

HSBC Private Bank (UK) Limited

Summary of Transfer

SUMMARY OF THE PROPOSED BANKING BUSINESS TRANSFER SCHEME UNDER PART VII OF THE UK FINANCIAL SERVICES AND MARKETS ACT 2000 FOR THE TRANSFER OF THE BANKING BUSINESS OF HSBC PRIVATE BANK (UK) LIMITED TO HSBC UK BANK PLC

1. Introduction

- 1.1. It is proposed that HSBC Private Bank (UK) Limited (the **Transferor**) will transfer its banking business (including the acceptance of deposits), the provision of financial services and other related activities (the **Transferring Business**) to HSBC UK Bank plc (the **Transferee**).
- 1.2. The transfer of the Transferring Business (the **Transfer**) is to be effected by a statutory banking business transfer scheme under Part VII of the Financial Services and Markets Act 2000 (the **Act**) (the **Scheme**).
- 1.3. The Transfer is subject to the approval of the High Court of England and Wales under section 111 of the Act. The application to the Court is expected to be heard for sanction on or around 9 December 2019.
- 1.4. Subject to the approval of the Court, it is intended that the Scheme will become effective on or around 1 January 2020 or such other date (or, in respect of different parts of the Transferring Business, dates) as agreed between the Transferor and the Transferee in writing and which falls within the period commencing on 2 January 2020 and ending on 1 July 2020) (the **Effective Date**).
- 1.5. In general, the Scheme provides a mechanism to transfer the Transferring Business either
 - a. on the Effective Date (for assets and liabilities that are able to transfer and vest in the Transferee on that date); or
 - b. on subsequent dates (for any residual transferring assets and liabilities),(in each case, the **Relevant Date**), without any further steps being required.
- 1.6. The information in this document is only a summary of the Scheme. Further information and a copy of the Scheme document can be obtained free of charge by visiting HSBC Private Bank (UK) Limited, 8 Cork Street, London W1S 3LJ, writing to The Chief Executive Officer, HSBC Private Bank (UK) Limited, 8 Cork Street, London W1S 3LJ or by contacting: (a) in the case of customers, your normal Relationship Manager; (b) in the case of suppliers and counterparties, The Chief Operating Officer on +44 20 7024 1048; or (c) in the case of claimants, The Associate General Counsel on +44 (0)20 7024 1037.

2. Transfer date

The Scheme will become effective at 00:01 on the Effective Date.

3. The business to be transferred

- 3.1. The Transferring Business, other than the Excluded Matters (as further described in paragraph 3.2 below), is comprised of all business conducted by the Transferor.
- 3.2. The Transferring Business excludes:
 - a. all assets in respect of Excluded Matters referred to in this paragraph 3.2;
 - b. any contracts relating to Excluded Matters referred to in this paragraph 3.2, contracts of employment in respect of any employee or past employee of the Transferor, all appointment letters between the Transferor and any non-executive directors, including any rights and entitlements thereunder and any claims arising thereunder, the business transfer agreement between the Transferor and the Transferee in respect of the Scheme (the **Business Transfer Agreement**)

and the intra-group licence to occupy properties dated 26 November 2018 between the Transferor and the Transferee (the **IGLO**);

- c. regulatory licences, permissions or waivers;
- d. the engagement letter between the Transferor and PricewaterhouseCoopers LLP for the provision of auditing services dated 31 July 2014;
- e. any contracts relating to any HSBC pension plan, any rights and liabilities thereunder and any claims thereunder;
- f. any liabilities of the Transferor under the Business Transfer Agreement and the IGLO and any liabilities in respect of the Excluded Matters referred to in this paragraph 3.2;
- g. the domestic liquidity sub group agreement between the Transferor, the Transferee, Marks and Spencer Financial Services plc and HSBC Trust Company (UK) Limited dated 28 March 2018;
- h. the core UK group agreement between, among others, the Transferor and the Transferee dated 21 June 2018;
- i. the powers of attorney granted by the Transferor prior to the Effective Date;
- j. the Transferor's nostro accounts established or to be established between the Transferor and the Transferee on or after 1 June 2019;
- k. any liabilities of the Transferor in respect of tax relating to the Transferring Business attributable to periods ending on or before, or an event occurring on or before, the Effective Date; and
- l. any other asset, contract, liability or customer that the Transferor and the Transferee agree in writing shall be an Excluded Matter for the purposes of the Scheme prior to the Relevant Date,
(a) to (l) above, together, the **Excluded Matters**).

