

# KIRKLAND & ELLIS

Kirkland Alert

## Silicon Valley Bank UK — Impact of Rescue Deal

13 March 2023

### At a Glance

On Monday, 13 March, the Bank of England ('BoE') [announced](#) that:

- Silicon Valley Bank UK Limited ('SVBUK') is being sold to HSBC UK Bank plc to stabilise SVBUK, ensuring the continuity of banking services, minimising disruption to the UK tech sector and supporting confidence in the financial system;
- all depositors' money with SVBUK is safe and secure as a result of this transaction – SVBUK's business will continue to be operated normally by SVBUK;
- the £322 million perpetual subordinated notes (AT1 Instruments) and the £33 million subordinated debt notes due 2032 (Tier 2 Instruments), each issued by SVBUK, are reduced to zero and liabilities under those instruments are cancelled;<sup>1</sup>
- no taxpayer money is involved; and
- SVBUK continues to be authorised by the Prudential Regulation Authority ('PRA') / Financial Conduct Authority,

(the 'Resolution Announcement').

The Resolution Announcement supersedes the BoE's statement of 10 March, that it intended "to apply to the Court to place [SVBUK] into a Bank Insolvency Procedure".

HSBC [announced](#) that:

- the consideration for the sale was £1;
- the transaction completes immediately; and

- the assets and liabilities of the parent companies of SVBUK are excluded from the transaction.

In protecting all depositors' money – over and above deposits protected under the Financial Services Compensation Scheme ('FSCS') – the UK approach mirrors that for Silicon Valley Bank in the U.S., where resolution of the U.S. bank is being completed in a manner that fully protects all depositors.

Our *Alert* summarises what the Resolution Announcement means for SVBUK, its customers and counterparties. A dedicated SVB-related team at Kirkland is assisting clients globally with these matters. Further updates will be produced as developments emerge.

## How does this relate to Silicon Valley Bank in the U.S.?

On Friday, 10 March, U.S. banking regulators assumed control of Silicon Valley Bank and put the bank into receivership. The U.S. Federal Deposit Insurance Corporation ('FDIC') and the Office of the Comptroller of Currency created a new U.S. bridge bank and transferred all insured deposits of SVB to the U.S. bridge bank. Late Sunday, 12 March, the U.S. Department of the Treasury [announced](#) that the resolution would be completed in a manner that fully protects all depositors, i.e., all depositors would be made whole. Effective Monday (13 March), the U.S. bridge bank is providing limited operations as described in [FDIC FAQs](#), to allow depositors to access their deposits and close accounts.

SVBUK is a separate legal entity registered in the U.K. The Resolution Announcement for SVBUK is separate to what is happening to Silicon Valley Bank in the U.S.

## What has happened to SVBUK?

The BoE decided, in consultation with other Government departments, to use the resolution powers for stabilising failing banks that were brought in following the financial crisis. The resolution powers are designed to protect and enhance UK financial stability, ensure the continuity of banking services, protect public funds and impose losses on investors in failed banks.

At the point of failure, SVBUK had a total balance sheet size of c.£8.8 billion, deposits of c.£6.7 billion and loans of c.£5.5 billion. HSBC's [announcement](#) states that SVBUK's

tangible equity is expected to be c.£1.4 billion. However, the scale of the deterioration of liquidity and confidence in SVBUK meant that – in the view of the BoE and the PRA – the position was not recoverable.

One of the resolution tools is the power to transfer all or part of a firm’s business (which can include either its shares or its assets and liabilities) to a private sector purchaser – here, HSBC. This transfer does not require the consent of the failed bank or its shareholders, customers or counterparties.

The transfer of shares to HSBC transfers title to all issued ordinary shares in the capital of SVBUK, such that Silicon Valley Bank U.S. no longer has any equity in SVBUK. As noted, the £322 million perpetual subordinated notes (Additional Tier 1 instruments) and the £33 million subordinated debt notes due 2032 (Tier 2 instruments), each issued by SVBUK, are reduced to zero; liabilities under those instruments (including accrued interest) are cancelled.

