Bank of England Resolves Silicon Valley Bank UK Through Sale to HSBC

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The Bank of England (BoE) has announced that Silicon Valley Bank UK Limited (SVB UK) will be sold to HSBC UK Bank Plc (HSBC). This is being carried out under the aegis of the Special Resolution Regime (SRR) — a bespoke pre-insolvency regime applicable to failing banks[1] — set forth in the Banking Act 2009 (the Act). SVB UK will be sold to HSBC (as a private sector purchaser under the SRR) for £1 through the exercise of one of the stabilization powers under the Act. Deposits held with SVB UK will be protected and the use of government funds is not required to support SVB UK. Businesses with deposits at SVB UK have been advised that they may continue to bank as normal, accessing funds and making interest payments. This removes the serious uncertainty caused to SVB UK clients over the weekend by the bank's sudden failure.

In the United States, regulators are aiming to protect deposits with US operations of Silicon Valley Bank and are providing additional liquidity to stabilize other banks. Unlike in the UK, US regulators have been unable to find a purchaser for the bank, but have guaranteed that deposits will be protected. For more details on the US developments, see our client alert "US Government Takes Major Steps To Make Depositors Whole and Provide Liquidity."

The move by the BoE resolves a situation created by the failure of Silicon Valley Bank several days ago. Earlier, the BoE had announced its intention to apply to obtain a court order to place SVB UK into a Bank Insolvency Procedure. The primary objective of the Bank Insolvency Procedure would have been to transfer "eligible deposits" to another bank or to ensure repayment of up to £85,000 per depositor under the Financial Services Compensation Scheme (FSCS). The secondary objective would have been to protect creditors as a whole. A specially convened liquidation committee would have guided the liquidator as to how to achieve this primary objective. Once that objective was met, the focus would then have shifted to the second objective and the role of the liquidator in selling the bank's assets and winding up SVB UK, much like in an ordinary insolvency process. The timing of completion would have depended on the quality and liquidity of assets to be sold and secondary market conditions.

However, in order to effect the sale, the BoE pivoted from the Bank Insolvency Procedure to resolution and the use of stabilization powers under the Act. Resolution provides the only statutory mechanism to enforce the sale of SVB UK. In order to ensure statutory sale by way of a transfer to a private purchaser, four 'Conditions' had to be met, namely: (i) the bank has failed or is likely to fail; (ii) it is not reasonably likely that action will be taken by or in respect of the bank that will result in the bank not failing or being likely to fail; (iii) the exercise of stabilization powers is necessary, having regard to the public interest in the advancement of one or more of the special resolution objectives;[2] and (iv) one or more of the special resolution objectives would not be met to the same extent by the winding up of the bank.[3] The Prudential Regulation Authority and the BoE considered these conditions to be met and the resolution powers to be triggered, paving the way for the sale of SVB UK to HSBC in place of its liquidation.

Under the circumstances, including the potential serious consequences of an unresolved situation for SVB UK customers, the resolution by a sale to HSBC will be a welcome relief, especially for startups with large balances held at the bank.

[1] Section 11(2) Banking Act 2009.

[2] Special resolution regime objectives include ensuring continuity and critical functions of banking services in the UK; protecting and enhancing (as well as that of the public's confidence in) the stability of the UK's financial system; protecting public funds, including minimizing extraordinary public financial support; protecting FSCS-covered depositors and investors; and protecting client assets.

[3] Section 7(1)-(5) BA 2009.