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Ongoing developments at Silicon Valley Bank UK

As we continue to work with clients regarding the [Bank of England's statement](#) as to its intention to apply to place Silicon Valley Bank UK Limited (SVB UK) into a bank insolvency procedure, please see below for responses to some frequently asked questions surrounding the current situation. Please note that this list covers general topics related to rapidly changing circumstances. The below should not be construed as legal advice as it does not consider the particular facts of any specific situation or the documentation relating thereto. To the extent that you have any particular circumstances on which you require advice, we encourage you to reach out to your Ropes & Gray contacts to discuss the specific facts, circumstances and documentation relating thereto.

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How might a bank insolvency process be opened for SVB UK?

- I. The Bank of England (BoE), the Prudential Regulation Authority (PRA) or the Secretary of State can make an application to the court for a bank insolvency order. The BoE indicated in its statement on 10 March 2023 that it intends to apply to the court for a **bank insolvency order for SVB UK** “absent any meaningful further information”.
- II. In the meantime, SVB UK is not making any payments or accepting deposits.
- III. A bank insolvency order can be applied for if (i) SVB UK is unable, or likely to become unable, to pay its debts; (ii) the winding up would be in the public interest (which ground can only be relied upon in an application by the Secretary of State); or (iii) the winding up would be fair, and, in each case, SVB UK has eligible depositors under the Financial Services Compensation Scheme (FSCS).
- IV. In an application by the BoE, the PRA must have informed BoE that SVB UK is failing or likely to fail (Condition 1), and the BoE must be satisfied that it is not reasonably likely, having regard to timing and other relevant circumstances, that any action will be taken by or in respect of SVB UK that would result in Condition 1 ceasing to be met (Condition 2).

How does the FSCS work?

- I. If a bank insolvency procedure is opened, eligible deposits with SVB UK will be paid by the FSCS up to **a cap of £85,000**, or £170,000 for joint accounts, as soon as reasonably practicable. Higher payments may be made for claims relating to temporary high balances, e.g., proceeds from a recent asset sale.
- II. **Companies will generally be eligible depositors**, but deposits by the following are not protected by the FSCS:
 - credit or financial institutions;
 - investment firms;
 - insurance or reinsurance undertakings;
 - collective investment undertakings;

- pension or retirement funds (other than personal pension schemes, stakeholder pension schemes and occupational pension schemes of micro, small and medium sized enterprises); and
- public authorities, other than small local authorities.

III. The quantum and timing for recovery of any deposits that are not covered by the FSCS will depend on the realisations of SVB UK's assets by the bank liquidator and is uncertain at this stage.

What will happen if a bank insolvency order is made?

- I. A qualified insolvency practitioner must be appointed as **bank liquidator**.
 - A. The bank liquidator must work towards **two statutory objectives** in parallel:
 - i. to work with the FSCS to ensure that, as soon as reasonably practicable, each eligible depositor (a) has their account(s) transferred to another financial institution, or (b) receives payment from or on behalf of the FSCS (Objective 1); and
 - ii. to wind up the affairs of the bank to achieve the best result for the bank's creditors as a whole (Objective 2).
 - B. The bank liquidator has the authority to do anything necessary or expedient for the pursuit of the Objectives.
- II. A **liquidation committee** must be established for the purpose of ensuring that the bank liquidator properly exercises his functions.
 - A. The liquidation committee initially consists of (i) two individuals nominated by the BoE; (ii) one individual nominated by the PRA; (iii) one individual nominated by the Financial Conduct Authority (FCA); and (iv) one individual nominated by the FSCS.
 - B. The bank liquidator must report to the liquidation committee about any matter which the bank liquidator thinks is likely to be of interest to them or on their request, including, notably, when Objective 1 has been achieved entirely or so far as is reasonably practicable. Once the liquidation committee has received such a notice regarding Objective 1, if appropriate, it must then resolve that Objective 1 has been achieved entirely or so far as is reasonably practicable (known as a full payment resolution).
 - C. Once a full payment resolution has been made, the members of the liquidation committee nominated by the BoE, PRA and FCA must (and the nominee of the FSCS may) be replaced by a creditors' meeting. If sufficient replacement committee members are not elected, the liquidation committee ceases to exist at this stage.
- III. **Priority of claims in a bank insolvency and insolvency set-off**
 - A. The bank liquidator will work to realise the assets of SVB UK and maximise the returns to its creditors. The assets of the bank in liquidation will be distributed broadly in accordance with the following waterfall:
 - i. debts secured by a fixed charge;

- ii. expenses of the insolvent estate (including the fees of the bank liquidator);
- iii. ordinary preferential debts, including:
 - certain pension contributions, employee salaries and holiday pay;
 - **debts owed to the FSCS**; and
 - amounts owed in respect of an eligible deposit protected by the FSCS;
- iv. secondary preferential debts, including:
 - amounts owed to depositors in respect of eligible deposits that exceed the FSCS cover; and
 - certain debts owed to HMRC;
- v. the prescribed part (calculated as a percentage of the bank's property that is subject to a floating charge, up to a cap of £800,000 where the floating charge is created post-April 2020);
- vi. debts secured by a floating charge;
- vii. ordinary non-preferential debts (non-preferential debts which are neither secondary non-preferential debts nor tertiary non-preferential debts, i.e., most ordinary unsecured creditors);
- viii. secondary non-preferential debts (constituted by debt instruments with a maturity of at least one year, no derivative features and expressly referring to their ranking under the Insolvency Act 1986);
- ix. tertiary non-preferential debts (subordinated debts including, but not limited to, debts under instruments constituting Common Equity Tier 1 instruments, Additional Tier 1 instruments and Tier 2 instruments (within the meaning of Part 1 of the Banking Act 2009));
- x. statutory interest; and
- xi. shareholders.

B. **Mandatory insolvency set-off rules** applicable in the context of a bank insolvency provide that where, before a bank goes into bank insolvency, there have been mutual dealings between the relevant bank and a creditor of the bank, the sums due from one party are to be set off against the sums due from the other. This set-off does not apply to deposits that are covered by the FSCS, but to the extent that sums held on deposit exceed the maximum amount protected by the FSCS, the set-off rules will apply to such excess amount.

Note that companies **should be on high alert for fraud** relating to requests to change bank accounts from portfolio companies and investors. There will almost surely be phishing attempts around this because many people will need to change accounts and will be reaching out. **Please verify all requested changes of authorized persons and bank account details by *PHONE* with the authorized person on the account.**