

EXPLANATORY STATEMENT

This explanatory statement (this “**Explanatory Statement**”) sets out the terms of the proposed scheme for the transfer of the UK deposit-taking and payment services business of AS LHV Pank (UK Branch) (the “**Transferor**”) to LHV UK Limited (to be renamed LHV Bank Limited) (the “**Transferee**”).

1. Introduction

Background

1.1. As part of its planning to ensure continuity of service provision to customers in the United Kingdom of Great Britain and Northern Ireland (the “**UK**”), in response to the withdrawal of the UK from the European Union on 31 January 2020 and the expiry of the UK’s temporary permissions regime for financial services firms based in the European Economic Area (the “**TPR**”) on 31 December 2023, the Transferor and the Transferee have jointly applied to the High Court of Justice of England and Wales (the “**High Court**”) to sanction a banking business transfer scheme under Part VII of the Financial Services and Markets Act 2000 (the “**Scheme**”).

The Scheme applicants

1.2. The Transferor is established as a UK establishment (with UK establishment number BR020302) of a foreign company, being AS LHV Pank (the “**Estonian Bank**”). The Transferor is permitted to accept deposits and provide regulated payment services in the UK as a branch of the Estonian Bank (which is authorised as a credit institution, under permit number 4.1-1/37, by the Estonian Financial Supervision and Resolution Authority). The Transferor currently conducts regulated activities in the UK under the TPR, with firm reference number 796009.

1.3. The Transferee is incorporated in England and Wales as a private company limited by shares with company number 13180211, and is within the same corporate group as the Transferor. The Transferee is authorised by the Prudential Regulation Authority (the “**PRA**”), with firm reference number 993767, and regulated by both the Financial Conduct Authority (the “**FCA**”) and the PRA. The Transferee is a “UK authorised person”, able to accept deposits and to provide regulated payment services in the UK.

The Scheme terms

1.4. The Scheme involves the Transferor transferring its UK deposit-taking and payment services business (the “**Transferring Business**”), as further described in paragraphs 2.1 and 2.2 below, to the Transferee under Part VII of the Financial Services and Markets Act 2000.

1.5. The terms of the Scheme are set out in full in the banking business transfer scheme document (the “**Scheme Document**”), which has been submitted to the High Court for approval pursuant to Part VII of the Financial Services and Markets Act 2000.

1.6. This Explanatory Statement provides a summary of the terms of the Scheme Document, as required by regulation 5(4) of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001. Further information about the Scheme and the other key Scheme documents can be obtained from www.lhv.com/legal-and-regulatory/ or from the addresses and/or telephone number set out at the end of this Explanatory Statement.

The Scheme process

1.7. To become effective, the Scheme requires the sanction of the High Court. It is anticipated that the final High Court hearing to sanction the Scheme (the “**Sanction Hearing**”) will be held on 15 August 2023.

1.8. As referred to in paragraph 1.1 above, the Scheme process has been initiated by an application to the High Court dated 4 May 2023 (the “**Application**”). This process involved an initial High Court hearing, held on 15 May 2023, at which the High Court made provision for various procedural matters. At the Sanction Hearing, the High Court will consider and, if considered fit, sanction the Scheme.

1.9. The PRA and the FCA are entitled to appear at the Sanction Hearing and both the Transferor and the Transferee have been liaising closely with the PRA and the FCA as part of the Scheme process.

1.10. Other procedural requirements, which must be met between the date of the Application and the Sanction Hearing, are as follows:

- (a) certain public notices must be published stating that the Application has been made. These notices have been approved by the PRA and it is intended that they will be published in The London Gazette, The Edinburgh Gazette, The Belfast Gazette, The Telegraph, The Times and the international edition of The Financial Times;

- (b) the PRA and the FCA must be provided with copies of the Application and this Explanatory Statement; and
- (c) the Transferee must obtain from the PRA a certificate of adequate financial resources, and must have the requisite regulatory authorisation under FSMA to carry on the Transferring Business.
- 1.11. Any person (including any counterparty of any Transferring Customer Contract or Transferring Supplier Contract (as defined in paragraph 2.1 below)) who claims that they will be adversely affected by the carrying out of the Scheme is entitled to be heard by the High Court or make representations in writing to it, as are the PRA and the FCA.
- 1.12. Any such person who wishes to attend the Sanction Hearing or wishes to instruct a barrister or solicitor advocate to attend the Sanction Hearing and make representations on their behalf or who wishes to make a written representation to the High Court is requested to give notice in writing of their intentions and their objections, as soon as possible and preferably before 1 August 2023, by:
- Email:** PartVII@lhv.com
- Post:** **LHV UK Limited**
1 Angel Court
London EC2R 7HJ
United Kingdom
- Attn: Ingvar Ülpre, UK General Counsel
- 1.13. This will enable the Transferor and the Transferee to provide notification of any material developments to the High Court or, where possible, to seek to address any concerns raised in advance of the Sanction Hearing. In addition, the Transferor and the Transferee will provide the PRA and the FCA with copies of any such representations received, regardless of whether the person making such representations has indicated they intend to attend the Sanction Hearing or not.
- 1.14. A failure to give written notice in advance does not prevent any person who wishes to do so from attending the Sanction Hearing or instructing a barrister or solicitor, at such person's own cost, to attend the Sanction Hearing on their behalf.

