the Bank, it was clear that Law No. 2463-IX was a trap created to snare the Bank when (as the State intended) its financial health would deteriorate to such an extent as to be caught by the solvency threshold of the new law.
83. However, such was the Bank’s financial health and the loyalty of its client base (due in no small part to its technological offerings), that even in the face of the State’s discriminatory restrictions and relentless media campaign against the Bank, it did not meet the criteria for being nationalised by the State pursuant to Law No. 2463-IX. The State was thus forced to create an even bolder and more egregious legislative pretext for the expropriation of the Bank. This time it took no chances and went with an even more overt and blunt approach that left nothing to the imagination.
84. This came in the form of Law No. 9107-1 “On Amendments to Certain Legislative Acts of Ukraine Concerning Improvement of the Procedure for Withdrawal of a Bank

⁹⁰ Law of Ukraine No. 2463-IX “On amendments to certain legislative acts of Ukraine on the peculiarities of activities of the financial sector in connection with the introduction of martial law in Ukraine”, dated 27 July 2022 (C-051).

from the Market under Martial Law”,⁹¹ which was promulgated by the State on 18 June 2023. Law No. 9107-1 provides, *inter alia*, that:

- i. If a bank recognised as systemically important by the NBU and/or a material shareholder of such a bank is sanctioned by foreign States or under Ukrainian law, the NBU may “withdraw it from the market” in a similar manner to an insolvent bank (*i.e.*, nationalise it);⁹² and
 - ii. Any person who suffers loss or damage as a result of the withdrawal from the market of a systemically important bank by the NBU will not have access to the usual civil remedies under Ukrainian law; rather, they can only be compensated “with the funds of the state (states) that has (have) committed or is (are) committing an armed aggression against Ukraine”.⁹³
85. It is clear that Law No. 9107-1 was specifically drafted and passed with a view to expropriating the Bank, with no other banks in Ukraine fulfilling the criteria set out in the Law. Indeed, numerous Ukrainian media sources referred to the Law as the “Alfa-Bank law”.⁹⁴
86. Further, Law No. 9107-1 was passed notwithstanding that during its drafting process, it had elicited significant concerns from many Members of the Rada (Ukraine’s Parliament) as well as by the Rada’s various departments itself as to the Law’s constitutionality by reference to the Ukrainian Constitution and the Law’s consistency with Ukraine’s obligations under international law.
87. The Chief Research and Expert Office of the Rada opined,⁹⁵ *inter alia*, that:
- i. the scope of the powers given to the NBU under the Law was “rather broad so that the National Bank of Ukraine would actually apply such provisions at its sole discretion, which application will not be fully consistent with the principle of legal certainty and may give rise to corruption risks”,⁹⁶

⁹¹ Law of Ukraine on Introduction of Amendments to Certain Laws of Ukraine to Improve the Procedure for Withdrawing a Bank from the Market Under Martial Law, dated 29 May 2023 (C-079).

⁹² *Id.*, pp. 2–3.

⁹³ *Id.*, p. 3.

⁹⁴ “The Verkhovna Rada adopted a law on the nationalization of Mikhail Fridman's Sense Bank”, Forbes Ukraine, dated 29 May 2023 (C-080).

⁹⁵ Opinion of Chief Research and Expert Office of Rada Regarding Draft Law, dated 30 March 2023, 30 March 2023 (C-081).

⁹⁶ *Id.*, ¶ 1.1.4.

- ii. the Law “incorrectly correlates” between foreign sanctions “that are in no way connected with the armed aggression against Ukraine” and the compensation for the damage caused by the application of the Law from the funds of the states that have committed or are committing the armed aggression against Ukraine;⁹⁷
 - iii. the Law operating in a way that would allow ownership of shares in an affected bank to be “terminated without proper compensation from Ukraine” raises concerns vis-à-vis Ukraine’s obligations under international law in relation to the interference by a public authority with the peaceful enjoyment of property, specifically under Article 1 of the First Protocol to the 1950 Convention on the Protection of Human Rights and Fundamental Freedoms and under the ECHR;⁹⁸ and
 - iv. the Law “lacks legal certainty, clarity and unambiguity as far as it goes to the concept of “persons who suffered loss as a result of the liquidation of the bank or withdrawal of the systemically important bank from the market””.⁹⁹
88. The Chief Legal Department of the Rada supported the comments made by the Chief Research and Expert Office of the Rada, and further opined,¹⁰⁰ *inter alia*, that:
- i. the operation of the Law is inconsistent with the separation of powers enshrined in the Ukrainian Constitution in Articles 75, 85 and 92;¹⁰¹ and
 - ii. the provision in the Law that prevents persons suffering loss or damage as a result of the withdrawal from the market of a bank pursuant to the Law from being entitled to their usual civil remedies under Ukrainian law is inconsistent with Articles 13(4) and 22(2) of the Ukrainian Constitution (which respectively protect property rights and existing rights and freedoms),¹⁰² and failed to take into account the need to comply with the requirement in the ECHR that a person be able to choose his remedy when his proprietary rights are interfered with.¹⁰³
89. Further, by a letter dated 14 July 2023, the Ukrainian Ministry of Justice confirmed that Law No. 9107-1 was neither drafted by the Ministry of Justice nor was it ever

