

Explanatory Statement



Explanatory statement setting out the terms of the proposed scheme for the transfer of the entirety of the business of Kleinwort Benson Bank Limited to SG Kleinwort Hambros Bank Limited.

1 Overview

- 1.1 Kleinwort Benson Bank Limited (**KBBL**) proposes to transfer the entirety of its business as described in paragraph 4 to SG Kleinwort Hambros Bank Limited, formerly known as SG Hambros Bank Limited, (**Kleinwort Hambros**) (the **Transfer**) by means of a banking business transfer scheme (the **Scheme**) under Part VII of the Financial Services and Markets Act 2000 (**FSMA**).
- 1.2 The terms of the Transfer are set out in full in the banking business transfer scheme document (the **Scheme Document**) which has been submitted to the High Court of England and Wales (the **Court**) for approval under Part VII of FSMA.
- 1.3 This Explanatory Statement provides a summary of the terms of the Scheme, as required by regulation 5(4) of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001.
- 1.4 Further information about the Scheme and the other key Scheme documents can be obtained from <https://www.kleinwortbenson.com/en/bank-transfer/> or from the address and telephone numbers set out at the end of this Explanatory Statement.

2 Process

- 2.1 To become effective, the Scheme requires the sanction of the Court. It is anticipated that the final Court hearing to sanction the Scheme (the **Final Hearing**) will be held on 30 October 2017. The Court process has been initiated by an application to the Court dated 17 July 2017 (the **Application**) and involved an initial Court hearing at which the Court made provision for various procedural matters. At the Final Hearing the Court will consider and, if thought fit, sanction the Scheme.
- 2.2 Both KBBL and Kleinwort Hambros are authorised and regulated by the Bank of England's Prudential Regulation Authority (the **PRA**) and regulated by the Financial Conduct Authority (the **FCA**). The PRA and the FCA are entitled to appear at the Final Hearing and both KBBL and Kleinwort Hambros have been liaising closely with the PRA and FCA as part of the Scheme process.
- 2.3 Other procedural requirements, which must be met between the date of the Application and the Final Hearing, are as follows:
 - (a) certain 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, Edinburgh and Belfast Gazettes, and in *The Times*, *The Telegraph* and, for the benefit of international clients and third parties, 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) Kleinwort Hambros must obtain from the PRA a certificate of adequate financial resources, and must have the requisite regulatory authorisations to carry on the transferred business.
- 2.4 Any person (including any client or employee of either KBBL or Kleinwort Hambros) who claims that they will be adversely affected by the carrying out of the Scheme is entitled to be heard by the Court or make representations in writing to it, as are the PRA and the FCA.
 - 2.5 Any such person who wishes to attend the Final Hearing or wishes to instruct a barrister or solicitor advocate, at their own cost, to attend the Final Hearing and make representations on their behalf or who wishes to make a written representation to the Court is requested to give notice in writing of their intentions and their objections, as soon as possible and preferably before 25 October 2017, by email to banktransfer@kleinwortbenson.com or by post to:

If writing from within the UK:

Freepost KLEINWORT BENSON BANK TRANSFER

If writing from overseas:

Kleinwort Benson Bank Transfer
8 St James's Square
London SW1Y 4JU
United Kingdom

This will enable KBBL and Kleinwort Hambros to provide notification of any changes to the hearing and, where possible, to address any concerns raised in advance of the hearing. In addition, KBBL and Kleinwort Hambros 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 hearing or not.

A failure to give written notice in advance does not prevent any person who wishes to do so from attending the Final Hearing.

3 Effective Date of the Scheme

It is intended that the Scheme will become effective in accordance with the order of the Court on such date as KBBL and Kleinwort Hambros may agree (the **Effective Date**). Such date is expected to be 6 November 2017 and if this date changes we will place a notice confirming the Effective Date on our website at www.kleinwortbenson.com. Unless the

Scheme becomes effective by the later of (i) 29 December 2017; or (ii) such other time and/or date as the Court may allow on the application of KBBL or Kleinwort Hambros, it will lapse.