The Scheme effective date

- 1.15. Subject to approval by the High Court, the Scheme will take effect at 11.59 p.m. (London time) on 22 August 2023 (the "**Effective Date**").

2. Transferring Business, Transferring Assets and Transferring Liabilities

- 2.1. Under the Scheme, the Transferor will transfer the Transferring Business and related assets and liabilities to the Transferee on and with effect from the Effective Date. The Scheme makes provision for the transfer of certain assets, including (but not limited to) the contracts between the Transferor and its customers pursuant to which the Transferor provides UK banking services (the "**Transferring Customer Contracts**") and the contracts between the Transferor and certain of its key UK suppliers in respect of critical operational infrastructure and outsourcings, together with any and all ancillary contracts and agreements relating thereto (the "**Transferring Supplier Contracts**", and together with the Transferring Customer Contracts, the "**Transferring Assets**").
- 2.2. In addition, on and with effect from the Effective Date, all liabilities of the Transferor to the extent they relate to the Transferring Business and the Transferring Assets (whether arising prior to, on or after the Effective Date) (together, the "**Transferring Liabilities**") will transfer to the Transferee. As at 31 March 2023, the Transferor had total assets relating to the Transferring Business of £166,470,322 and £103,324,107 of UK customer deposits.
- 2.3. The Transferor and the Transferee will use reasonable endeavours to perform such other acts and things as may be required to effect or perfect the transfer and the vesting in the Transferee of any Transferring Asset or Transferring Liability in accordance with the terms of the Scheme.

3. Consequences of the Scheme

- 3.1. The Transferee will be entitled to all the rights, benefits and powers under the Transferring Business and will be subject to all the obligations and the Transferring Liabilities of the Transferor under the Transferring Business whatsoever subsisting on the Effective Date.

- 3.2. Every Transferring Customer Contract and Transferring Supplier Contract will be construed from the Effective Date as if the Transferee had always been an original party thereto from inception instead of the Transferor. As such, except as explained in paragraph 4.1 below, the Transferring Customer Contracts and the Transferring Supplier Contracts will continue in full force and effect as between the Transferee and the relevant counterparty(ies) on the terms which applied prior to the Effective Date.
- 3.3. The Transferee shall become entitled to all the assets and property of the Transferor whatsoever subsisting on the Effective Date under or by virtue of the Transferring Customer Contracts and the Transferring Supplier Contracts.

4. Amendments to Transferring Customer Contracts and Transferring Supplier Contracts

- 4.1. If the Scheme is approved by the High Court, from the Effective Date:
- (a) all references in any Transferring Customer Contract or any Transferring Supplier Contract to the Transferor, the board of directors of the Transferor, or any other officers, employees or agents of the Transferor or the address of the Transferor will be read as references to the Transferee, the board of directors of the Transferee, or any other officers, employees or agents of the Transferee or the address of the Transferee;
 - (b) all rights, duties and responsibilities to be performed by the Transferor, the board of directors of the Transferor, or any other officers, employees or agents of the Transferor in relation to any of the Transferring Customer Contracts and the Transferring Supplier Contracts will be exercisable or required to be performed by the Transferee, the board of directors of the Transferee or any other officers, employees or agents of the Transferee; and
 - (c) the terms of the Transferring Customer Contracts will be amended as set out in Appendix B (*Changes to Transferring Customer Contracts*) of the Scheme Document. Broadly, these amendments are of a mechanical, administrative and/or technical nature (e.g. updated definitions, contact details, statutory references, etc.).
- 4.2. The amendments described in paragraph 4.1 will not apply to diminish any right, benefit or power which the Transferee or the counterparties to the Transferring Customer Contracts and the Transferring Supplier Contracts may acquire other than as a result of the Scheme.
- 4.3. If, after the Effective Date, any customer in respect of a Transferring Customer Contract (a “**Transferring Customer**”) enters into any new agreement with the Transferee in respect of the provision by the Transferee of banking products and services to that Transferring Customer and such new agreement contains an ‘entire agreement’ or equivalent provision, such provision shall, unless stated to the contrary therein, be read and construed as if it did not refer or apply to that Transferring Customer’s Transferring Customer Contract.
- 4.4. Any offer or invitation to treat in respect of products or services made to or by the Transferor prior to the Effective Date shall be construed and have effect as an offer or invitation to treat made to or by the Transferee.