4. The effect of the transfer

- 4.1. The Transferring Business shall transfer to, vest in or (as the case may be) become liabilities of the Transferee on the Relevant Date without any further act or instrument, such that the Transferee shall succeed to the Transferring Business as if in all respects it was the same person in law as the Transferor.
- 4.2. The Relevant Date of the transfers are:
 - a. the Effective Date, for the assets and liabilities of the Transferring Business (other than any present or future assets and liabilities of the Transferor to be transferred under the Scheme but whose transfer to and vesting in the Transferee does not take place on the Effective Date (the **Residual Assets** and **Residual Liabilities**, as the case may be)); and
 - b. the date on which each Residual Asset and Residual Liability is transferred to the Transferee (each being a **Subsequent Transfer Date**), being:
 - i. the date on which transfer and perfection steps have been concluded for: (a) contracts, assets and liabilities governed by the law of any country or territory outside the UK or where any deposit or asset of the Transferring Business forms part of a frozen account by virtue of an order of any court outside the UK; and (b) assets and liabilities in respect of which security has been granted in favour of the Transferor, such assets and liabilities only being transferable under the Scheme if the relevant security transfers at the same time (and vice versa); and
 - ii. as determined by the Transferor and Transferee in all other cases.
- 4.3. Residual Assets and Residual Liabilities shall, as from their respective Subsequent Transfer Dates, be respectively vested in and owned by the Transferee in all respects on the same terms as if the relevant assets or liabilities had been transferred under the Scheme on the Effective Date.
- 4.4. With respect to anything falling to be done on, or with effect from, the Relevant Date in relation to the Transferring Business, a reference to the Transferor shall be construed as, and take effect as, a reference to the Transferee, and the sort code and account numbers allocated by the Transferor to each of the customer accounts within the Transferring Business shall be construed as and take effect as references to the sort code and account numbers allocated by the Transferee for each such customer accounts following the Relevant Date.
- 4.5. The transfer under the Scheme shall be deemed to take effect on the basis that there is no requirement to obtain the consent of any person and there is no contravention, liability or interference with any interest, right or requirement, and on the basis that it does not give rise to any right to terminate, modify, acquire or claim an interest or right, or to treat an interest or right as terminated or modified.

- 4.6. The transfer and vesting of any contract, asset or liability under the Scheme shall not:
- a. cause any contract, security or other thing, or any term of any of them, to be invalid, non-binding, unenforceable, discharged or cancellable;
 - b. require any further registration or amendment of existing registration in respect of any security or other instrument registered in the UK;
 - c. constitute a breach of, or default under, or require compliance with, any notice or consent provision or require any obligation to be performed sooner or later than would have otherwise been the case under, any contract or instrument to which the Transferee or the Transferor is a party or is bound;
 - d. allow any person to terminate, default or cross-default any contract, whether an agreement to which the Transferor or Transferee is a party or not, when that party would not otherwise have been able to terminate, default or cross-default it, or to treat any interest or right under that contract as terminated, defaulted, cross-defaulted or modified;
 - e. entitle any party to any contract to which the Transferor or the Transferee is a party to vary the terms of that contract when that party would not otherwise have been able to vary those terms or confer a right or benefit on that party which that party would not otherwise have had;
 - f. entitle the Transferor or the Transferee to terminate, default, cross-default, reduce, suspend, delay, alter, discharge or otherwise secure any contract or liability where the Transferor or Transferee would not otherwise have been able to do so;
 - g. affect the enforceability, priority or ranking of any security;
 - h. require or deem any representation or warranty to be made or repeated;
 - i. enable any person to bring a claim, whether in contract, tort, equity or otherwise;
 - j. cause the imposition of any greater or lesser obligation on any party to any contract to which the Transferor or the Transferee is a party when that greater or lesser obligation would not otherwise have been imposed;
 - k. constitute a breach of, or default under, any court order by any court of any jurisdiction; or
 - l. constitute a breach of, or default under, a customer contract or security agreement or other agreement by the relevant customer.
- 4.7. Any account and overdraft between the Transferor and a customer that is being transferred will become an account and overdraft between the Transferee and that customer as if it had always been and will be subject to the same terms and incidents as applied immediately prior to the Relevant Date.
- 4.8. Any asset and liability transferring under the Scheme shall be transferred to, and vested in, the Transferee subject to any security (if any) that affects it. With effect from the Relevant Date, every Transferring Customer shall have the same rights against the Transferee under their relevant transferring arrangements as were available to him/her against the Transferor prior to the Relevant Date.
- 4.9. Any existing instruction, order, direction, mandate, power of attorney, authority, consent, direct debit instruction or standing order given to or by the Transferor in respect of the Transferring Business shall have effect on and from the Relevant Date as if given to or, as the case may be, by the Transferee.
- 4.10. Any negotiable instrument, cheque, warrant, draft, letter of credit or order for payment of money relating to any part of the Transferring Business, drawn on or by, or given to, or accepted or endorsed by, the Transferor, or payable at any place of business of the Transferor, whether so drawn, given, accepted, endorsed or payable before, on or after the Relevant Date, shall have the same effect on and from that date as if it had been drawn on or by, or given to, or accepted or endorsed by, the Transferee and, if relevant, as if the place of business at which it is payable were a place of business of the Transferee.
- 4.11. In relation to any deposits and assets held for customers which form part of the Transferring Business which are affected by a freezing order (a **Freezing Order**), the Transferee shall, on and from the Relevant Date, be entitled to the same rights and priorities and be subject to the same obligations and incidents pursuant to the Freezing Order to which the Transferor would itself have been entitled and subject if it had continued to hold the such deposits and assets.
- 4.12. On and with effect from the Effective Date, the Transferee shall not be entitled to apply:
- a. any rights of set-off which might otherwise be exercisable by the Transferee by virtue of the Scheme to reduce or discharge any liability arising from time to time: (i) under any of the Transferor's agreements using credit balances held pursuant to an existing agreement of the Transferee; or (ii) under any existing agreement of the Transferee using credit balances held pursuant to any agreement of the Transferor. Such restrictions shall cease to apply in relation to credit balances held pursuant to any existing agreement of the Transferee or any agreement of the Transferor: (i) where the credit balance is at the Relevant Date held for a fixed term, the date that falls three months after the expiry of that term;