4 The Transferring Business

4.1 KBBL is authorised and regulated by the PRA and regulated by the FCA. It was acquired by SG Kleinwort Hambros Limited (formerly known as SG Hambros Limited) on 6 June 2016. KBBL is a licensed bank which provides a range of private banking and investment services to clients including deposit taking and lending (including in the form of regulated mortgages) and advising on and arranging investments. Under the Scheme, the entirety of the business of KBBL, including the marketing, origination and operation of current accounts, savings deposits and loans and any ancillary activities including its investment management and advisory business for private banking clients, and together consisting of the Transferring Assets and Transferring Liabilities (the **Transferring Business**) will be transferred to Kleinwort Hambros.

4.2 The Transferring Business includes, in particular:

- (a) all deposits accepted by KBBL;
- (b) all loan and mortgage facilities granted by KBBL, together with the benefit of all security granted to KBBL, in each case, in respect of the Transferring Business; and
- (c) all investment management activity carried on by KBBL;
- (d) all investment advisory services carried on by KBBL; and
- (e) all contracts or agreements:
 - (i) between KBBL and its clients in relation to any accounts or any investment management, advisory or other services provided by KBBL and forming a part of the Transferring Business (the **Transferring Client Agreements**); and
 - (ii) to which KBBL is a party or a beneficiary and which relate to the Transferring Business other than the Transferring Client Agreements (the **Transferring Third Party Contracts**).

4.3 The Transferring Business does not include the contractual arrangements relating to KBBL's account held with the Bank of England but any amounts held in this account at the Effective Date will transfer to Kleinwort Hambros' equivalent account with the Bank of England.

5 Effect of the Transfer on contracts

5.1 Except as provided in the Scheme Document (and paragraph 10 below), every contract in respect of the Transferring Business (including the Transferring Client Agreements and the Transferring Third Party Contracts) shall have effect on and from the Effective Date as if the contract had been made with Kleinwort Hambros instead of KBBL and in respect of anything falling to be done after the Effective Date, a reference to Kleinwort Hambros shall be substituted in place of a reference to KBBL.

5.2 Subject as set out below, the Transfer under the Scheme will not:

- (a) invalidate or discharge any contract, security or other arrangement having a similar effect (whether with a client or with a third party);
- (b) require further registration or re-registration or filing or re-filing or amendment to any existing registration or filing in respect of any security;
- (c) allow any party to a contract to which KBBL or Kleinwort Hambros are a party to terminate the contract when it would otherwise not have been able to terminate it;
- (d) entitle any party to any contract to modify the terms of the contract when that party would not otherwise have been able to modify those terms;
- (e) entitle any person to exercise any contractual right or remedy it would otherwise not have been able to;
- (f) confer any greater or lesser rights or benefits or impose any greater or lesser obligations on any party to a contract to which KBBL is party when that greater or lesser obligation would not otherwise have been imposed;
- (g) affect the enforceability, priority or ranking of any security or other arrangement having a similar effect; or
- (h) enable any person to bring a claim in relation to any Transferring Asset or Transferring Liability.

Agreements, accounts and mortgages

5.3 Any agreement or account between KBBL and a client in respect of the Transferring Business shall become an agreement or account between Kleinwort Hambros and that client and subject to the same terms and conditions except as described in paragraph 5.7 below.

5.4 Similarly, any mortgage loans made to any mortgage client by KBBL in respect of the Transferring Business shall become loans made between Kleinwort Hambros and that mortgage client, and Kleinwort Hambros will have all rights, powers, remedies and priority in relation to any other lenders to that mortgage client as KBBL.

Security

5.5 Any security in respect of the Transferring Business held by KBBL or by a nominee, agent or trustee for KBBL, as security for the payment or discharge of any liability shall on and from the Transfer be held by Kleinwort Hambros or as the case may be by a nominee, agent or trustee for Kleinwort Hambros, and be available to Kleinwort Hambros as security for the payment or discharge of any such liability.

Instructions and authorities

5.6 Any existing direct debit instruction, standing order, direction, mandate, power of attorney, authority, undertaking or consent given to or by KBBL in respect of the Transferring Business shall have effect on and from the Effective Date as if given to, or as the case may be, by Kleinwort Hambros.

Client terms of business

5.7 The Scheme will also substitute existing client general terms of business with new terms of business. If this is relevant to you then a copy of the new terms of business is enclosed with this Explanatory Statement along with a summary of the key differences between your existing terms of business and the new terms. This change in terms is necessary to bring your terms of business into line with the terms of business for Kleinwort Hambros' existing clients.