5. Customer payment mandates

- 5.1. All payments payable to the Transferor and attributable or referable to any Transferring Customer Contract will, from the Effective Date, be payable to the Transferee.
- 5.2. Any direct debit mandate, standing order or other instruction or authority in force on the Effective Date and providing for payment under any Transferring Customer Contract will thereafter take effect as if it had provided for and authorised such payment to the Transferee.
- 5.3. Any mandate or other instruction or authority in force on the Effective Date as to the manner of payment to the Transferor of any sum payable under any Transferring Customer Contract shall continue in force as an effective mandate, instruction or authority as to the manner of payment to the Transferee.

6. Financial Services Compensation Scheme

- 6.1. The Financial Services Compensation Scheme (the “**FSCS**”) provides holders of eligible deposits (pursuant to rule 2.2 of the Depositor Protection Part of the PRA Rulebook) with assurance that up to £85,000 (as may be amended from time to time) of money deposited with a PRA authorised deposit taker will be protected if that deposit taker becomes unable to repay money deposited with it.

6.2. Following the Effective Date, all Transferring Customers who hold eligible deposits with the Transferee which exceed the abovementioned monetary threshold will, for a period of 3 months from (and including) the date immediately following the Effective Date, be entitled to withdraw the amount of such eligible deposits in excess of the abovementioned monetary threshold from the Transferee free from any penalty, withdrawal fee, transfer fee, prior notification obligation and/or charge (including loss of accrued interest) which may otherwise apply.

7. Liabilities and proceedings

7.1. The Scheme provides for all of the liabilities of the Transferor relating to the Transferring Business to be transferred to the Transferee, including any proceedings in connection with or relating to the Transferring Assets and the Transferring Liabilities.

7.2. Any proceedings which have been issued, served, are pending, current or threatened by, or on behalf of, or against the Transferor shall be continued or commenced by or against the Transferee (in place of the Transferor) and:

- (a) the Transferee shall be entitled to all defences, claims, counterclaims, defences to counterclaims, set-offs and other rights in relation thereto that would have been available to the Transferor; and
- (b) the Transferring Customers and the Transferring Suppliers shall be entitled to all defences, claims, counterclaims, defences to counterclaims, set-offs and other rights in relation thereto in respect of the Transferee that would have been available to them in respect of the Transferor.

For the avoidance of doubt, any proceedings in connection with the Transferring Business which are threatened, served or issued on or after the Effective Date shall be threatened, served or issued (as the case may be) by, or on behalf of, or against the Transferee.

8. Employees

8.1. The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (“**TUPE**”) provides protection for employees when the business in which they are employed changes ownership. TUPE applies to a “relevant transfer”, which means a transfer of a business, undertaking or part of a business or undertaking where there is a transfer of an economic entity that retains its identity. Where there is a “relevant transfer”, regulation 4(1) of TUPE provides that the contracts of employment of those employees employed by the Transferor in the UK and engaged in the Transferring Business automatically transfer to the Transferee on their existing terms (the “**Transferring Employees**”). In effect, the Transferee steps into the Transferor’s shoes with regard to the Transferring Employees. Pursuant to regulation 4(2) of TUPE, all of the Transferor’s rights, powers, duties and liabilities under or in connection with the Transferring Employees’ contracts pass to the Transferee and any acts or omissions of the Transferor before the transfer are treated as having been done by the Transferee.

8.2. The Scheme coming into effect will constitute a “relevant transfer” for the purposes of TUPE and the Transferring Employees will transfer by operation of law to the Transferee.¹ Any Transferring Employee who objects to the transfer will not become an employee of the Transferee. Instead, his / her contract of employment will terminate by operation of law on the Effective Date, under regulation 4(7) of TUPE, without dismissal of that Transferring Employee.

9. Privacy and data protection

9.1. The Transferee and the Transferor have entered into an agreement under which:

- (a) for certain data processing activities relating to the certain services provided between the Transferee and the Transferor, each of them may act as a processor for the other (the “**Controller / Processor Purposes**”);
- (b) for certain joint data processing activities, the Transferee and the Transferor will act as joint controllers (the “**Joint Controller Purposes**”); and
- (c) for activities falling outside the preceding paragraphs, the Transferee will act as an independent controller with respect to the processing of personal data received under the Scheme (the “**Independent Controller Purposes**”).

