

Berne Financial Services Agreement between Switzerland and the United Kingdom

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Key takeaways

- **With the Berne Financial Services Agreement, two major financial centres have for the first time concluded an international treaty establishing mutual recognition of their respective regulatory and supervisory frameworks with regard to financial services.**
- **The BFSA provides for enhanced market access for financial services providers established in Switzerland and the UK in certain sectors of the financial services industry.**
- **In areas where market access is already provided under the respective national laws of Switzerland and the UK, the BFSA reiterates this status quo and the two countries agree to maintain this degree of market access in the case of future amendments to their national legal frameworks.**

Introduction

The Agreement between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on Mutual Recognition in Financial Services (the “Berne Financial Services Agreement” or “BFSA”) marks the first time two major international financial centres have mutually recognised the equivalence of their respective legal and supervisory frameworks in a binding international treaty.

The BFSA aims at enabling or facilitating cross-border business activities in the financial sector whilst ensuring the stability and integrity of financial markets as well as client protection. At its core, the BFSA represents the mutual acknowledgement of equivalence between the two countries’ regulatory and supervisory frameworks and outlines enhanced regulatory and supervisory co-operation between Switzerland and the United Kingdom (the

"UK") going forward.

Implications of the Berne Financial Services Agreement

As mentioned, the BFSA goes beyond pre-existing sectorial agreements between the two countries (i.e. with respect to direct insurance) and impacts a number of aspects in the wider field of financial services – most notably wealth management, insurance, asset management, and financial market infrastructures.

Wealth Management

With respect to wealth management, the BFSA facilitates Swiss financial institutions (i.e. banks, securities firms, managers of collective assets, fund management companies, and portfolio managers) in providing financial services (i.e. asset management, investment advice, execution-only, and ancillary services such as the granting of loans for the execution of transactions involving financial products) to professional clients and high-net-worth individuals (i.e. individuals having net assets in excess of GBP 2,000,000) in the UK.

Furthermore, client advisors of Swiss financial institutions shall be able to provide financial services to such clients in the UK, not only on a purely cross-border basis but also locally as part of temporary local operations, without becoming subject to UK authorisation and regulatory prerequisites.

However, it must be noted that Swiss financial institutions – in order to benefit from the BFSA in this regard – must notify the UK Financial Conduct Authority and state the services to be provided in the UK and the clients thereby served.

Conversely, UK-based financial services providers already benefit from relatively open market access in the area of wealth management in Switzerland. This status quo is reiterated in the BFSA and additionally, the client advisors of UK financial services providers may, under certain conditions, temporarily serve Swiss high-net-worth individuals directly in Switzerland without having to register in Switzerland.

Insurance

Already at present, Swiss insurers are largely able to provide cross-border services in the UK under the applicable national law. The BFSA reiterates this status quo and adds a safeguard by requiring the UK – in the event of a change in its national legislation that would limit the current market access for Swiss insurers – to enter into regulatory dialogue with Swiss authorities for the purpose of maintaining the current degree of market access.

On the other hand, the BFSA opens up new avenues for UK insurers to provide cross-border services into Switzerland. Henceforth, UK insurers may provide cross-border insurance services in certain fields of non-life insurance. However, a range of insurance products remain excluded from the BFSA's scope, in particular: accident, health, liability, fire and natural hazard, financial loss, as well as monopoly insurance products (notably cantonal building insurance monopolies). UK insurers providing such services are thus exempt from any obligation to comply with Swiss regulations pertaining to authorisation and prudential

measures pursuant to the Swiss Insurance Supervision Act (“ISA”) and its implementing ordinances.

Furthermore, under the BFSA, insurance services provided by UK insurers may only be offered to large companies in Switzerland, satisfying two of three of the following criteria: (i) net turnover in excess of CHF 40 million, (ii) balance sheet total in excess of CHF 20 million, or (iii) more than 250 employees.

Lastly, independent UK insurance intermediaries are exempt from the localisation requirement pursuant to art. 41 para. 2 lit. a ISA that has applied since 1 January 2024, whilst otherwise remaining subject to the Swiss insurance supervisory framework.

Asset Management

The BFSA acknowledges the fact that the asset management market is already international in nature. Notably, both Switzerland and the UK provide for relatively open regimes with respect to the distribution of collective investments as well as with respect to the delegation of investment decisions and/or risk management.

As such, the BFSA does not provide for any new or further market access for neither Swiss nor UK market participants. Instead, the status quo is reiterated and confirmed in the agreement.

Financial Market Infrastructures

With respect to financial market infrastructures, the BFSA extends to trading venues, central counterparties, and over-the-counter derivatives.

Specifically, the BFSA bolsters the legal and regulatory co-operation between Switzerland and the UK in relation to trading venues. As regards central counterparties, the BFSA facilitates their mutual recognition, whereby the central counterparty must continue to fulfil the individual authorisation prerequisites under the respective applicable law – subject to the assessment of the systemic relevance of its services. Moreover, both countries have agreed to facilitate cross-border transactions involving over-the-counter derivatives by mutually recognising the respective risk mitigation rules of the two national legal frameworks.

Outlook

Whilst the Berne Financial Services Agreement was already signed by both Switzerland and the United Kingdom in December 2023 and passed by Swiss parliament on 1 April 2025, the referendum period is currently ongoing and will last until 10 July 2025.

Thus far, there are no indications for a popular referendum against the BFSA and once the referendum period has expired, a date for the entry into force of the BFSA shall be determined.

Whilst entry into force is unlikely to occur prior to 2026, financial service providers in both Switzerland and the United Kingdom may wish to familiarise themselves with the potential opportunities and impact of the BFSA ahead of time.

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No legal or tax advice

This legal update provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this legal update or would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in this legal update.

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