(ii) where the credit balance is at the Relevant Date held on terms that a promotional rate of interest will be lost if the deposit is withdrawn before the end of a certain period, on the date that falls three months after the expiry of that period; and (iii) in all other cases, on the date that falls three months after the Relevant Date;

- b. any "all monies" rights which might otherwise be exercisable by the Transferee by virtue of the Scheme under: (i) any existing agreement of the Transferee to secure any liability arising from time to time under any agreement of the Transferor; or (ii) any agreement of the Transferor to secure any liability arising from time to time under: (A) any existing agreement of the Transferee; or (B) any agreement entered into by the Transferee on or after the Relevant Date, unless expressly stated to the contrary in that new agreement;
- c. any cross default rights which might otherwise be exercisable by the Transferee by virtue of the Scheme to accelerate or alter any rights or obligations under: (i) any existing agreement of the Transferee as a result of the breach of any agreement of the Transferor, unless the Transferor would have been entitled to accelerate or alter any rights or obligations under any such agreement as a result of a breach of any agreement of the Transferor prior to the Relevant Date; or (ii) any agreement of the Transferor as a result of the breach of any existing agreement of the Transferee, unless the Transferor would have been entitled to accelerate or alter any rights or obligations under any such agreement as a result of the breach of any existing agreement of the Transferee prior to the Relevant Date;
- d. any consolidation rights which might otherwise be exercisable by the Transferee by virtue of the Scheme to prevent the release of security given in connection with: (i) any existing agreement of the Transferee until any obligations have been satisfied under any agreement of the Transferor; (ii) any agreement of the Transferor until any obligations have been satisfied under: (A) any existing agreement of the Transferee; or (B) any agreement entered into by the Transferee on or after the Relevant Date, unless expressly stated to the contrary in that new agreement of the Transferee; and
- e. any other right, benefit, interest, discretion, authority or power which might otherwise be exercisable by the Transferee by virtue of the Scheme under or in relation to any: (i) existing agreement of the Transferee to terminate, reduce, suspend, delay, alter, discharge or otherwise secure any liability arising from time to time under any agreement of the Transferor; or (ii) agreement of the Transferor to terminate, reduce, suspend, alter, discharge or otherwise secure any liability arising from time to time under any existing agreement of the Transferee.