¹ Please note that the terms relating to the application of TUPE are not set out in the Scheme Document. Instead, they are set out in a separate employee transfer deed between the Transferor and the Transferee which is available, free of charge, from www.lhv.com/legal-and-regulatory/.

- 9.2. From the Effective Date, in respect of the Controller / Processor Purposes, the Transferee and the Transferor will abide by the applicable requirements of Article 28 of the UK GDPR, with respect to the processing of personal data by a processor, as reflected in the agreement between the parties.
- 9.3. From the Effective Date, in respect of the Joint Controller Purposes, the Transferee and the Transferor will abide by the applicable requirements of Article 28 of the UK GDPR, with respect to the obligations of joint controllers, as reflected in the agreement between the parties.
- 9.4. From the Effective Date, in respect of any Independent Controller Purposes for which the Transferor will no longer be a controller after the effective date, the Transferee will, to the extent permissible under applicable law, take on the role, responsibilities and obligations of the controller under the UK GDPR.
- 9.5. To the extent that the Transferor remains a controller with respect to any personal data whether relating to the Transferring Customers or otherwise, or otherwise retains any such personal data in its possession or control, the Transferor shall continue to abide by its obligations under the UK GDPR in respect of such personal data.

10. Wrong pockets

- 10.1. The Scheme includes a mechanism whereby all or any part of any Transferring Supplier Contract which the Transferor and the Transferee intend to transfer, but has not transferred, as a result of the Scheme will be transferred by the Transferor to the Transferee (or as the Transferee may otherwise direct) as soon as reasonably practicable at no cost to the Transferee. Liabilities in relation to any incorrectly retained Transferring Supplier Contract will be allocated between the Transferor and the Transferee to reflect the intended allocation of the relevant Transferring Supplier Contract.
- 10.2. The mechanism described in paragraph 10.1 will remain in full force and effect for a period of 3 months immediately following the Effective Date.

11. Amendments to the Scheme

- 11.1. The Transferor and the Transferee can apply jointly at any time before or after the Effective Date to the High Court for any amendment, variation, modification or addition to the Scheme, provided that both the PRA and FCA must be notified not less than 21 calendar days in advance of any hearing of the High Court at which such application is considered, and shall have the right to attend and be heard at such High Court hearing.
- 11.2. At any time after the sanction of the Scheme, in the case of minor amendments or manifest error, the amendment may be made without the consent of the High Court, provided that the FCA and the PRA have been notified of the proposed amendment and each of the PRA and the FCA has engaged in considering such proposed amendment and has not communicated any material concern in relation to the proposed amendment within 30 calendar days of such notice having being given.

12. Costs

The Transferee will be responsible for all costs of implementing the Scheme and the counterparties to the Transferring Customer Contracts or the Transferring Supplier Contracts will not bear any such costs.

13. Governing law

The Scheme is governed by English law.

14. Further information

- 14.1. This Explanatory Statement and the Scheme Document contain important information. A copy of the Scheme Document itself together with copies of the other relevant documents are available from www.lhv.com/legal-and-regulatory/. Alternatively, you may request free copies of any of the relevant documents or ask further questions by contacting your designated relationship managers via their usual details. In addition, UK customers of the Transferor can, if they prefer, contact the Transferee by phone, email or post on the telephone number or the addresses shown below:

Phone: +44 20 3005 0155

Email: PartVII@lhv.com

Post: **LHV UK Limited**
1 Angel Court
London EC2R 7HJ
United Kingdom

Attn: Ingvar Ülppe, UK General Counsel

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- 14.2. If you wish to notify the Transferor or the Transferee of your intention to object to the Scheme, you are requested to please provide us with details of your objection and your written representation or details of your intention to attend or be represented at the Sanction Hearing in writing to the address or email address shown above stating your reasons, preferably before 1 August 2023. This will enable the Transferor and the Transferee to provide notification of any objections to the High Court or, where possible, to address any concerns raised in advance of the Sanction Hearing.
- 14.3. In addition, the Transferor and the Transferee will provide the PRA and the FCA with copies of any such representations received, regardless of whether the person making such representations has indicated they intend to attend the Sanction Hearing or not. A failure to give written notice in advance will not prevent any person who wishes to do so from attending the Sanction Hearing.
- 14.4. If you are in any doubt as to the meaning or import of the contents of this Explanatory Statement or the Scheme Document, or if you require further guidance, you are recommended to seek advice from your own solicitor or other professional adviser immediately.

19 May 2023