

Silicon Valley Bank's current position and what to do about it

FAQs

Updated: 12 March 2023, 3pm GMT

CMS can help you, now

CMS's **cross-specialism team** will keep you on top of the **technical detail and practical implications** in the coming days and weeks. We pool the knowledge of **financial services, crisis and reputation, insolvency, capital markets and of course VC and start-up** lawyers, to give holistic real-time advice to founders, start-ups, established regulated entities, VCs and other players. We have a detailed understanding of the insolvency process and how interactions with the regulators work, with a number of our lawyers having previously worked or been seconded to the regulators (including the Bank of England). If SVB's current circumstances affect you, get in touch. Useful contact details can be found at the end of these FAQs or email us at our dedicated support email address svbhelp@cms-cmno.com.

In these situations it is important to be proactive. SVB's current circumstances and possible insolvency is likely to have a disruptive impact on many sub-sectors within the UK market due to its connections to participants. The government is aware of this and working on possible mitigation steps for this very reason. We have been talking to a large number of affected customers and counterparties about their options, and we are in contact with debt funders and account providers who are looking to support impacted parties going forward – we are happy to discuss the support your particular business needs and to make introductions.

Our comments below reflect the situation as at 3pm on Sunday 12th March 2023. This is currently a dynamic situation and therefore the regulators' and government's position may change over time. CMS will continue to monitor the situation and can offer you help, however this matter develops.

Some context

The Bank of England has announced that “absent any meaningful further information” it intends to apply to place Silicon Valley Bank UK Limited (“**SVB UK**”), the UK’s deposit-taking subsidiary of the Silicon Valley Bank group, into a Bank Insolvency Process (“**BIP**”), following the collapse of its US parent bank and the US regulator taking over that US bank. In Germany, SVB is a branch of SVB US and BaFin is continuing to monitor the situation and may take action in the coming days.

The use of a BIP for a UK bank post-2008 is extremely uncommon compared to the US, where over 500 federally insured banks have ‘failed’ from 2009 onwards, according to their regulators. Despite their relative rarity, UK and US regulators impose a detailed process for bank insolvencies and that process will shortly start to play out in the US and may start in the UK.

This may be little comfort to parties currently with deposits held at the UK or US bank, and many directors may be concerned about their company’s own position if their funds are tied up in a BIP and inaccessible, if they don’t benefit from the UK’s FSCS deposit-protection scheme or if they otherwise do business with SVB. Our FAQ helps guide affected entities through a BIP (should there be one) and explain some of its implications.

The macro-level questions

Is this the same as 2008? Will other banks start to fail?

No. SVB's problems don't appear to have been caused by systemic failures in the banking industry and there doesn't appear – from information available - to be significant contagion risk between SVB and other banks. The actions of the UK and US regulators so far suggest that regulators across the various jurisdictions the SVB group operates in have discussed or co-ordinated their individual responses to the particular financial circumstances of the group, something we would expect the regulators in the US and the UK to have been monitoring for some time. We therefore anticipate the regulators are likely to be prepared for a range of different scenarios, including for how this wind-down will be implemented.

Additionally, following 2008, the UK put in place a resolution regime to enable banks to be wound up in a more orderly fashion than was the case prior to the financial crisis. The Bank of England conducts resolution planning for all banks operating in the UK to ensure that a bank can be allowed to fail without disruption to financial stability. The resolution regime created requirements for banks to plan for such a scenario, which includes setting out detailed processes to assist with returning funds to depositors/creditors as quickly as possible, with the intention of limiting the impact of an insolvency on the financial market and ensuring losses are absorbed by investors rather than the public as a whole. The Bank of England intends to apply to place SVB UK into a BIP and we would expect the regulators to be implementing pre-prepared plans.

How does a BIP work?

A BIP is a specific statutory process introduced in 2009 to assist with the orderly winding up of a bank, where it was the most viable and/or appropriate option taking into account the scale of the bank and its particular characteristics (e.g. how important it is to the financial system, whether there are FSCS protected deposits etc.).