⁹⁷ *Id.*, ¶ 1.1.5.

⁹⁸ *Ibid.*

⁹⁹ *Id.*, ¶ 1.2.

¹⁰⁰ Comments of Chief Legal Department of Rada Regarding Draft Law, dated 1 May 2023 (C-082).

¹⁰¹ *Id.*, p. 1.

¹⁰² *Id.*, pp. 2–3.

¹⁰³ *Id.*, p. 3.

submitted to the Ministry of Justice for expert legal evaluation, notwithstanding all the concerns raised by the Chief Research and Expert Office and Chief Legal Department of the Rada as set out above.¹⁰⁴

90. Further, 64 Members of the Rada brought a constitutional petition to the Constitutional Court of Ukraine to challenge the constitutionality of the effects of the changes to Ukrainian law introduced by Law No. 9107-1, which judgment remains pending.¹⁰⁵

7) The State expropriated the Bank unlawfully

91. On 20 July 2023, pursuant to its new powers under Clause 15 of Section VII to the Banking Law (added by Law No. 9107-1 dated 29 May 2023, detailed above), the NBU formally withdrew the Bank from the market.¹⁰⁶

92. On 21 July 2023, pursuant to its new powers under Clause 23 of Section X to the Law “On the Individual Deposit Guarantee System” (added by Law No. 9107-1 dated 29 May 2023, detailed above), and pursuant to the NBU’s formal withdrawal of the Bank from the market detailed in the immediately preceding paragraph, the Cabinet of Ministers of Ukraine formally resolved to have the Ministry of Finance, acting on behalf of the State, “acquire” all the shares in the Bank for one hryvnia.¹⁰⁷

93. On 22 July 2023, pursuant to the resolution of the Cabinet of Ministers of Ukraine detailed in the immediately preceding paragraph, the Ministry of Finance of Ukraine, acting on behalf of the State, “acquired” all the shares in the Bank. The expropriation of the Bank by the State was thereby completed. Also, on 22 July 2023, the NBU approved a request by the Ministry of Finance to appoint its own candidates to the following positions in the newly-nationalised Bank, thereby replacing the former position-holders:¹⁰⁸

- i. Chairperson of the Supervisory Board;

¹⁰⁴ Letter from Ministry of Justice of Ukraine to V. Bogatyr, dated 20 July 2023 (C-083).

¹⁰⁵ See Letter from Constitutional Court of Ukraine to V. Bogatyr, dated 14 September 2023 (C-084).

¹⁰⁶ Decision of National Bank of Ukraine Regarding Withdrawal of Sense Bank from the market, dated 20 July 2023 (C-085). See also Letter from National Bank of Ukraine to Shareholder of JSC “Sense Bank”, dated 20 July 2023 (C-086).

¹⁰⁷ Resolution of Cabinet of Ministers of Ukraine on the State’s Involvement in the Withdrawal of a Systemically Important Bank from the Market, dated 21 July 2023 (C-087); Letter from Cabinet of Ministers of Ukraine to V. Bogatyr, dated 28 July 2023 (C-088).

¹⁰⁸ Letter from National Bank of Ukraine to V. Bogatyr, dated 20 September 2023, p. 4. (C-089).

- ii. Deputy Chairpersons of the Supervisory Board;
- iii. Members of the Supervisory Board;
- iv. Chairperson of the Management Board;
- v. Deputy Chairpersons of the Management Board; and
- vi. Members of the Management Board.

V. JURISDICTION UNDER THE TREATY AND ICSID CONVENTION

94. The arbitral tribunal to be constituted under the Treaty and the ICSID Convention has jurisdiction over ABHH's claim that Ukraine breached the protections guaranteed to ABHH under the Treaty.