4.13. On and with effect from the Effective Date:

- a. where an agreement of the Transferor contains an entire agreement clause, the relevant clause shall be read and construed as if it referred only to the products or services comprised in the Transferring Business and shall not apply to, and an agreement of the Transferor shall not supersede, any existing agreement of the Transferee;
- b. where an existing agreement of the Transferee contains an entire agreement clause, the relevant clause shall be read and construed as if it referred only to products or services of the Transferee not comprised in the Transferring Business and shall not apply to, and an existing agreement of the Transferee shall not supersede, any agreement of the Transferor; and
- c. where an agreement entered into by the Transferee on or after the Relevant Date contains an entire agreement clause, the relevant clause shall, unless expressly stated to the contrary, be read and construed as if it referred only to products or services of the Transferee that are not comprised in the Transferring Business and shall not apply to, and the agreement entered into by the Transferee on or after the Relevant Date shall not supersede, any agreement of the Transferor.

4.14. The provisions of paragraphs 4.12 and 4.13 above shall not diminish any right, benefit, interest, discretion, authority or power which:

- a. immediately prior to the Relevant Date, the Transferee or its counterparty has in respect of agreements entered into by the Transferor, including any rights of the Transferee to use credit balances on accounts held with the Transferee to pay debts owed to the Transferor, any rights of the Transferor to use credit balances on accounts held with the transferor to pay debts owed to the Transferee, or any rights against a customer allowing the acceleration or alteration of payments under a contract as a result of a breach under another contract;
- b. immediately prior to the Relevant Date, the Transferor or its counterparty has in respect of any existing agreements of the Transferee, including any rights allowing the acceleration or alteration of payments under a contract as a result of a breach under another contract; or
- c. the Transferee, Transferor or a customer may acquire other than as a result of the Scheme.

4.15. If on or after the Relevant Date, the Transferor acquired any rights to exercise any of the rights, benefits, interests, discretions, authorities or powers referred to in paragraphs 4.12 and 4.13 above in relation to agreements entered into with other HSBC group companies (the **Acquired Rights**) either: (i) as a result of any contractual variation; or (ii) through other means, other than as a result of the Scheme, paragraphs 4.12 and 4.13 above shall not apply to restrict the Transferee's right to exercise the Acquired Rights.

- 4.16. Any customer of the Transferor with any deposits when aggregated with any deposits held by that customer with the Transferee in excess of the current Financial Services Compensation Scheme limit (in most instances this will be GBP 85,000) (the **Excess Deposit**) may request the withdrawal of all, or part, of the Excess Deposit at any time from the Relevant Date until the date that is three months after the Relevant Date. Such withdrawal shall take effect as soon as reasonably practicable and a withdrawal request may be made on any business day without the relevant customer complying with any requirement to give notice to which the relevant customer would otherwise be subject. Such a withdrawal shall be without loss of any accrued interest and without the relevant customer incurring any charge that would otherwise apply in consequence of such a withdrawal. The Transferee shall not be obliged to permit a customer to withdraw any Excess Deposit where the Excess Deposit relates to a sanctioned account.

5. Transferor as trustee for the transferee

- 5.1. The Scheme provides that the Transferor will, from the Effective Date, hold any Residual Asset (and, from the Relevant Date, any other asset of the Transferring Business that is not transferred to, and vested in, the Transferee) together with any proceeds of sale or income or other right accrued or return arising in respect thereof, on trust for the Transferee absolutely. The interests and entitlements of the Transferee under such trust will be vested and indefeasible, such that the Transferee is absolutely entitled to the assets comprised in the trust and to the income generated by those assets as it arises.
- 5.2. The Transferor will be subject to the exclusive directions from the Transferee in respect of any Residual Asset from the Effective Date until such Residual Asset is transferred to or otherwise vested in the Transferee or is disposed of (upon which the Transferor will account to the Transferee for the proceeds of any sale thereof). All payments made to, property received by or rights conferred upon the Transferor on or after the Effective Date in respect of the Transferring Business will be paid or transferred (to the extent possible) to the Transferee.
- 5.3. The Scheme also provides that the Transferee will, on the Transferor's behalf, discharge or, failing that, indemnify the Transferor against all Residual Liabilities from the Effective Date to such time as when such Residual Liabilities are transferred to the Transferee. In respect of each Residual Liability, to the extent that after the Subsequent Transfer Date the Transferor recovers under a policy of indemnity insurance or a claim or right of recovery against a third party a sum that compensates the Transferor, the Transferor shall promptly notify the Transferee of this fact and pay to the Transferee, as soon as reasonably practicable after receipt, an amount equal to the compensation received from the third party, providing always that the Transferee will indemnify the Transferor in respect of any reasonable costs, claims, charges and other liabilities incurred by the Transferor in recovering the same.