6 Widening of rights

6.1 As a result of the Scheme, the scope for Kleinwort Hambros to exercise certain rights under agreements that Kleinwort Hambros is a party to and are in force immediately prior to the Effective Date or Transferring Client Agreements may be widened, unless the Scheme provides otherwise. The Scheme will therefore impose specific restrictions against this happening as described in paragraphs 6.2 to 6.10 below.

Set-off rights

- 6.2 A **set-off** right is the right of a bank, in certain circumstances, to use money deposited with it (such as in a current account or savings account) against a debt the same client has with it (such as a loan or mortgage) that becomes repayable. For example, if a client had both a KBBL savings account and mortgage, and fell behind with the mortgage payments, then money in the savings account could be used to repay the arrears on the mortgage.
- 6.3 The Scheme will state that after the Transfer, where someone has (1) in the case of paragraph 6.3(a)(i), a current or savings account with KBBL and a mortgage or loan with Kleinwort Hambros; and (2) in the case of paragraph 6.3(a)(ii), a current or savings account with Kleinwort Hambros and a mortgage or loan with KBBL:
- (a) during the period set out in paragraph 6.3(b) below, Kleinwort Hambros will not be able to:
 - (i) use money deposited in such savings or current accounts transferred to it from KBBL as a consequence of the Transfer to pay debts on any such existing mortgages or loans with Kleinwort Hambros; or
 - (ii) use money deposited in such existing savings or current accounts with Kleinwort Hambros to pay debts on mortgages or loans transferred to it from KBBL as a consequence of the Transfer; and
 - (b) these restrictions will last until the date three months after the Relevant Date or Subsequent Transfer Date (as defined at paragraph 10 below), except in relation to deposits made for a fixed term or which are subject to a promotional rate if the deposit is maintained for a certain period, in which case the restrictions will last until three months after the end of that fixed term or promotional period.

Cross-default rights

6.4 A **cross-default** clause is one which means that a client will automatically be in breach of the account terms and conditions if in breach of certain other

agreements. This may give rise to a right of early termination or a right to demand early repayment of any sum due to the bank.

- 6.5 The Scheme will state that, on and with effect from the Relevant Date and for three months thereafter, Kleinwort Hambros will not be entitled to apply any cross-default rights which might otherwise be exercisable by Kleinwort Hambros as a result of the Scheme to accelerate or alter any rights or obligations:
- (a) under any existing agreement between the client and Kleinwort Hambros, as a result of the breach of any Transferring Client Agreement (including mortgages) originally entered into with KBBL; or
 - (b) under any Transferring Client Agreement (including mortgages) originally entered into with KBBL, as a result of the breach of any existing agreement between the client and Kleinwort Hambros.

All monies rights

- 6.6 An **all monies** clause is one which allows a mortgage or charge to be used as security for all debts owed to the lender, not just the mortgage loan.
- 6.7 The Scheme will state that, on and with effect from the Relevant Date and for three months thereafter, all monies clauses:
- (a) in existing agreements between the client and Kleinwort Hambros will not apply to debts transferred from KBBL to Kleinwort Hambros under the Scheme; and
 - (b) in Transferring Client Agreements (including mortgages) originally entered into with KBBL and transferred to Kleinwort Hambros under the Scheme will not apply to existing debts owed to Kleinwort Hambros.

Consolidation rights

- 6.8 A **consolidation** clause is one which permits a mortgage lender to retain the security until all debts owed to the lender have been repaid, even if the mortgage loan has been repaid.
- 6.9 The Scheme will state that, on and with effect from the Relevant Date and for three months thereafter, consolidation rights:
- (a) in existing agreements between the client and Kleinwort Hambros will not apply to prevent the release of the security until all obligations have been satisfied under any lending transferred from KBBL to Kleinwort Hambros under the Scheme; or
 - (b) in Transferring Client Agreements (including mortgages) originally entered into with KBBL and transferred to Kleinwort Hambros under the Scheme will not apply to prevent the release of the security until all obligations have been satisfied under any existing lending provided by Kleinwort Hambros.