A. **ABHH is an Investor in Ukraine with a covered Investment that is promised substantive protections under the Treaty**

95. The Treaty includes the following relevant definitions under Article 1:¹⁰⁹

Article 1(1)

The term "investors" shall mean:

a) the "nationals", i.e. any natural person who, according to the legislation of Ukraine, of the Kingdom of Belgium, or of the Grand-Duchy of Luxemburg, is considered as a citizen of Ukraine, of the Kingdom of Belgium or of the Grand Duchy of Luxemburg respectively;

b) the "companies", i.e. any legal person constituted in accordance with the legislation of Ukraine, of the Kingdom of Belgium or of the Grand-Duchy of Luxemburg and having its registered office in the territory of Ukraine, of the Kingdom of Belgium or of the Grand-Duchy of Luxemburg respectively.

Article 1(2)

2. The term "investments" shall mean any kind assets and any direct or indirect contribution in cash, in kind or in services, invested or reinvested in any sector of economic activity.

¹⁰⁹ Treaty, Article 1 (C-001).

96. Claimant is a legal person constituted in accordance with the laws of the Grand-Duchy of Luxembourg and having its registered office there.¹¹⁰ It is therefore an “investor” for the purposes of the Treaty. Hence, the Tribunal has *jurisdiction ratione personae* under the Treaty.
97. Claimant made an investment on the “territory” of Ukraine. It held, directly and indirectly, 100% of the shares in the Bank, invested hundreds of millions of US dollars into Ukraine over many years,¹¹¹ employed thousands of employees on the ground, owned the intellectual property and goodwill in the Bank, and was exclusively entitled to any “incomes” arising out of the Bank in accordance with Article 1(3) of the Treaty. Hence, the Tribunal has *jurisdiction ratione materiae* under the Treaty.
98. The Treaty came into force on July 27, 2001 and has not been terminated pursuant to its Article 13. ABHH made its investment, at the very latest, in 2009. The present legal dispute crystallised at a date to be determined between March 2022 and July 2023, over which period the State undertook a series of unlawful actions against the Bank and its shareholders that culminated in the expropriation of the Bank, as detailed above. Hence, the Tribunal has *jurisdiction ratione temporis* under the Treaty.

B. ABHH meets the jurisdictional requirements of the ICSID Convention

99. A claimant must meet the jurisdictional requirements of the ICSID Convention as well as those of the relevant bilateral investment treaty. Article 25(1) of the ICSID Convention specifies that the “jurisdiction of the Centre shall extend to [(1)] any legal dispute arising directly out of an investment, [(2)] between a Contracting State . . . and a national of another Contracting State, [(3)] which the parties to the dispute consent in writing to submit to the Centre.” Again, all of these prerequisites are met in the present case.
100. First, while the ICSID Convention provides no definition of the term “investment,” the term is widely accepted in international investment law to have a broad meaning that is on any view satisfied here. Claimant owned 100% of the Bank prior to its expropriation by the State, and has continuously invested in Ukraine since, at the very latest, 2009. During that time, it has poured millions of dollars into the Bank’s activities. This has resulted in profit and benefit not just for ABHH, but for millions

¹¹⁰ Extract from Registre de Commerce et des Sociétés of Luxembourg for ABH Holdings S.A., dated 28 December 2023 (C-009).

¹¹¹ Table of Investments made in JSC “Alfa-Bank” by ABH Ukraine Limited between 2006 and 2016 (C-090).

of Ukrainian clients of the Bank, as well as the State itself through both the taxes paid by the Bank every year and the Bank's contribution to a stable Ukrainian banking system. Size, revenue, and profits grew steadily until Respondent began its unlawful actions against Claimant's investment, and the present legal dispute between Claimant and Respondent arises directly out of the actions taken by Respondent against this investment in breach of Claimant's rights under the Treaty. This long-term commitment, the expectation of profit and risk, and the avowed benefit to the host State's economy, qualify Claimant's activities as a quintessential investment operation in Ukraine.

101. Second, Claimant is a national of a "Contracting State" to the ICSID Convention. ABHH (as a legal person of Luxembourg) has at all material times been, and remains as of the date of this Request, a national of Luxembourg.¹¹² Luxembourg signed the ICSID Convention on September 28, 1965 and deposited instruments of ratification on July 20, 1970; and the ICSID Convention entered into force there on August 29, 1970. For its part, Ukraine signed the ICSID Convention on April 3, 1998; and deposited instruments of ratification on June 7, 2000; and the ICSID Convention entered into force in Ukraine on July 7, 2000.
102. Third, Claimant and Respondent have both expressed their consent to submit the present legal dispute to arbitration. By the terms of Article 9 of the Treaty,¹¹³ Ukraine consented to submit any investment dispute arising between Ukraine and an investor of Luxembourg to binding arbitration in the expressly listed forums at the option of the investor. This is Ukraine's unequivocal statement of consent and offer to arbitrate a potential legal dispute with a qualified investor. Claimant, by issuing the notice of dispute,¹¹⁴ accepted Ukraine's offer of arbitration.