A BIP is essentially a modified version of the corporate insolvency process, with particular amendments to reflect the fact that the subject entity holds deposits or client assets. The Bank of England (as Resolution Authority) would make an application to the Court to appoint an insolvency practitioner to carry out the orderly wind-down of the bank. The liquidator's primary objective is to return deposits which are protected by FSCS as quickly as possible, and then wind up the affairs of the bank so as to achieve the best results for the bank's creditors as a whole. The regime otherwise operates in a similar way to a corporate insolvency process.

Would the Bank of England run this process and do the UK rules apply, or will the US regulators take over?

SVB UK is a subsidiary based in the UK, and therefore a separate company from the US parent bank. It holds its own authorisations under the UK regime and will (among other things) have had its own capital and liquidity requirements set at a corporate level by the Prudential Regulation Authority. As a result, the Bank of England will be the Resolution Authority for SVB UK and the UK rules will apply.

The Bank of England would co-ordinate and co-operate with the US regulator (and almost certainly has been doing so already) to effect any wind-down in the most orderly way possible, but it will ultimately control the process for the UK entity.

Will there be a 'bail-in' or other stabilisation powers used?

It doesn't appear so. The announcement from the Bank of England is that a BIP would be used. Bail in, which involves the write down of the claims of the bank's unsecured creditors and conversion of their claims into equity is normally the insolvency strategy for the largest firms. Based on the public statements we have seen, it appears the Bank of England is satisfied that the appropriate strategy here is a BIP.

Will there be an administration?

It is possible that a Bank Administration Process could form part of any insolvency process, and for certain elements of the UK bank's activities to be kept operational, however this currently appears unlikely, particularly given the fact that SVB UK is likely to rely on its wider group for some or all of its back-office operational functions.

How would SVB UK operate during any period where a BIP is being implemented?

The liquidator's primary objective is to return deposits which are protected by FSCS as quickly as possible, and then wind up the affairs of the bank so as to achieve the best results for the bank's creditors as a whole. This means that key operational systems and controls may continue to run for a period of time (particularly those that generate revenue for the bank and/or realise assets, e.g. debt repayment processes for loan facilities), but new business will not be taken on and it is highly likely that certain non-essential functionality will be closed down as quickly as possible. Customer contracts will still remain in place, albeit there may be provisions in those agreements that modify the terms in light of the insolvency process.

The ability to make deposits and withdrawals will, however, likely remain suspended for the foreseeable future.

Who should I be contacting?

Talk to your relationship team at SVB UK - they are fully aware of the need to be available and communicate the practical implications of whatever insolvency option is pursued.

If you are a regulated entity, you should be considering if you are required to notify your relevant regulator about the impact SVB UK's situation may have on your operations.

Additionally, the Treasury have asked any start-ups in the UK that are exposed in any way to SVB UK to email them at EST@HMTreasury.gov.uk with the following info:

- Name of the firm
- Approx. amount on deposit
- Approx. monthly cash burn, where that is relevant
- Whether the firm banks only with SVB UK or has access to other banking facilities

Product holders

In the event of a BIP, is my account balance protected?

This will depend on what type of entity you are and what your account balance with SVB UK is.

The UK's deposit protection scheme, FSCS, only applies to certain types of entity, and notably excludes deposits held on behalf of most regulated entities from protection. However, if you are a sole trader or non-regulated corporate entity, you are likely to be entitled to some protection.

The FSCS only offers a maximum compensation sum of £85,000 for the **aggregate** eligible deposits each depositor holds with a bank. This means that, even if you hold multiple accounts, you will only be protected for a maximum of £85,000 under the FSCS.

If you hold an account as a business partnership, the partnership will be treated as a single entity, and it will have only one compensation limit (and not one for each partner).

My balance exceeds the FSCS limit / I'm not covered by FSCS, what does this mean?

