

REGULATORY INTELLIGENCE

ANALYSIS: Switzerland and UK sign agreement for mutual recognition in financial services

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The Swiss Federal Council and the UK's HM Treasury on December 21, 2023, announced an [agreement on mutual recognition](#) in specific areas of financial services between Switzerland and the UK, referred to as the Berne Financial Services Agreement.

This ground-breaking agreement is the culmination of more than two years of negotiations after the signing of a [Joint Statement](#) on June 30, 2020, aimed at enhancing cooperation in financial services between Switzerland and the UK.

Its main objective is to introduce mutual recognition to facilitate the provision of financial services, including insurance, between the two countries, which face regulatory and commercial challenges vis-à-vis access to the EU market in the absence of passporting.

The agreement generally provides for a mutual recognition of equivalence in the sectors of asset management, banking, investment services, financial market infrastructures, OTC derivatives, and insurance for wholesale and sophisticated clients, such as professional and institutional clients.

Asset management services

The agreement confirms the existing mutual access for marketing, including advertising and offering collective investment schemes to per se professional clients, institutional clients/eligible counterparties, and elective professional clients. The ability of UK and Swiss financial services firms to delegate portfolio and risk management activities to financial service providers of both jurisdictions is also confirmed by the agreement.

Banking and investment services

For banking and investment services, the agreement allows Swiss financial service providers to provide financial services, in particular portfolio management and investment advice, to per se professional clients, eligible counterparties, and high-net-worth individuals with assets exceeding £2 million, either on a cross-border basis or as part of a temporary local operation without prejudice to UK visa and other entry requirements.

This is slightly wider than the existing regime, including the "overseas persons exclusion" that many non-UK firms currently rely on to provide investment services to UK-based clients without needing UK regulatory permissions. Under these circumstances, Swiss financial service providers can continue providing services under Swiss law.

For UK financial service providers, which already benefit from a liberal regime for cross-border activities in Switzerland, in particular when targeting per se professional clients and eligible counterparties, the agreement adds additional flexibility for client advisers acting on behalf of UK investment services firms. Under the agreement, such advisers will no longer need to individually register with Swiss registration bodies to serve certain high-net-worth clients.

Instead, their firm can give confirmation on their behalf that they meet the prerequisites for giving business or investment advice to Swiss clients. This will eliminate the need to sit for examinations and provide documentation relevant to the registration process.

Note that not all high-net-worth clients as defined under the Swiss Financial Services Act (FinSA) are covered by the agreement. UK financial service providers that are exempt from registration requirement under the agreement must still ensure they meet the following FinSA requirements:

- Their client advisers must have sufficient knowledge of conduct rules established in FinSA and possess the necessary expertise required to perform their activities.
- They must have obtained professional indemnity insurance or arranged for equivalent collateral in accordance with FinSA.
- They must be affiliated with a Swiss ombudsman where required under FinSA.

Further, temporary presence in Switzerland of UK client advisers is possible (without prejudice to the respective visa and other entry requirements of Switzerland).

Financial market infrastructures and OTC derivatives

For central counterparties (CCPs), the agreement provides for a regulatory recognition by both Switzerland and the UK. This will ensure that Swiss and UK CCPs can provide services with greater certainty. The agreement also includes a commitment to strengthen current access to trading venues, such as stock exchanges and multilateral trading facilities.



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For non-centrally cleared OTC derivatives, Swiss and UK counterparties will be free to rely on either recognised Swiss or UK risk mitigation rules, subject to UK standards and supervision of initial margin models and variation margin on physically settled FX swaps and forwards applicable to UK counterparties in accordance with UK domestic law.

Switzerland and the UK have already agreed by a [side letter](#) of December 21, 2023, to explore further cooperation in other areas, including benchmarks, credit rating agencies, trade repositories, recognition of reporting and clearing obligations for OTC derivatives, and the application of OTC derivatives intragroup exemptions for domestic firms.

Insurance services

The agreement enables Swiss insurance undertakings to provide cross-border insurance services to large UK corporate clients. Reciprocally, the agreement offers the same to UK insurance undertakings in Switzerland, securing access to many wholesale lines of business that go beyond what Switzerland has offered to any other trading partner. The recognition concerns certain lines of non-life insurance, including liability insurance in specific and selected lines of business for professional policyholders. Provision of life, accident, and health insurance; liability insurance for non-covered lines of business; monopoly insurance of any kind, or business interruption insurance are not in scope and do not benefit from mutual recognition.

Based on the agreement, non-tied insurance intermediaries in the UK will also be relieved from the new Swiss localisation requirement, which entered into force on January 1, 2024. This gives them an advantage over their competitors from all other jurisdictions that are required to establish a local presence in Switzerland.

A separate [side letter](#) dated December 21, 2023, regarding auxiliary insurance services, such as consultancy, actuarial, risk assessment, and claim settlement services, confirms a mutual understanding that the agreement extends to the supply of certain auxiliary insurance services to Switzerland.

Outlook

In many respects, both the UK and Switzerland have had fairly liberal regimes when it comes to permitting overseas firms to carry on financial services activity with UK clients and counterparties in the UK and Switzerland, respectively, without needing a local licence. The agreement takes this a step further. Mutual recognition should significantly reduce the remaining regulatory barriers for Swiss and UK financial services providers and, hopefully, boost the international competitiveness of both financial centres.

Swiss industry representative bodies, such as the Swiss Bankers Association and the Asset Management Association Switzerland, plus market participants, such as SIX Swiss Exchange, have already welcomed the agreement.

HM Treasury in the UK described the agreement as establishing "a new global best practice for regulatory and supervisory cooperation," while UK industry representative bodies, such as TheCityUK, have also welcomed it.

The Swiss Federal Council will prepare its dispatch and submit it to the Swiss parliament later this year. The UK government will likewise seek to implement and ratify the agreement in due course. The agreement requires approval by the parliaments of both countries before entering into force.

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