

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4956 GIBRALTAR Friday 29th April 2022

Private Member's Bill 01/22

BILL

FOR

AN ACT to make provision for and in connection with the transfer of the undertaking of SG Kleinwort Hambros Bank (Gibraltar) Limited to SG Kleinwort Hambros Bank Limited.

ENACTED by the Legislature of Gibraltar.

Title, commencement and interpretation.

1.(1) This Act may be cited as the SG Kleinwort Hambros Bank (Gibraltar) Limited (Transfer of Undertaking) Act 2022 and comes into operation on the day of publication.

(2) In this Act -

"the change-over date" means such date as may be appointed by the Minister by notice in the Gazette for the purposes of the vesting in SGKH Bank Limited of the undertaking of SGKH Gibraltar;

"customer" includes any person having a bank account or similar contract or arrangement with SGKH Gibraltar;

"document" means a document of any description whatsoever, together with any record, tape, disc or other thing from which information of any description can be obtained by mechanical, electronic or other means;

"existing" means in existence immediately before the change-over date (whether or not in force or otherwise having legal effect at that time);

"liabilities" includes debts, duties and obligations of every description wherever arising (whether actual or contingent, present or future);

"the Minister" means the Minister with responsibility for financial services;

"property" means property and assets of every description, whether real or personal, moveable or immoveable and wherever situated (including property held on trust and securities, rights, benefits and powers of every description);

"securities" includes mortgages, security interests, charges, debentures, fixed securities, floating charges, personal bonds, bills of exchange, promissory notes, trust receipts, warehouse warrants, guarantees, indemnities, liens, rights of retention, pledges or other means of securing payment of a debt, whether present or future, or the discharge of any obligation or liability;

"SGKH Bank Limited" means the company which is incorporated in the United Kingdom under the name SG Kleinwort Hambros Bank Limited and having a branch in Gibraltar;

"SGKH Gibraltar" means the company which is incorporated in Gibraltar under the name SG Kleinwort Hambros Bank (Gibraltar) Limited and which is a subsidiary of SGKH Bank Limited;

"undertaking", in relation to SGKH Gibraltar, does not include its share capital and reserves.

Vesting of undertaking of SGKH Gibraltar in SGKH Bank Limited.

2.(1) On the change-over date the undertaking of SGKH Gibraltar shall, by virtue of this Act, vest in SGKH Bank Limited in respect of its Gibraltar branch to the intent that SGKH Bank Limited shall succeed to that undertaking in all respects as if SGKH Bank Limited were the same person in law as SGKH Gibraltar.

(2) The following provisions of this Act have effect for the purpose of giving full effect to, and supplementing, the provisions of subsection (1).

Vesting of property.

3.(1) Subject to any provision of this Act making specific provision in relation to property of any description, all property which forms part of the undertaking of SGKH Gibraltar shall, by virtue of this Act (and without any assignment or other form of transfer or the need for any consent), become on the change-over date property of SGKH Bank Limited.

(2) All property which forms part of the undertaking of SGKH Gibraltar and is held by SGKH Gibraltar jointly with any other person, other than SGKH Bank Limited, shall, by virtue of this Act (and without any assignment or other form of transfer or the need for any consent), become on the change-over date property of SGKH Bank Limited jointly with that other person.

(3) In so far as, immediately before the change-over date, any property to which subsection (1) or subsection (2) applies is subject to the rights or liabilities of any other person, those rights or liabilities shall continue on and after that date in all respects as if SGKH Bank Limited were the same person in law as SGKH Gibraltar.

(4) Without prejudice to the generality of subsections (1) to (3), those subsections apply to property held subject to any trust or other fiduciary obligation as they apply to property not so held and, accordingly, on and after the change-over date, SGKH Bank Limited shall hold that property (alone or, as the case may be, jointly with any other person) subject to the same trust or fiduciary obligation as applied to SGKH Gibraltar immediately before that date.

(5) If, immediately before the change-over date, any document or other thing is in the custody or possession of (but is not the property of) SGKH Gibraltar, then, on that date, that document or other thing shall, by virtue of this Act (and without the need for any consent or other dealing), pass into the custody or possession of SGKH Bank Limited to be held in all respects as if SGKH Bank Limited and SGKH Gibraltar were the same person in law.

Excluded property.

4.(1) Subject to subsection (2), nothing in this Act applies to-

- (a) any interest in land in Gibraltar which, immediately before the change-over date, is occupied by SGKH Gibraltar for the purposes of its undertaking;
- (b) any licence or authorisation held by SGKH Gibraltar under the Financial Services Act 2019;
- (c) any rights or liabilities or other property in which, immediately before the change-over date, no person other than SGKH Gibraltar and SGKH Bank Limited had an interest; or
- (d) any contract or other property of which the proper law is not the law of Gibraltar.

(2) If at any time after the passing of this Act (whether before, on or after the change-over date) a tenancy of land occupied by SGKH Gibraltar (or of land which was so occupied immediately before the change-over date) is assigned by SGKH Gibraltar to SGKH Bank Limited, then, without prejudice to the operation of section 62(2)(c) of the Landlord and Tenant Act 1983 (assignment of tenancy from one member of a group to another not to be treated as a change in the person of the tenant) nothing in section 69 of that Act (consents to assignment) shall apply in relation to that assignment.

Pension Scheme.

5.(1) Without prejudice to the generality of sections 2 and 3, any continuing obligation of SGKH Gibraltar under the current pension scheme shall, by virtue of those sections, become on the change-over date an obligation of SGKH Bank Limited; and on and after that date the current pension scheme shall have effect as if SGKH Bank Limited and SGKH Gibraltar were the same in law.

(2) In subsection (1), “the current pension scheme” means the defined contribution pension scheme commenced in 1998 and known as The SG Kleinwort Hambros Gibraltar Occupational Retirement Plan.