Where part of your balance is outside the scope of FSCS protection, and you are an individual or micro, small or medium-sized businesses¹ you will become a preferential creditor of the bank for your unprotected balance amount (i.e. any amount in excess of the £85,000 limit).

This is reflected in a modified hierarchy of insolvency claims that applies under a BIP:

1. Fixed charge holders including:
 - Capital market transactions (e.g. covered bonds)
 - Trading book creditors (e.g. collateralised positions)
2. Liquidators (fees and expenses)
3. Preferential creditors (ordinary), including:
 - FSCS (taking the place of all protected depositors for amounts up to £85,000) or depositors who have not yet been compensated by FSCS up to the £85,000 limit

¹ Businesses which employ fewer than 250 persons and which have an annual turnover not exceeding €50 million, and/or an annual balance sheet total not exceeding €43 million

- Employees with labour-related claims
4. Preferential creditors (secondary), including:
 - Depositors that are individuals and micro, small or medium-sized businesses for amounts in excess of £85,000 (i.e. the FSCS limit)
 5. Floating charge holders
 6. Unsecured senior creditors, including:
 - Bondholders
 - Trading book creditors (e.g. uncollateralised positions)
 - Creditors with master netting agreements (net position only)
 - Commercial or trade creditors arising from the provision of goods and services
 - Depositors that are not individuals or micro, small and medium-sized businesses for amounts in excess of £85,000
 - FSCS, taking the place of individuals with funds invested with the insolvent firm
 7. Interest incurred post-insolvency
 8. Unsecured subordinated creditors (e.g. subordinated bondholders)
 9. Shareholders (preference shares)
 10. Shareholders (ordinary shares)

When would I get my balance returned to me?

If your balance is protected by the FSCS, it should be paid to you within ten business days of the FSCS calculating the compensation due to a deposit holder. The BIP is intended to resolve FSCS claims as quickly as possible, so we would expect most compensation claims to be calculated during the course of this week.

If you have an unprotected balance, this will be resolved as part of the insolvency process through the distribution of assets to creditors – we currently do not have an indication of how long this may take, and unfortunately there are no statutory timeframes on it. There may be indications early next week on the planned timeline for this part of the BIP process.

If I don't have access to my balance, what should I be doing?

Entities with deposits at SVB UK may face a liquidity issue whilst the BIP proceeds, until such time as funds are returned to depositors. If this is a possibility for a business or fund, the emphasis should be on measures to manage or avoid a short-term cash crisis. The objective will be to stabilise the business and allow for longer term options to be explored, if necessary. Companies should also be considering funding options to bridge any immediate cashflow concerns – details of potential providers can be found [here](#).

To help manage short-term cashflow, businesses and the managers of affected funds are advised to prepare and continually update detailed cashflow forecasts.

In terms of cash preservation, a wide range of measures are likely to be implemented, including deferral of non-critical payments, cancelling orders and reducing various other costs where possible.

Early stakeholder engagement will be vital. Start-ups should be convening their boards and taking legal advice, as well as talking to their major investors and updating their staff. Key stakeholders may be supportive on the basis that this is an extraordinary, and hopefully short-term, crisis, that the return of funds is out of the control of the business, and that there will be a mutual benefit if the company can be kept alive rather than being liquidated immediately. However, this will require careful, and ongoing, stakeholder management.

In terms of fresh liquidity measures, businesses may be able to draw down on existing credit facilities or ask shareholders to put new money into the business. However, directors should be conscious of their duties under the Companies Act and more broadly (for example, wrongful trading), which may prevent the directors deciding to take on new debt or raise additional equity. Directors who are at all unsure of their position should seek robust legal advice in order to be able to defend their position against later criticism.

Managers of affected funds should be taking similar steps, but must also ensure that any measures are compliant with their fund documentation.

As we move through the process, the emphasis will change from these short-term measures to longer term planning. Directors and managers will need to consider what will be required from both an operational and funding perspective, to address any longer-term impact.

