Update to Silicon Valley Bank's current position and what it means

FAQs

13 March 2023, 4pm GMT

CMS can help you, now

CMS's **cross-specialism team** will keep you on top of the **technical detail and practical implications** as the detail of the acquisition of SVB UK by HSBC becomes clearer. We pool the knowledge of **financial services, crisis and reputation, insolvency, capital markets and of course VC and start-up** lawyers, to give holistic advice to founders, start-ups, established regulated entities, VCs and other players. We have a deep understanding of complex and accelerated bank acquisition processes and how interactions with the regulators in these types of situations work, with a number of our senior lawyers having previously worked or been seconded to the regulators (including the Bank of England). 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.

The announcement of SVB UK's purchase by HSBC has been welcomed by the market and is a positive step that is expected to give some certainty and stability to customers of the bank and the wider tech and financial eco-system.

The finer detail of the acquisition of SVB UK by HSBC and the "what next" remains to be fleshed out. We have been talking to a large number of customers and counterparties about what will happen now and next, – we are happy to discuss the support your particular business needs.

Our comments below reflect the situation as at 4pm on Monday 13th March 2023.

The macro-level questions

What happened overnight?

HSBC's UK-based and authorised ring-fenced bank (HSBC UK Bank Plc) agreed to acquire SVB UK (Silicon Valley Bank UK Limited, the UK subsidiary of the SVB Group, which holds its own UK banking authorisations) by way of a share acquisition. This means that SVB UK will leave the SVB Group and become a subsidiary of the HSBC Group. It will sit within HSBC's "ring-fence" and will therefore be subject to certain restrictions on the way it operates going forward.

The Bank of England has confirmed that this announcement supersedes the Bank's 10 March statement that, absent any meaningful further information, it intended to apply to the Court to place SVB UK into a Bank Insolvency Procedure. The Bank of England has confirmed that HSBC represents a credible purchaser for SVB UK and this therefore justifies the Bank using its resolution powers to assist with the stabilising of SVB UK and enabling the sale to a 'private sector purchaser' to proceed.

HSBC Group, as the ultimate parent of SVB UK, will provide backing to SVB UK going forward, and support its liquidity. The Bank of England and the Treasury have confirmed that all depositors' money with SVB UK is safe and secure as a result of this transaction.

As the transaction was structured as a share sale, SVB UK will remain in existence as an entity, and will continue to provide its services to customers as SVB UK. SVB UK has said it should operate as normal and customers should not notice any changes – but there is likely to still be some delay and disruption to services as infrastructure and operational matters are resolved.

Do we have to wait for regulatory approval for this transaction to go ahead?

No.

Due to the manner in which this sale was agreed, and the fact the Bank of England has used its resolution powers to enable it, there is no need to wait for regulatory approval of the transaction in the same way as a seller and buyer would if they were selling a regulated business in a normal M&A process.

Could something cause this acquisition to not go ahead?

No.

The sale completed at 7am on 13 March 2023 by way of a specific statutory instrument. HSBC UK Bank Plc therefore now owns and controls SVB UK.

Could a Bank Insolvency Process still follow based on last week's events?

No.

The transfer to HSBC should resolve the immediate concerns that were driving the indication by the Bank of England that a Bank Insolvency Process would be used. It is clear from the Bank of England statements that it no longer intends to apply for the Bank Insolvency Process and has instead elected to use alternative powers to enable the sale of SVB UK to HSBC.

HSBC may wish to review SVB's operations over time as part of integrating SVB UK into the HSBC Group (as discussed below), but this is unlikely to be through the statutory resolution regime.

Will this lead to further regulatory policy changes around bank prudential requirements and resolution?

Possibly, but there are currently no suggestions of any changes.

Whilst the rapid deterioration of the SVB Group and the existence of the significant start-up/fintech industry concentration risk may cause regulators some concern, it appears that the resolution regime worked as intended, and the wider UK market was insulated from disruption.

The regulators and government may look at how they can step in earlier where it is apparent that a bank, particularly one that has a highly concentrated client base within a particular industry, is experiencing an elevated risk of financial distress risk. We expect any such reviews (if they happen at all) to come down the line once enquiries are completed into how SVB's situation occurred in the first place.

How does this affect entities that banked with other parts of the SVB Group?

The HSBC acquisition only relates to SVB UK, and therefore entities that banked with other parts of the SVB Group will not benefit from the transaction.

We are aware that a number of European companies have disclosed in public statements that they banked with the US entity (given the German branch was a branch of the US entity) and remain concerned about the status of their funds/regaining access to them.