6. Continuity of proceedings and claims

- 6.1. As part of the Scheme, any regulatory, judicial, quasi-judicial or arbitral right of action (including any right of action under any other dispute resolution proceeding) and any such remedy (including regulatory enforcement action) available in consequence of which accrues, arises or becomes enforceable or available before the Relevant Date by or against the Transferor and which relates to any part of the Transferring Business, or which would in the absence of a transfer under the Scheme accrue, arise or become enforceable or available by or against the Transferor, on or after the Relevant Date and which relates to any part of the Transferring Business, may be enforced or availed by or against the Transferee on or after the Relevant Date.
- 6.2. Any regulatory, judicial, quasi-judicial or arbitration proceedings or any complaint to any ombudsman or other proceedings for the resolution of a dispute or claim by or against the Transferor as at the Relevant Date concerning the Transferring Business shall be brought or continued by or against the Transferee without the need for further order. The Transferee shall be entitled to all defences, counterclaims and rights of set-off that would have been available to the Transferor in relation to those proceedings or complaints, and the Transferor shall have no liability under those proceedings or complaints.
- 6.3. After the Relevant Date, any regulatory, judicial, quasi-judicial or arbitration proceedings or any complaint to any ombudsman or other proceedings for the resolution of a dispute or claim commenced by or against the Transferor concerning the Transferring Business shall by virtue of the Scheme be commenced by or against the Transferee. Any such proceedings or complaints after the Relevant Date commenced in error against the Transferor shall be deemed to have been commenced and shall be continued against the Transferee without the need for further order, whether for substitution of parties or otherwise. In any event, the Transferee will be entitled to all defences, counterclaims and rights of set-off that would have been available to the Transferor in relation to those proceedings or complaints and the Transferor shall have no liability under those proceedings or complaints.
- 6.4. Any judgment, order or award obtained by or against the Transferor which relates to any part of the Transferring Business and which is not fully satisfied before the Relevant Date shall, on the Relevant Date, become enforceable by or against the Transferee.

7. Confidentiality and data protection

- 7.1. As part of the Scheme, all personal data obtained by the Transferor from its customers in respect of the Transferring Business will be disclosed to the Transferee, who will become a data controller in respect of such data. Any consent given by customers in relation to the use of their data will be deemed to have been given in relation to the Transferee. The Transferee will use this data in order to carry on the Transferring Business and references to the Transferor (or any member of the Transferor group) in any such information data protection statements or consents will be construed as references to the Transferee. The Transferee shall owe, to any Transferring Customer and to any person who had previously been a customer of the Transferring Business, the same duties of confidentiality and privacy on, and with effect from, the Relevant Date.
- 7.2. On and with effect from the Effective Date, the Transferee shall have the benefit of the marketing preferences of the Transferring Customers (other than to the extent unlawful under, or inconsistent with, data protection laws).

8. Employment and pensions

- 8.1. No contract of employment, and no right, power, duty, liability or claim in connection with such contracts of employment, will be transferred under the Scheme, provided that nothing in the Scheme prevents such transfer taking place under and in accordance with the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006. The transfer of employees will take place on a standalone basis immediately prior to the transfers under the Scheme.
- 8.2. No right or liability relating to any occupational pension scheme, in which the employees of the Transferor participate, shall transfer under the Scheme and, accordingly, the Transferee shall not succeed to any obligation of the Transferor in connection with such pension scheme.

9. Modifications or additions

- 9.1. The Transferor and Transferee may consent jointly to make any modification of or addition to the Scheme which the Court may approve prior to its sanction of the Scheme.
- 9.2. In relation to any modification or addition to the Scheme which may be proposed to be made after its sanction by the Court, the Transferor and the Transferee shall respectively be at liberty to apply to the Court for consent to amend its terms, provided that in any case the Prudential Regulation Authority and the Financial Conduct Authority have been given at least 21 days' notice of, and have the right to be heard at, any hearing of the Court at which such application is considered.

10. Process

More information on how to express your views or participate in the formal court process in relation to the Scheme can be found at: www.hsbcprivatebank.com and following the link for the Scheme.

11. Governing law

The Scheme is governed by and construed in accordance with English law

HSBC Private Bank (UK) Limited
8 Cork Street
London
W1S 3LJ

Registered in England number 499482
Registered office: 8 Canada Square, London E14 5HQ

Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and Prudential Regulation Authority

www.hsbcprivatebank.com