

SILICON VALLEY BANK UK LIMITED MANDATORY REDUCTION AND SHARE TRANSFER INSTRUMENT

The Silicon Valley Bank UK Limited Mandatory Reduction and Share Transfer Instrument
2023

Made - - - - *13 March 2023*

Coming into force - - *7.00 a.m. 13 March 2023*

Having consulted with the Bank of England in accordance with section 7(5F) of the Banking Act, the PRA is satisfied that Condition 1 in section 7 of the Banking Act is met.

Having consulted with the PRA, the FCA and the Treasury in accordance with section 7(5G) and section 7(5H) of the Banking Act, the Bank of England is satisfied that Conditions 2, 3 and 4 in section 7 of the Banking Act are met.

The Bank of England is required to make an instrument containing provision for a mandatory reduction of the capital instruments of Silicon Valley Bank UK Limited in accordance with section 6A(2) and 6B of the Banking Act. It has also been determined to transfer all the ordinary shares in Silicon Valley Bank UK Limited and to make other provisions for the purpose of, or in connection with, such transfer.

Accordingly, the Bank of England, having had regard to the special resolution objectives and the code of practice published by the Treasury under section 5 of the Banking Act in the exercise of the powers conferred by sections 6B, 11(2), 15, 17, 18, 20, 21, 23, 48L, 48N, 48O, 48Q, 48S and 66 of that Act, makes this Instrument.

Under section 50(2) of the Banking Act, where the Bank of England has made a share transfer instrument under section 11(2) of that Act, the Treasury is required to make a compensation scheme order which may include a third party compensation order.

PART 1

GENERAL

Citation and commencement

1. This Instrument may be cited as The Silicon Valley Bank UK Limited Mandatory Reduction and Share Transfer Instrument 2023.
2. All provisions of this Instrument come into force upon the making of this Instrument.

Interpretation: general

3. In this Instrument:

“AT1 Instruments” means the £322 million perpetual subordinated notes issued by Silicon Valley Bank;

“Banking Act” means the Banking Act 2009;

“Capital Instruments” means the AT1 Instruments and the Tier 2 Instruments;

“Companies Act” means the Companies Act 2006;

“FSMA” means the Financial Services and Markets Act 2000;

“Mandatory Reduction Time” means 7.00 a.m. on 13th March 2023, being the time at which the mandatory reduction of Capital Instruments and the transfer of Shares take place pursuant to Part 2 of this Instrument and from which certain other things take effect;

“HSBC” means HSBC UK Bank Plc, a company incorporated in England and Wales with registered number 09928412 and having its registered office at 1 Centenary Square, Birmingham B1 1HQ;

“PRA” means the Prudential Regulation Authority;

“Securities” means the Shares and the Capital Instruments;

“Shares” means all the issued ordinary shares in the capital of Silicon Valley Bank;

“Silicon Valley Bank” means Silicon Valley Bank UK Limited, a company incorporated in in England and Wales with registered number 12546585 and having its registered office at Alphabeta, 14-18 Finsbury Square, London EC2A 1BR;

“Tier 2 Instruments” mean the £33 million subordinated debt notes due 2032 issued by Silicon Valley Bank;

“Transferor” means the person or persons who were the registered holders of the Shares immediately before the Mandatory Reduction Time.

Expressions used in this Instrument which are not otherwise defined in this Instrument and which are defined in the Banking Act or the FSMA have the same respective meanings as given to such terms in those Acts.

PART 2

MANDATORY REDUCTION: SHARE TRANSFER AND REDUCTION AND CANCELLATION OF CAPITAL INSTRUMENTS

Share transfer and mandatory reduction

4.(1) By this Instrument all Shares in issue at the Mandatory Reduction Time are transferred to HSBC.

(2) By this Instrument:

- (a) the principal amount of the Capital Instruments is reduced to zero;
- (b) all liabilities owed by Silicon Valley Bank in respect of the Capital Instruments, including accrued interest, are cancelled;
- (c) all rights of any holder or beneficial owner of Capital Instruments at any time to or in respect of the Capital Instruments are extinguished and the Capital Instruments are cancelled in full.

(3) The transfer of Shares effected under paragraph 4(1) vests title to the Shares in HSBC:

- (a) free from all trusts, liabilities, claims and encumbrances which are hereby extinguished;
- (b) together with all rights, benefits or privileges which attach or accrue to or arise from or in respect of such Shares; and

(c) regardless of any restriction on the transfer or holding of the Shares to which the Transferor or HSBC or any other person may be subject.

(4) The transfer, mandatory reductions, extinguishments and cancellations effected by paragraphs 4(1) and 4(2) take place at the Mandatory Reduction Time.

(5) Subject to section 48Y of the Banking Act, the effect of the mandatory reductions, extinguishments and cancellations effected by paragraph 4(2) is permanent.

Overriding nature of the Share transfer and mandatory reduction

5. (1) The transfer of the Shares by paragraph 4(1) and the reductions, extinguishments and cancellations of and in respect of the Capital Instruments by paragraph 4(2) take effect at the Mandatory Reduction Time irrespective of whether the Securities have been produced, delivered, transferred or otherwise dealt with or are subsequently purported to be produced, delivered, transferred or otherwise dealt with.