At this stage, it will be difficult to model this accurately, because the timing and the shape of the BIP and repayment of funds held by SVB UK to depositors is still uncertain. Nonetheless, directors must do all they reasonably can, with appropriate assumptions and sensitivities, to refine the modelling as better information comes to light.

I have an overdrawn account, would I have to repay it?

You will be required to repay the overdrawn amount. The repayment will be in line with the terms and conditions applicable to that overdraft, therefore if it is an on-demand facility, the insolvency practitioner is likely to require repayment imminently so as to generate as many assets as possible for creditors. It is also highly likely that all existing overdraft arrangements will be terminated wherever possible and any contractual rights to require accelerated payments will be exercised.

Consequently, an account holder that has a debt liability to SVB UK should start considering the manner in which it will finance any immediate repayment obligation.

I have an uncommitted overdraft, would I have access to it?

It is highly likely that any insolvency practitioner will take steps to prevent amounts being drawn under it going forward (as it reduces the assets available to creditors), using any regulatory powers to amend the agreement if it does not have necessary contractual powers to do so already.

A customer with any sort of facility with SVB UK may therefore need to start to consider alternative financing arrangements with a new provider in order to meet any funding needs.

Will I know if my lender sold any debt to another bank?

In the event that SVB UK is wound down and ceases to be able to service loan repayments going forward for those entities it has provided debt to, we would expect you to be notified of any purchaser if any or all of the loans are transferred to a new purchaser.

This notification is likely to set out the new practical arrangements for repayments (e.g. new account details etc.), and should be complied with to avoid inadvertently breaching your facility.

The bank holds warrants in my company, what would happen to these under a BIP?

As assets of the bank, these would likely to be sold to a third party as part of the insolvency process so as to generate funds for creditors – provided this is permitted by the terms of the warrants.

Whilst free transferability is often the case, in many instances the right to transfer the warrants without consent may be limited to situations where there is an event of default continuing under the associated loan documentation.

If you have a loan agreement and such a restriction exists, it is prudent to continue to comply with the terms of the loan agreement (and keep the loan out of default) as this avoids full transferability of the warrants. However it will be apparent as a commercial matter if it is necessary to breach the loan agreement under the circumstances, but the full consequences of this should be considered (including the possibility of acceleration) and the directors should take advice before commencing such an action.

If you are notified of an intention to sell the warrants, you should review the terms of the warrants to confirm this is permissible and request details of who the intended purchaser is, again to confirm this meets the requirements of any sale restrictions that may exist in your existing warrant arrangements.

If the sale does go ahead, this will necessitate updates to capital tables and relevant records to represent that new parties are holding such instruments.

I'm a payment services / e-money firm and I used SVB UK for as a safeguarding account provider, what does a wind-down mean for this?

Given SVB UK's prominent position in supporting payment services and e-money firms, it remains to be seen if we will receive additional guidance from the regulators in respect of this point. This is particularly because many firms are unlikely to be able immediately to move an equivalent amount of funds into a new credit institution whilst waiting for a return of their SVB UK balance.

The FCA could adopt a strict reading of the rules, holding that the funds at SVB UK will no longer qualify as a deposit at an authorised credit institution, and therefore the monies currently with SVB UK no longer constitute safeguarded funds. The consequence of this would be that a payment services / e-money firm may be seen to have a shortfall in their safeguarded proceeds if they cannot generate a sufficient balance at another account provider (which is highly likely to be the case given the financial models used in the payment services / e-money sector).

Furthermore, even if the FCA did not adopt such a view and even if the funds are returned promptly, there may not be a full recovery of the balance, so firms may find that they are still left with a safeguarding shortfall that will need to be met. This could present an issue for many firms.

Given the large focus of SVB UK on UK fintech businesses, and the likelihood of a number of payment services / e-money firms being unable to generate sufficient liquidity on such short notice to create a new safeguarding arrangement, we anticipate there being regulatory transitional measures announced alongside confirmation of how funds safeguarded at SVB UK will be dealt with.