The manner in which such funds will be treated, and the protections such customers have, will be subject to US and local law, but it is worth highlighting that the FDIC (the United States government corporation supplying deposit insurance to depositors in American banks) has created the Deposit Insurance National Bank of Santa Clara to protect insured depositors of the US-based Silicon Valley Bank. Additionally the FDIC has said all insured depositors will have full access to their insured deposits no later than the morning of 13 March 2023, with uninsured depositors being paid an advance dividend within the next week. European depositors who banked with the German branch/US bank of the SVB Group should seek further advice as to their specific position and whether this protection applies to them.

How will the SVB Group crisis affect the banking industry?

The collapse of the SVB Group is likely to lead to banking customers reviewing their liquidity risk management controls, particularly amongst those businesses that have a high burn rate (such as start-ups and fintechs).

Whilst the HSBC acquisition will hopefully give SVB UK customers comfort as to the status of their products with SVB UK, many entities throughout the UK and Europe may start looking at diversifying their spread of banking partners so as to mitigate the impact that the failure of a bank may have on their ability to meet costs.

Establishing multiple banking relationships is likely to cause burdens for such entities given the additional financial and administrative costs associated with doing this, but directors will likely be balancing this against the significant disruption that the possible insolvency of a single banking partner has caused, and could cause in the future.

In respect of the banks themselves, and on a more global view, this situation may put additional pressure on interest rates in US and, as a result, in the Eurozone. Continued interest rate rises in the Eurozone and the US will create pressure on emerging economies and may trigger an outflow of liquidity from the banking sector in certain currencies – i.e. we may see the start of a so-called 'flight to quality', as customers shore up their liquidity risk processes.

In terms of any knock-on impact, regulators will likely be particularly sensitive to any exposure on the part of banks to significant outflows due to an over-reliance on deposits as a source of funding for mortgage portfolios. This will particularly be the case where the borrower base cannot withstand further increases in financing costs or the lending arrangements predominantly operate on long-term fixed rates. Based on this, we may see many banks start to review their portfolios and offerings over the coming months in order to impose greater control over the impact of increasing interest rates.

Product holders

Who am I now banking with?

You are still a customer of SVB UK, and SVB UK will be providing you with the services.

The sale of SVB UK to HSBC has been carried out as a share sale. This means that SVB UK remains in existence as a distinct corporate entity and it has retained all of its current authorisations. All customer and contractual relationships with SVB UK remain with SVB UK.

The intention is that SVB UK's business will continue to be operated as normal by SVB UK. The various parties intend that all existing services will continue and customers should not notice any changes.

Is my deposit safe?

The government has said HSBC is backing SVB UK, and the regulators and government are satisfied that the HSBC Group has sufficient funding and liquidity to support SVB UK in meeting its ongoing deposit obligations (and any withdrawal requests).

FSCS cover will still apply to your deposits at SVB UK following the transfer to HSBC. FSCS cover applies on a 'per banking licence' basis, and as SVB UK is currently being kept as a distinct entity with its own banking permissions, this will therefore mean you get a separate FSCS protection limit in respect of your SVB UK deposits compared to any protection applying to a deposit held at HSBC (i.e. if you have £85,000 at SVB UK and £85,000 at HSBC, you would receive separate FSCS protection for each deposit as they are distinct entities with their own individual banking authorisations).

Will I be able to access my deposit and make payments from my account?

Yes, albeit you may experience some delays.

As noted by the Bank of England, and confirmed by representatives of SVB UK, the intention is that SVB UK's business will continue to be operated as normal throughout the coming days and that all existing services will continue. The various parties hope that customers should not notice any changes.

You should therefore now have access to key functionalities of your deposit accounts.

However, it is known that SVB UK relied on its US parent for certain services and operations, and therefore it is likely that SVB UK will experience some operational disruption as a result of the knock-on impact of the failure of SVB Group in the United States. The length of time any such disruption may last is likely to be at least in part dependent on the timing of any integration of SVB UK's systems into HSBC's infrastructure.

If you do have concerns, or wish to discuss the specifics of any particular instruction, we recommend speaking to your relationship team at SVB UK.

I'm a payment services / e-money / CASS / AIF / deposit aggregator entity, how does this affect the classification of an account I have with SVB UK?

It should have no impact on the account classification, but there may be further changes in the longer term.

The transfer of SVB UK to HSBC does not change the nature or terms of any account you hold with SVB UK, and therefore it should retain the same status it previously held. This means that, for example, an account that met the requirements for a safeguarding account will still meet such requirements, and where funds held with SVB UK qualified as ‘own funds’ for regulatory capital purposes, they will still do so.