There is **no formal bank insolvency procedure in respect of SVBUK.**

In order to ensure the sale could proceed, the Government used its powers under the Banking Act to provide an exemption for HSBC to certain ring-fencing requirements; this exemption is reported to be permanent.<sup>2</sup>

The Treasury is now required to establish a scheme for determining whether SVBUK’s former shareholders should be paid any compensation with respect to the resolution;<sup>3</sup> it is also possible that holders of the cancelled capital instruments may receive appropriate compensation for any loss incurred in consequence of the mandatory reduction instrument.<sup>4</sup> The Annex provides further information regarding creditor safeguards. Developments are expected in the coming weeks.

## Can you access your deposited funds in SVBUK?

Yes: the Resolution Announcement states that all deposits will be protected, services will continue to operate as normal and customers should not notice any changes. A related Treasury [announcement](#) provides that this is effective immediately (from 13 March).

The Resolution Announcement states that “**all** depositors’ money with SVBUK is safe and secure as a result of this transaction”. This goes over and above deposits protected by the FSCS, which is subject to a limit of £85,000 (or up to £170,000 for

joint accounts). It also appears that this protects even depositors that would not have been eligible for protection under the FSCS (such as credit institutions, financial institutions, investment firms, insurers, pension funds, insurance undertakings, and large public authorities (rule 2.2, [PRA Rulebook](#))).

The Resolution Announcement also makes clear that borrowers should make any loan repayments to SVBUK as normal.

## What about other arrangements with SVBUK?

With respect to your obligations under credit facilities, collateral and security, sweeps, and other items, the terms of your arrangements need to be reviewed and considered in light of further announcements. Specific legal advice should be sought.

If you have further queries, please contact [Kon Asimacopoulos](#) and [Kate Stephenson](#).

## Annex: What safeguards apply for SVBUK's creditors and counterparties?

First, the resolution regime requires that an independent valuer conduct a valuation of the firm's assets and liabilities prior to the use of resolution powers. If there is insufficient time ahead of resolution, the BoE may conduct this valuation on a provisional basis. The valuation informs (a) the decision that SVBUK was failing or likely to fail (which permits the resolution regime to be triggered) and (b) the use of the transfer tool.

Second, transactions that involve netting and set-off, collateral and certain other financial market arrangements must generally be respected in resolution. This is to ensure that arrangements whose purpose is to reduce the counterparty's loss in the event of a default by a bank are preserved in resolution. This set of safeguards effectively ensures that the resolution authority cannot 'cherry pick' when using the resolution powers, for example by transferring some contracts subject to a netting, set-off or capital markets arrangement with a given counterparty, while leaving others behind that are also part of that arrangement.

Third, the regime also contains a 'no creditor worse off' ('NCWO') safeguard, which requires that no shareholder or creditor must be left worse off from the use of

resolution powers than they would have been had the entity entered insolvency rather than resolution. An estimated NCWO valuation is prepared prior to resolution. After resolution, an NCWO valuation of the firm is prepared by an independent valuer – appointed by a panel put in place by HM Treasury – in order to determine whether any shareholders or creditors have received less from the resolution than they would have recovered from an insolvency. Where there is a shortfall, shareholders and/or creditors are entitled to compensation. This compensation is paid from a fund provided by HM Treasury and recovered from the industry. The NCWO safeguard assures creditors that any losses they suffer when resolution powers are used will either be less than, or at worst the same as, in insolvency.

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1. [Silicon Valley Bank UK Limited Mandatory Reduction and Share Transfer Instrument](#)↔

2. [Hansard](#), 13 March↔

3. Sections 49(2) and 50, Banking Act 2009↔

4. Section 6C(4)(d), Banking Act 2009↔

## Related Professionals

Kon M. Asimacopoulos

Partner / London

Kate Stephenson

Partner / London

## Related Services

Practices

- Restructuring

## Suggested Reading

- 26 April 2023 Speaking Engagement PLI's Bankruptcy & Reorganizations 2023: Current Developments
- 08 March 2023 Kirkland Alert English Court Approves First “Unsecured Credit Bid”, in Administration of Sova Capital
- 08 March 2023 Award Rising Stars: The UK's Best Up and Coming Female Lawyers 2023

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