VI. RESPONDENT'S BREACHES OF THE TREATY

103. As a result of Respondent's unlawful actions discussed in Section IV.F above (as well as additional information to be pleaded during the course of the arbitration), Respondent has committed multiple breaches of its obligations under the Treaty in

¹¹² Extract from Registre de Commerce et des Sociétés of Luxembourg for ABH Holdings S.A., dated 28 December 2023 (C-009).

¹¹³ Treaty, Article 9 (C-001).

¹¹⁴ Notice of Dispute under BLEU (Belgium-Luxembourg)-Ukraine Bilateral Investment Treaty, dated 16 June 2023 (C-091).

respect of Claimant's investment in Ukraine. For example, and without limitation to other Treaty breaches to be developed in due course:

104. First, Respondent's treatment of Claimant's investment, and in particular its nationalisation of ABHH's shares in the Bank on 22 July 2023, constituted a "measure" of "expropriation or nationalisation" or "any other measure having the effect of directly or indirectly dispossessing" ABHH of its investment in Ukraine. Article 4(1) of the Treaty is a remarkable and perhaps unique prohibition of such an act.¹¹⁵ Unlike many other bilateral and multilateral investment treaties, where expropriation is only unlawful if the State does not accompany its taking with due process, non-discrimination, public purpose, and/or adequate and effective compensation, Article 4(1) of the Treaty prohibits *any* expropriation or nationalisation *per se*. Put another way, even if Ukraine did follow the usual formula for a lawful expropriation in this case (which, in any event, it did not), its taking would nevertheless *still* be an unlawful expropriation for the purposes of this Treaty.
105. While Article 4(2) of the Treaty does provide Ukraine with limited grounds to derogate from the comprehensive prohibition of Article 4(1) of the Treaty, those are not met here.¹¹⁶ Specifically, as set out in Section IV.F.8 above, Ukraine has never so much as hinted at any "public purpose, security or national interest" that would require a "derogation" from Article 4(1). Nevertheless, should Respondent seek to articulate a *post hoc* rationalisation to reframe its actions within those limited grounds (on which it would bear the burden of proof), it would nevertheless be unable to meet the further conditions including those of due process, non-discrimination, and adequate and effective compensation without delay required in Articles 4(2)(a), (b), (c), and 4(3) of the Treaty.
106. Second, Respondent also failed to accord Claimant's investment "fair and equitable treatment" under Article 3(1) of the Treaty,¹¹⁷ and subjected it to acts of the State agencies and their public officials by reason of the Government's disproportionate, discriminatory and/or arbitrary actions, and/or actions that harmed Claimants' legitimate expectations and its investment. Specifically, but without limitation, Respondent's public relations campaign; the arbitrary and unreasonable restrictions on the Bank's business; the bogus criminal allegations and investigations; the

¹¹⁵ Treaty, Article 4(1) (C-001).

¹¹⁶ *Id.*, Article 4(2).

¹¹⁷ *Id.*, Article 3(1).

discriminatory interferences with Claimant's investment when similar banks were not so targeted; the refusal to allow the Bank to restructure its shareholding; and the nationalisation of the Bank; all violated Claimant's rights under that provision of the Treaty.

107. Third, for the same reasons as stated above, Respondent also failed to provide Claimant's investment with "continuous protection and security" under Article 3(2) of the Treaty. It subjected Claimant's investment to unjustified and discriminatory measures that manifestly hindered, both under Ukrainian law and in practice, Claimant's rights to manage, maintain, use and possess the Bank.
108. As a direct and proximate result of Respondent's breaches of the Treaty, Claimant has suffered significant loss and damage in an amount to be quantified, but anticipated to be no less than US\$1 billion. Claimant is entitled to full compensation in damages in respect of such loss and damage it has suffered, including full compensation for the lost profits caused to its investment, as well as full indemnification for any damages that may be claimed by third parties against ABHH directly or indirectly consequent to the expropriation of the Bank by the Respondent for which ABHH may be found liable. Further, considering the unjust, targeted, and predatory nature of the taking which has resulted in additional compensable harm to Claimant not covered by the pecuniary damages specified above, Claimant also claims moral damages in any amount to be quantified. Claimant reserves the right to further clarify and/or add to its legal claims under the Treaty and/or the resulting loss and damage suffered, through documentary, testimonial and expert evidence, in its memorials and at a hearing on the merits of its claims.