Entire agreement clauses

6.10 Some client agreements state that they apply to all accounts of a certain type that a client holds with either KBBL or Kleinwort Hambros. The Scheme will provide that, on and with effect from the Relevant Date and for

three months thereafter, those client agreements will continue to apply to the same accounts as immediately prior to the Transfer so that:

- (a) accounts that have transferred from KBBL to Kleinwort Hambros under the Scheme will continue to be governed by the terms of the relevant client agreement originally entered into with KBBL;
- (b) existing accounts with Kleinwort Hambros will continue to be governed by the terms of the relevant client agreement originally entered into with Kleinwort Hambros; and
- (c) the terms of new client agreements that are entered into by the client with Kleinwort Hambros on or after the Transfer will only apply to accounts that have transferred to Kleinwort Hambros from KBBL if explicitly agreed in such new client agreement.

Savings to rights

- 6.11 The provisions summarised in paragraphs 6.2 to 6.10 above will not apply so as to reduce any right, benefit or power which Kleinwort Hambros or a client may acquire other than as a result of the Scheme.

7 Financial Services Compensation Scheme

- 7.1 Clients of KBBL are covered by the UK Financial Services Compensation Scheme (the **FSCS**). The FSCS provides eligible depositors, including private individuals and small businesses (which includes companies, as long as they meet the "small company" criteria set out in the relevant Companies Act 2006) with assurance that up to £85,000 of money deposited with an authorised deposit taker will be protected if the bank becomes unable to repay money deposited with it. Some eligible clients also benefit from protection in respect of investment business for up to £50,000 per firm.
- 7.2 For joint accounts each account holder is treated as having a claim under the FSCS in respect of their share so, for a joint account held by two eligible depositors, the maximum amount that could be claimed under the FSCS would be £85,000 each (making a total of £170,000). The £85,000 limit relates to the combined amount in all the eligible depositor's accounts with the bank, including their share of any joint account, and not to each separate account.
- 7.3 Following the implementation of the Scheme, clients who have accounts with both KBBL and Kleinwort Hambros, will not receive the same level of protection as they currently enjoy under the FSCS as amounts held in KBBL account(s) will no longer be covered separately under the FSCS.
- 7.4 All eligible clients who have deposit accounts with both KBBL and Kleinwort Hambros prior to the Relevant Date will be permitted to withdraw their funds held with either Kleinwort Hambros or KBBL until the expiry of three months from the Relevant Date other than amounts that an eligible client has deposited as security for services that are being provided or as security for borrowings. Any amounts withdrawn by an eligible client will be free from penalty, fee, notice or charge (including loss of accrued interest) from the Relevant Date until the expiry of three months after the Relevant Date.

- 7.5 If a client is concerned about the impact of the Transfer on the protection available to him/her by the FSCS then they are requested to call us on the telephone numbers in paragraph 15 below. Our team will be able to talk the client through the different options available to them in relation to this change in protection.

8 Data Protection

- 8.1 As part of the Transfer, all personal data obtained by KBBL from its clients in respect of the Transferring Business will be disclosed to Kleinwort Hambros who will become the data controller in respect of that data. Kleinwort Hambros will use this data in order to administer the client accounts that are included in the Transferring Business and references in any of relevant data protection statements or consents to KBBL should be construed as references to Kleinwort Hambros.

Marketing preferences

- 8.2 Where, prior to the Transfer, a client who is included in the Transfer has provided marketing preferences to both KBBL and Kleinwort Hambros, Kleinwort Hambros's record of the client's marketing preferences shall be deemed to apply on and with effect from the Transfer whether or not it is the same as any marketing preference given by the client to KBBL.

Subject access requests

- 8.3 Where a client who is included in the Transfer has made a subject access request (under the Data Protection Act 1998) to KBBL before the Transfer, which has not been actioned before the Transfer, Kleinwort Hambros will be able to treat the request as limited to a request for information held by KBBL before the Transfer.
- 8.4 Conversely, where an individual has made a subject access request to Kleinwort Hambros before the Transfer, which has not been actioned before the Transfer, Kleinwort Hambros will not need to provide information held by KBBL before the Transfer.

9 Continuity of proceedings

Any judicial, quasi-judicial, administrative proceedings or other proceedings (including any complaint or claim to any ombudsman (including the Financial Ombudsman Service)) for the resolution of a dispute or claim (whether implemented, pending, threatened or otherwise) by or against KBBL in relation to the Transferring Business will be continued by or against Kleinwort Hambros. Kleinwort Hambros will also be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to KBBL in any such proceedings.