Payment services / e-money firms whose safeguarding accounts are held with SVB UK should also be liaising with the FCA as a matter of urgency, to ensure that the regulator is sighted on these issues.

In the interim, an affected firm should look to establish an alternative safeguarding method if possible, and start using that immediately. Where possible, we recommend funding it to the level of funds that were held with SVB UK

I used SVB UK for a CASS client money account, what does a wind-down mean for this?

This would be a 'secondary pooling event' for the purposes of the CASS rules, and therefore you should start to engage your CASS distribution and transfer processes.

In summary, a secondary pooling event means that any shortfall on the client money balances held in the relevant accounts with SVB UK will be borne pro rata by the clients whose monies were held in those accounts, and new client money entitlements will need to be calculated and applied, taking into account the pro-rata reductions.

FSCS protection should apply to eligible depositors who do incur a loss of funds due to the secondary pooling event (due to the 'look through' rules applying under the depositor protection rules), but CASS firms should carry out the calculation of entitlements of underlying customers as soon as possible to support the process as best as possible.

Additionally, a firm which held CASS monies at SVB UK must notify the FCA of this as soon as practicable, setting out the details of any anticipated shortfall and what it intends to do in respect of such a shortfall.

I'm a deposit aggregator business and I use SVB UK for holding customer funds under a bare trust, what does any wind-down mean for this?

FSCS protection (up to the relevant limits) should be available to each underlying eligible customer on the basis of the 'look through' rules applying to pooled deposits held under a bare trust.

It is likely that there may be a slightly longer delay in calculating the compensation due to these underlying customers given the additional complexities involved compared to deposit held by an eligible customer directly, and you may be asked to provide additional information about your underlying beneficiaries to prove their entitlements to protection.

In light of this, you should start gathering records of the beneficiaries on whose behalf you hold money at SVB UK and their relevant entitlements so you can share this information as soon as requested. In the event of a wind down, you should also seek, if necessary, to open a new trust account at another provider to receive any payments associated with the bare trust deposits.

I am managing an AIF and the fund's cash is in an account at SVB UK, is there anything else that I need to be considering?

All regulated firms have an obligation to notify the FCA of matters which could affect the firm's ability to continue to provide adequate services to its customers and which could result in serious detriment to a

customer of the firm; or any matter which could result in serious financial consequences to the UK financial system. While the UK regulators are already actively engaged, firms should be notifying the FCA as soon as possible if they or their funds are affected, to ensure that the regulator has sight of the scale of the impact on the market.

Fund managers have a duty to act in the best interests of all investors. They must therefore consider how to ensure the on-going fair treatment of all investors in their funds in determining how to proceed – including when making a decision whether or not to suspend fund dealings. Any tools employed to manage short term liquidity issues – such as disposals of underlying assets, investor draw-downs or borrowings - need to be compliant with fund documentation and/or undertaken with appropriate investor consent. If a depositary has been appointed, they will need to be informed at the opening of any new cash account by the AIF (or AIFM acting on behalf of the AIF) to enable them to enable them to undertake cash-flow monitoring - and can potentially assist if the AIFM does not have alternative accounts available.

Managers of authorised funds need to contact the FCA in advance of any proposed suspension of their funds, but all managers of affected funds should be notifying the FCA as soon as practicable, setting out the details of any anticipated liquidity issues and the steps it intends to take to manage them.

I have hedging arrangements with SVB UK, what are the implications for me if I am due money / owe money?

In the event of an insolvency process, it is likely that the insolvency practitioner will seek to close any open positions and end any hedging arrangements as soon as is permissible under the terms of the arrangement so as to crystallise the positions. Following this:

- To the extent you are 'in the money' you will become an ordinary creditor of SVB UK, and will need to submit a claim as part of the BIP.
- To the extent that you are 'out of the money' you will remain liable for this amount, and will likely be called to repay it.