However, as SVB UK will now be subject to the ring-fencing rules (as it will sit within HSBC’s “ring-fence”), HSBC will need to assess what types of account will be supported in the medium to long-term. There are certain restrictions on the types of products and services which can be provided by an entity within the ring-fence, and there are also restrictions on certain types of clients which can be held within the ring-fence. In particular, the key restriction for these purposes is that an entity within the ring-fence cannot enter into arrangements which give rise to an exposure – which, broadly speaking, would include loans or overdrafts - to a “relevant financial institution” (which includes credit institutions, investment firms, AIF managers, AIFs and certain other categories).

As part of the go-forward model, HSBC will therefore need to assess which products can be offered to customers that fall within the definition of a “relevant financial institution” by SVB UK. Products or clients who do fall within these restrictions could be offered alternative products from other members of the HSBC Group outside the ring-fence.

If you do have concerns about whether this could impact you, we recommend speaking to your relationship team at SVB UK in the first instance to understand what the impact will be long term. Additionally, we can provide support in understanding your various options should SVB UK need to review its offerings to such client types in the future.

Will I have access to my financing facilities?

Yes. The transfer of SVB UK to HSBC does not change the nature or terms of any facilities you hold with SVB UK, and therefore they should operate in the same manner as they did previously for the time being (subject to the commentary above).

If you do have concerns, or wish to discuss the specifics of any particular instruction, we recommend speaking to your relationship team at SVB UK. Additionally, we can provide support in understanding your finance documents.

Will any of my products be closed? Will the same products be available going forward?

One of the key objectives of this transfer was to provide stability for the customers of SVB UK, and any immediate product closures would be contrary to such an objective. We expect that there will be a period of time during which existing products are likely to continue as they did prior to the transfer to HSBC.

SVB UK is also entitled to write new business going forward – albeit we anticipate there may be a level of caution from the bank in doing so whilst SVB UK is integrated into the HSBC Group, and it is likely the terms of any new business will eventually be transitioned on terms that align to the HSBC Group’s overall approach, therefore there may be changes in the way that new business is handled in the medium term.

We would also highlight that as SVB UK is now subject to the UK ring-fencing rules (as a subsidiary of a UK ring-fenced bank), and whilst we believe the majority of SVB UK’s product offering is within the permitted areas (as providing deposits accounts to most entities, and most lending to business and simple hedging products are permitted for ring-fenced entities), there may be some elements of the offering that the HSBC Group deems can no longer be offered through SVB UK now it is within the ring-fence.

In addition, we would expect HSBC to consider SVB UK’s portfolio and the extent to which it aligns with HSBC’s offering and risk appetite in the UK and the ring-fencing strategy for the HSBC Group.

In that context, it is possible that certain customers may see certain types of products not being renewed at relevant maturity points or alternatives offered from another part of the HSBC Group. If this does occur, please do not hesitate to speak to us about your possible options.

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

Businesses may wish to use these events as a reason to review liquidity risk management tools. For those businesses that are regulated, we expect the regulators to raise queries with supervised entities as to how they are managing their liquidity risks, planning for similar situations in the future and whether they have adapted their BCP/DR policies accordingly. Carrying out an assessment of how significant a concentration risk the business has, and how liquidity is managed within the business will help entities develop robust plans that reflect the practicalities experienced as part of these events. Please do not hesitate to speak to us if you wish to discuss how this could be implemented.

Effect on third party suppliers

How will my agreement with SVB UK be affected by this?

There is no immediate impact as a result of the transfer.

As this is a share sale, SVB UK remains as your contracting party and the agreement will remain in full effect. You will continue to contract with SVB UK and owe your contractual obligations to SVB UK, and similarly SVB UK will continue to be liable to fulfil its part of the contract.

In the longer term, as SVB UK is integrated with the HSBC Group infrastructure, it is likely that an alignment exercise will be carried out in respect of third party services. It is possible that, as part of that exercise, some third party supplier contracts are brought to an end (in line with their terms and conditions) if there is already an existing arrangement for such services within the HSBC Group, or some arrangements transitioned on to HSBC Group standardised terms for such services. If you wish to discuss any such action by SVB UK in the future, please let us know.

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

This will depend on the terms of your agreement.

Your existing agreement remains in effect, and therefore if it has provisions that allow a party to take one of the above actions as a result of a ‘change of control’, these provisions may be engaged by the transfer of SVB UK to HSBC (albeit, some agreements may carve out situations where the change of control has occurred due to/been enabled by regulatory action).

If you are concerned about this, we recommend you review the terms of your agreement to determine if any such provisions are engaged, and we can advise as to what your possible options may be.

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