VII. PROCEDURAL MATTERS

A. Claimant has met the notice and time requirements

109. Pursuant to Article 9(1) of the Treaty,¹¹⁸ Claimant notified Ukraine in writing of the present legal dispute on 16 June 2023.¹¹⁹ Despite some limited correspondence between the parties, it was impossible for the parties to reach amicable settlement of the dispute.

¹¹⁸ *Id.*, Article 9(1).

¹¹⁹ Notice of Dispute under BLEU (Belgium-Luxembourg)-Ukraine Bilateral Investment Treaty, dated 16 June 2023 (C-091).

110. Six months from Claimant's notification was 16 December 2023. As a result, as of the date of this Request, more than six months have elapsed since Claimant's notification, and thus Claimant submits the present legal dispute, in the absence of amicable settlement, at its option, to international arbitration. For the avoidance of doubt, Claimant has taken all necessary internal actions to authorise this Request, as evidenced by a resolution by Claimant's Board of Directors.¹²⁰

B. Constitution of the Arbitral Tribunal

111. Rule 16 of the ICSID Arbitration Rules follows Article 37(2)(b) of the ICSID Convention, which states:

Where the parties do not agree upon the number of arbitrators and the method of their appointment, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party and the third, who shall be the president of the Tribunal, appointed by agreement of the parties.

112. As the parties have not otherwise agreed to the number and appointment of the arbitrators, these default provisions remain applicable.

113. Claimant hereby nominates Mr. Francis Xavier SC, a Malaysian national, as its party-appointed arbitrator. Mr. Xavier may be reached at:

Mr. Francis Xavier SC
Rajah & Tann Singapore LLP
9 Straits View #06-07
Marina One West Tower
Singapore 018937
Singapore
Email: francis.xavier@rajahtann.com
Telephone: +65 6232 0551

114. Claimant further proposes that the rest of the Arbitral Tribunal be appointed as follows:

- i. Within 30 days of the registration of this Request, Respondent shall appoint its arbitrator;
- ii. The two arbitrators so appointed shall, within 30 days of the appointment of Respondent's arbitrator and in consultation with the parties, jointly select a third arbitrator to serve as President of the Arbitral Tribunal; and

¹²⁰ ABH Holdings S.A. Board of Directors Resolution, dated 27 December 2023 (C-092).

- iii. In the event that Respondent fails to appoint its arbitrator or that the two party-appointed arbitrators are unable to reach agreement on the identity of the President of the Arbitral Tribunal within the time limits specified above, the Chairman of the ICSID Administrative Council shall appoint the arbitrator or arbitrators not yet appointed and shall designate the President of the Arbitral Tribunal.

C. Language and place of proceedings

115. The Treaty does not include any agreement by Luxembourg and Ukraine as to procedural language. The parties have reached no other agreement. Claimant therefore proposes English, an official language of ICSID, as the procedural language of the arbitration. Indeed, English is also the predominant language of the Treaty per Article 13(2) of the Treaty.¹²¹
116. Claimant further proposes that London, England, be the place of the proceedings.

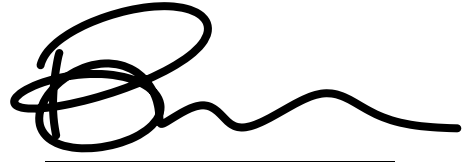
VIII. RELIEF REQUESTED

117. While reserving its rights to supplement or otherwise amend its claims and the relief requested in connection therewith, Claimant requests an award granting it the following relief:
 - i. A declaration that Ukraine violated the Treaty in respect of Claimant's investment;
 - ii. Compensation to Claimant for all loss and damage it has sustained, to be developed and quantified in the due course of this proceeding, but anticipated to be no less than US\$1 billion;
 - iii. All costs and expenses of this proceeding, including attorneys' fees and expenses;
 - iv. Pre-award and post-award compound interest until the date of Respondent's full and final satisfaction of the award; and
 - v. Such other relief as the Arbitral Tribunal may deem appropriate in the circumstances.

¹²¹ Treaty, Article 13(2) (C-001).

118. Claimant expressly reserves its right to amend its request for relief during the course of this proceeding in any manner it deems appropriate, including seeking relief on additional grounds.
119. For the reasons set forth above, Claimant respectfully requests that the Secretary-General of ICSID register this arbitration against Ukraine in accordance with Articles 36(1) and (3) of the ICSID Convention.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized initial 'B' followed by a series of loops and a long horizontal stroke extending to the right.

Mr. Baiju S. Vasani
Mr. Alexander Yean
TWENTY ESSEX
Counsel for the Claimant