Extinguishment of rights in relation to Shares

6. By this Instrument, but, for the avoidance of doubt, without prejudice to the effectiveness of paragraph 4, all rights of any holder or beneficial owner of the Shares at any time prior to the Mandatory Reduction Time to or in respect of the Shares and all rights of any person to receive any relevant securities, whether by issue, allotment, subscription, conversion, exchange or otherwise, are extinguished.

7. For the purposes of paragraph 6:

(a) right includes a right or entitlement by any name, including a contingent or future right or entitlement;

(b) it does not matter if the right was granted by Silicon Valley Bank or any other person; and

(c) “relevant securities” means ordinary shares, preference shares, other Class 1 securities (within the meaning of section 14(2) of the Banking Act) or any other securities of Silicon Valley Bank or any securities convertible into, exchangeable for or otherwise giving any right to subscribe for or acquire ordinary shares, preference shares, other Class 1 securities or any other securities of Silicon Valley Bank.

8. The extinguishing of rights by paragraph 6 takes place with effect from the Mandatory Reduction Time.

Registration of Shares, issue of certificates and amendment of Capital Instrument Registers

9. (1) With effect from the Mandatory Reduction Time, HSBC is entitled to be entered in the register of members of Silicon Valley Bank as holder of the Shares transferred by virtue of paragraph 4(1) of this Instrument, in each case without the need for delivery of any instrument or transfer or other instrument or document and notwithstanding:

(a) the absence of any required consent or concurrence to or with the transfer; and

(b) any other restriction relating to the transfer.

(2) Silicon Valley Bank shall procure that forthwith after the Mandatory Reduction Time HSBC is registered in Silicon Valley Bank’s register of members as the holder of the Shares in Silicon Valley Bank transferred by paragraph 4(1) of this Instrument, that a share certificate is duly issued to and in the name of HSBC in respect of such Shares and that all share certificates in respect of the Shares in existence at the Mandatory Reduction Time are cancelled and destroyed.

(3) From the Mandatory Reduction Time:

(a) HSBC is deemed for all purposes (including for the purposes of the Companies Act) to be a member of Silicon Valley Bank;

(b) no other person may exercise or purport to exercise in respect of Silicon Valley Bank any right deriving from any Shares in Silicon Valley Bank.

(4) HSBC is entitled from the Mandatory Reduction Time to all the rights and advantages of a member of Silicon Valley Bank to the exclusion of all other persons, notwithstanding that it is not entered in Silicon Valley Bank's register of members.

(5) Section 776 of the Companies Act (duty of company as to issue of certificates etc. upon transfer) applies to Silicon Valley Bank with the following modifications:

(a) the transfer by virtue of this Instrument is deemed to be a transfer of the first-mentioned type referred to in subsection (2) which is lodged with Silicon Valley Bank at the Mandatory Reduction Time;

(b) sub-sections (3) to (4) do not apply.

(6) Silicon Valley Bank shall procure that forthwith after the Mandatory Reduction Time the register in respect of the AT1 Instruments and the register in respect of the Tier 2 Instruments is amended to show the reduction, extinguishment and cancellation of the AT1 Instruments and the reduction, extinguishment and cancellation of the Tier 2 Instruments and shall procure that all certificates in respect of the AT1 Instruments and all certificates in respect of the Tier 2 Instruments are cancelled and destroyed.

PART 3

GOVERNANCE

Memorandum and Articles of Association

10. This Instrument takes effect notwithstanding any provision in Silicon Valley Bank's memorandum of association or articles of association, or any contracts to which Silicon Valley Bank is a party.

11. The directors of Silicon Valley Bank shall do all things necessary to give effect to this Instrument and shall refrain from exercising any power (whether deriving from statute or Silicon Valley Bank's memorandum of association or articles of association) which could have the effect of undermining the actions and prohibitions provided for or contemplated in this Instrument.

PART 4

MISCELLANEOUS

Continuity

12.(1) As from the Mandatory Reduction Time, HSBC is to be treated as the same person as the Transferor for all purposes necessary to give effect to the transfer to HSBC.

(2) Any rights, benefits or privileges in respect of the Shares to which the Transferor is entitled before the Mandatory Reduction Time that have not yet vested, been paid or settled shall transfer to HSBC from the Mandatory Reduction Time.

(3) A reference (express or implied) in a relevant instrument or document relating to the Transferor is to have effect as if it were a reference to HSBC if the reference is in connection with rights that relate to the Shares.

(4) A relevant instrument or document is one which relates to some or all of the Shares.

Provision of assistance

13. The Transferor must provide HSBC and the Bank of England with such information and assistance as is reasonably requested by HSBC or the Bank of England in writing:

- (a) in relation to the Shares, the Capital Instruments and the operation of Silicon Valley Bank, as applicable; and
- (b) for any other purpose relating to, in connection with or in consequence of this Instrument.

14. Silicon Valley Bank shall exercise all rights to which it is entitled by contract or otherwise to procure that all other relevant persons do all things necessary or desirable to give effect to the transfer and mandatory reductions and cancellations in Part 2 and to assist the Bank of England as it may require in connection therewith.

Overriding effect of this Instrument

15. This Instrument takes effect despite any restriction arising by virtue of contract or legislation or in any other way.

The Governor and Company of the Bank of England