Documents.

6.(1) Subject to any specific provision made by the following provisions of this Act in relation to a document or reference of a particular description, as respects anything done or falling to be done, or any other thing occurring, on or after the change-over date, any reference in an existing document to SGKH Gibraltar shall be construed as or, as the case may require, as including a reference to SGKH Bank Limited.

(2) As respects anything done or falling to be done on or after the change-over date, any reference in an existing document to the directors or any description of director, officer or employee of SGKH Gibraltar shall be construed as a reference to the directors of SGKH Bank Limited or, as the case may be, to such description of director, officer or employee of SGKH Bank Limited as SGKH Bank Limited may nominate in writing for the purpose or, in default of such a nomination, to that description of director, officer or employee of SGKH Bank Limited which corresponds as nearly as may be to the description specified in the document.

(3) On and after the change-over date, all documents which, before that date, would have been evidence in respect of any matter for or against SGKH Gibraltar shall be admissible in respect of the same matter for or against SGKH Bank Limited.

(4) Nothing in this section applies to a document which is or forms part of an Act.

Accounts.

7. Any existing account between SGKH Gibraltar and a customer shall, on the change-over date, become an account between SGKH Bank Limited and that customer and shall continue on and after the change-over date in all respects subject to the same terms and conditions as applied immediately before that date (including any terms or conditions providing for variation or termination).

Supplementary provisions as to other matters.

8.(1) The provisions of this section have effect without prejudice to the generality of the preceding provisions of this Act.

(2) Whether or not it is contained in a document, any existing instruction, order, direction, mandate, power of attorney, consent, undertaking or other thing to which SGKH Gibraltar is a party or which otherwise affects SGKH Gibraltar shall have effect on and after the change-over date as if SGKH Bank Limited were a party to it or, as the case may be, shall similarly affect SGKH Bank Limited on and after that date.

(3) If, under any existing document, SGKH Gibraltar is or would be entitled –

- (a) to charge remuneration in accordance with a scale for the time being applicable to SGKH Gibraltar, or

- (b) otherwise to act in accordance with any terms and conditions for the time being so applicable,

then, on and after the change-over date, the document shall be construed as entitling SGKH Bank Limited to charge in accordance with the corresponding scale or, as the case may be, to act in accordance with the corresponding terms and conditions for the time being applicable to SGKH Bank Limited.

(4) On and after the change-over date, any claims or legal proceedings which are existing or pending before that date by or against SGKH Gibraltar shall be treated for all purposes as if SGKH Gibraltar and SGKH Bank Limited were the same person in law except that, by virtue of this Act, the name of SGKH Bank Limited shall be substituted in those proceedings for that of SGKH Gibraltar.

(5) So far as relates to SGKH Bank Limited carrying on in or from within Gibraltar the business formerly carried on by SGKH Gibraltar, SGKH Bank Limited shall be treated for the purposes of the charge to tax as the continuation (without any change of legal entity) of SGKH Gibraltar and, accordingly, the vesting of the undertaking of SGKH Gibraltar in SGKH Bank Limited shall not be regarded as constituting (or giving rise to) the cessation or commencement of a business or source of income.

Application of Bankers' Books Evidence Act 1879.

9.(1) On and after the change-over date, the Bankers' Books Evidence Act 1879 (in this section referred to as "the 1879 Act") shall apply to the bankers' books of SGKH Gibraltar which, by virtue of this Act, become the property of SGKH Bank Limited as if those books were the bankers' books of SGKH Bank Limited.

(2) For the purposes of the application on and after the change-over date of section 4 of the 1879 Act to a copy of an entry purporting to be made before that date in a book to which subsection (1) applies, -

- (a) at the time of the making of the entry the book shall be deemed to have been an ordinary book of SGKH Bank Limited; and
- (b) the entry shall be deemed to have been made in the usual and ordinary course of business.

(3) Expressions used in this section and in the 1879 Act have in this section the same meaning as in that Act.

Evidence as to transfer of property.

10. Any document coming into existence after the change-over date whereby SGKH Bank Limited, whether alone or jointly with any other person, -

- (a) conveys or transfers or purports to convey or transfer, or

(b) applies to be registered as the holder or proprietor of,

any property which, immediately before the change-over date, was held by SGKH Gibraltar, whether alone or jointly with any other person, shall be prima facie evidence that the interest of SGKH Gibraltar in that property became vested in SGKH Bank Limited by virtue of this Act.

Winding up of SGKH Gibraltar.

11.(1) On such date (in this section referred to as “the winding-up date”) as may be specified by the Minister, by notice in the Gazette, SGKH Gibraltar shall be wound up by virtue of this Act (and without any application or other proceeding or action) and the share capital and any other property remaining with SGKH Gibraltar immediately before the winding-up date shall be distributed accordingly to those who at that time were the shareholders.

(2) The date specified as the winding-up date shall not be earlier than the date on which SGKH Gibraltar ceases to hold any licence or authorisation under the Financial Services Act 2019.

(3) For the purpose of enabling the Registrar of Companies to take such action as he considers appropriate in consequence of the winding-up of SGKH Gibraltar, not later than seven days after the winding-up date, SGKH Bank Limited shall send to the registrar a copy of the notice in the Gazette specifying that date.

Expenditure attributable to enactment of this Act.

12. The expenditure incurred by the Government in connection with the introduction and enactment of this Act, as certified by the Minister, shall be paid by SGKH Bank Limited.

EXPLANATORY MEMORANDUM

This Bill makes provision for and in connection with the transfer of the undertaking of SG Kleinwort Hambros Bank (Gibraltar) Limited to SG Kleinwort Hambros Bank Limited which has a branch in Gibraltar.

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