10 Business which may be transferred after the Effective Date

Any part of the Transferring Business that for any reason is not transferred on the Effective Date (for example, because the Court does not have jurisdiction to order its transfer) will be retained by KBBL but may be transferred to Kleinwort Hambros subsequently (**Residual Assets and Residual Liabilities**, with such later transfer date being a **Subsequent Transfer Date**).

11 Indemnity

- 11.1 From the Effective Date, Kleinwort Hambros shall indemnify KBBL and each of its affiliates in respect of all liabilities which would be Transferring Liabilities but: (i) which the Court does not have jurisdiction to transfer; (ii) which, despite the Court having jurisdiction, decides not to transfer (or to require the fulfilment of further steps before it shall transfer); or (iii) which KBBL and Kleinwort Hambros agree prior to the Effective Date, or the terms of the Scheme provide, should be transferred after the Effective Date, and any and all costs incurred by any of them as a result of any failure to discharge such liabilities.
- 11.2 From each Subsequent Transfer Date, Kleinwort Hambros shall: (i) assume and discharge those liabilities which would be Transferring Liabilities but which relate to a Residual Asset and arise before the Subsequent Transfer Date applicable to that Residual Asset; and (ii) indemnify KBBL and each of its affiliates for any failure to discharge such liabilities and any and all costs incurred by any of them as a result of any failure to discharge such liabilities.

12 Amendments to the Scheme

- 12.1 KBBL and Kleinwort Hambros can apply jointly at any time before or after the Effective Date to the Court for any amendment, variation, modification or addition to the Scheme provided that, if such application is made after the sanction of the Scheme, both the PRA and FCA shall be notified of, and have the right to be heard at, any hearing of the Court at which such application is considered.
- 12.2 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 Court provided that the FCA and the PRA have been notified of the proposed amendment and no objection is received by KBBL or Kleinwort Hambros from the PRA or the FCA within 14 days of such notification.

13 Costs

Kleinwort Hambros will be responsible for all costs of implementing the Scheme and clients will not bear any such costs.

14 Governing law

The Scheme is governed by English law.

15 Further information

- 15.1 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 the following website: <https://www.kleinwortbenson.com/en/bank-transfer/>. Alternatively, you may request free copies of any of the relevant documents or ask further questions by contacting us by phone, post or email at the addresses or telephone numbers shown below:

By phone:

UK clients: please call us on 0800 085 7138.

Clients calling from overseas: please call us on +44 203 207 7045.

The lines will be open from 09:00 to 17:00 Monday to Friday (excluding bank holidays).

By post:

If writing from within the UK:

Freepost KLEINWORT BENSON BANK TRANSFER

If writing from overseas:

Kleinwort Benson Bank Transfer
8 St James's Square
London SW1Y 4JU
United Kingdom

By email:

banktransfer@kleinwortbenson.com

In addition, clients of KBBL can, if they prefer, contact the designated private banker on their usual details.

Calls may be monitored or recorded. Calls to 0800 numbers from UK landlines are free. The costs from mobile phones may vary. If you are calling from abroad, please check with your service provider for the cost of calling this number from overseas.

If you wish to notify us of your intention to object to the Transfer, please provide us with details of your objection and your written representation or details of your intention to attend or be represented at the Court hearing in writing to the address or email address shown above stating your reasons and preferably before 25 October 2017.

This will enable KBBL and Kleinwort Hambros to provide notification of any changes to the Court hearing and, where possible, to address any concerns raised in advance of the Court hearing. In addition, KBBL and Kleinwort Hambros 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 Court hearing or not.

A failure to give written notice in advance does not prevent any person who wishes to do so from attending the Court hearing.

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 advice, you are recommended to seek advice from your own solicitor or other professional adviser immediately.

Copies of this Explanatory Statement, and all the documents relating to the Transfer, are available in large print or on audiotape on request by calling 0800 085 7138 (UK clients) or +44 20 3207 7045 (overseas clients).

Important information

Kleinwort Benson and Kleinwort Hambros are the brand names of Kleinwort Benson Bank Limited, which is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. The firm reference number is 119269. The company is incorporated in England and Wales under number 2056420 and its registered address is 14 St. George Street, London W1S 1FE. Telephone calls may be recorded.