I have a bilateral facility with SVB UK, what do I do?

There is no obligation to repay debt to an insolvent lender before its maturity. The terms of the loan agreement remain unchanged.

You should assume for now that the lender will not honour any further utilisation requests and will not fund. Depending on the powers of any insolvency practitioner, this may be a breach of contract by the bank under your loan agreement, but you would be an unsecured creditor only in respect of the contractual damages and your claim will be dealt with as set out in the list above.

Talk to your relationship team at SVB UK - they are fully aware of the need to be available and communicate the practical implications of whatever insolvency option is pursued. It is prudent to continue to comply with the terms of your loan agreement whilst the position of SVB UK plays out and in case the loan is taken over by another lender, which would want to step into the shoes of the same credit position as SVB UK. In some cases, this may be impractical, for example, an alternative source of borrowed funds may not be permitted under the loan agreement restrictions on taking further financial indebtedness. It will be apparent as a commercial matter if it is necessary to breach the loan agreement taking into account of the circumstances. A breach would however mean that the lender can technically demand repayment of the loan in full so advice should be taken before taking any steps.

I have a syndicated facility and SVB UK is a lender and/or the agent, what do I do?

You should assume for now that the lender will not honour any further utilisation requests and will not fund its share of new advances. There is no obligation on other syndicate members to make up the amount requested in the utilisation request. In practice, therefore, you would have a shortfall in relation to any future drawings in the proportion that SVB UK holds to the undrawn commitments.

Defaulting lender provisions may be included in your loan agreement, which could be triggered upon an insolvency of a lender. These may allow you to cancel that lender's undrawn commitment, suspend paying commitment fees and replace the lender (dependent on finding a replacement to step in). There are typically provisions in revolving credit facilities allowing the loans to be "termed-out", meaning that rather than being repayable to the defaulting lender at the end of the interest period and then being unable to be redrawn, the loan instead becomes repayable at the end of the availability period or at termination.

Other syndicate members are well aware of the status of SVB UK and have teams working on contingency plans. You should contact the agent and ask for an update. We can help with this.

Where SVB UK is the facility agent on your loan, we can help in checking whether your loan agreement allows you to bypass the facility agent in making payments and to replace the agent ("impaired agent" provisions). If necessary, any replacement could take some time to effect and SVB UK may not be able to execute documentation swiftly, having the ability to pay lenders directly will be important and you should check it is available under your facility agreement.

Talk to your relationship team at SVB UK - they are fully aware of the need to be available and communicate the practical implications of whatever insolvency option is pursued. You may also want to contact your other lenders to determine who would wish to take on the position of agent (and if relevant security trustee). This, as mentioned above, will require some documentation (especially where security needs to be transferred to the new agent). We can help with this.

I have an ABL facility with SVB UK, what do I do?

ABL facilities involve the ongoing sale of batches of receivables in exchange for advances of cash. Since cash advances are currently unlikely, businesses should not sell more receivables into the structure. You may wish to review your documents to determine how to terminate future sales.

SVB UK is party to an intercreditor, what is the position?

Under an intercreditor agreement, an insolvent lender's vote is typically reduced (although typically only by the amount of its undrawn commitments). There may also be "you snooze you lose" provisions in the facility agreement which mean the lender's vote is disregarded in the event they don't reply within a short period of time.

I have granted security to SVB UK, what do I do?

In principle unless your loan is defaulting or payment is due, your security should not be enforceable. Please contact us if you have concerns regarding enforceability or enforcement.

If SVB is holding security as a security trustee, see above note regarding syndicated loans and dealing with an impaired agent.

On any refinancing, releases from security granted by SVB UK are likely to take time to be executed. So, if you wish to refinance your loan or are seeking additional financing, and such financing is on a secured basis, your new lenders will have to hold second-ranking security pending the existing security being released. It is

unlikely that intercreditor arrangements or security priority deeds will be signed by SVB UK to deal contractually with such ranking. Negative pledges should be caveated accordingly.

I have ancillary facilities with SVB UK, what do I do?

If you have any day-to-day banking services with SVB UK, these appear currently unlikely to continue to be available and will have to be replaced. Overdrafts are on demand facilities and may be called - you should be ready to have them repaid. Talk to your relationship team at SVB UK - they are fully aware of the need to be available and communicate the practical implications of whatever insolvency option is pursued. You should check with your other relationship banks whether they can assist with this too. We can help you with this.

You should also check your key contacts for technical insolvency provisions and cross default clauses if SVB UK call in an on demand facility. We can help with this.

If you have procured letters of credit from any SVB affiliates for the benefit of a contractual counterparty, you should check whether the underlying contractual arrangements require you to obtain new letter of credit in case of insolvency or downgrading of the issuer. It is possible that, in any case, the beneficiary of any letter of credit issued by an SVB affiliate and procured by you contacts you. Equally if you are beneficiaries of such letters of credit, you should check the underlying contractual arrangements. We can help with such discussions.

Can I set my loan from SVB UK off against deposits held by them?

A BIP would provide for mandatory set-off of "mutual credits, mutual debts or other mutual dealings" between a bank and any creditor of a bank proving or claiming to prove for a debt in that bank's insolvency. Whilst certain debts may be excluded, depending on when any debt was incurred or acquired, on the whole set-off should apply to mutual dealings between the parties. However, it should be noted that this applies to mutual dealings between the same parties. If a sum is owed by a party to SVB UK, and a sum is owed to the same party by the SVB US (or a branch thereof), those two amounts will not be available for set-off. We recommend you consider whether set-off may apply before making any payments. We can help with this.

Are there any other additional matters I should be thinking about?

To the extent, your financial year end is coming, you should contact your auditors to understand to what extent having a defaulting lender would affect the audit exercise, including any qualification that your auditors may have to make.

If you were relying on a loan from SVB UK to meet certain contracted obligations (for example under a sale and purchase agreement), you should check those arrangements to determine to what extent they are conditional upon financing.

Effect on contracts / third party suppliers

Can I terminate / suspend / amend my contracts with SVB UK as a result of this?

Only if SVB UK triggers a relevant event that allows for such actions to be taken under the contract – such as breaching a payment obligation or similar. There is no automatic right to terminate etc. solely because a BIP has commenced. Additionally, please note that there may be carve-outs for regulator led insolvency processes in many commercial contracts entered into by banks like SVB UK.

It is not expected that the Bank of England will elect to implement the special resolution regime, so the additional restrictions on terminating contracts under that regime which override the contractual provisions are unlikely to apply. However, ordinary insolvency rules applying to an insolvent entity's commercial contracts are likely to apply.

A supplier to the bank should review the contract to understand the various payment obligations and termination rights that exist and should start to understand the current financial exposure to SVB UK so that this can be mitigated as much as possible and appropriate claims raised.

Can the bank terminate / suspend / amend my contracts with SVB UK as a result of this?

Yes, an insolvency practitioner will have the ability to operate the existing contract in line with its existing terms, and therefore can use all rights of the bank under such a contract. That may include terminating it or suspending it.

Similar to the above, the regulator's additional powers to amend the contract as it considers necessary under the special resolution regime are very unlikely to be engaged. However, as above, the ordinary insolvency powers of an insolvency practitioner may allow for certain amendments to be made.

I have a contract for services from the bank, what should I do?

The bank is likely to cease providing such services in the near term, therefore a recipient of services should start to consider its options for the continuity of such services, whether that be bringing them back in-house or finding an alternative provider.

A board should review its company's Business Continuity Processes to understand the possible impacts that disruption to SVB UK's services may cause the business, and start to consider the relevant mitigation steps it should take to protect its client offering as much as possible.

Useful contacts



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