CITY OF LONDON | THE GLOBAL CITY

CLIFFORD CHANCE

The Berne Financial Services Agreement

Explaining the UK-Switzerland Agreement on Mutual Recognition in Financial Services

March 2024

Contents

Foreword

The UK's Financial and Professional Services sector employs 2.4 million people, generates 12% of national GDP and drives prosperity around the world.

Much of this is due to the UK's unique international reach. Firms make the UK their home to do business across the globe, producing the services and products needed to solve some of the world's most pressing problems.

In short, the UK is a services trading powerhouse. The UK is the world's largest financial services net exporter and delivered a trade surplus of £92bn in 2022.

Yet the UK's trade policy has not always reflected this reality. Free trade agreements are important, but they are hard won and have done little to liberalise services trade compared to goods. The City of London Corporation has long campaigned for a focus on services in UK trade policy which looks beyond FTAs and incorporates other mechanisms within the 'trade toolbox'.

In December 2023, the UK and Switzerland unveiled a new such mechanism for facilitating wholesale cross-border services trade. The Berne Financial Services Agreement is a binding treaty based on the concept of mutual recognition of both countries' high regulatory standards. Here the UK and Switzerland have agreed that each other's regulatory outcomes are sufficiently aligned to allow cross-border wholesale business to happen without duplicative or onerous compliance procedures.

This is a significant and innovative achievement. Since the global financial crisis, different countries have implemented increasing volumes of regulation in divergent ways making cross-border trade in financial services more difficult. Where two countries apply high standards of regulation, outcomes-based mutual recognition represents a way of facilitating cross-border trade without undermining the achievement of either country's regulatory objectives.

Mutual recognition agreements do exist but in targeted instances. The Berne Financial Services Agreement is the first example of a broad mutual recognition agreement covering a wide range of financial services business.

The Agreement breaks ground in several ways. It will result in changes to Swiss and UK laws enabling new market access in covered sectors. It preserves the rights of the UK and Switzerland to regulate their respective markets but adds conditions which stabilise existing routes. The Agreement also contains forward-looking provisions and a mechanism to expand the scope of mutual recognition.

Importantly, the Agreement sets a new precedent. The Agreement shows that cross-border services provision can rely on outcomes-based assessments within a binding bilateral framework, in contrast with unilateral regimes such as equivalence which can be withdrawn on little or no notice. We are hopeful that the Agreement could provide a blueprint for arrangements with other trading partners.

This paper seeks to give a practical explanation of the Berne Financial Services Agreement for firms. In doing so, we want to highlight the benefits of the Agreement and outline next steps. Much will depend on how the UK and Switzerland implement the Agreement and we hope this paper will also help firms engage with the process. This paper also looks at additional mechanisms to expand the UK-Switzerland financial and professional corridor still further to the benefit of both UK and Swiss firms and their clients.

Chris Hayward
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Executive summary

The UK and Switzerland signed the landmark Agreement on Mutual Recognition in Financial Services (the Berne Financial Services Agreement) in December 2023.

The Agreement provides for the mutual recognition of the UK and Swiss regulatory and supervisory frameworks for financial services in the 'covered sectors'.

The Agreement **lowers regulatory barriers to wholesale cross-border financial services** business between the UK and Switzerland by establishing new arrangements under which each country defers to the domestic authorisation and prudential measures of the other country with the following effects (subject to the conditions set out in the Sectoral Annexes):

- UK insurers will be able to provide selected lines of **non-life insurance business cross-border** to large Swiss corporates without authorisation in Switzerland, UK insurance intermediaries will be relieved from recently imposed localisation requirements when providing cross-border services to large Swiss corporates and client advisers employed by UK firms providing cross-border investment services to Swiss institutional, professional and high net worth clients will be relieved from the obligation to register individually with Swiss registration bodies.
- Swiss firms will be able to provide **cross-border investment services** to UK high net worth clients (as well as professional clients and eligible counterparties) without authorisation in the UK.
- **UK CCPs** will be relieved from Swiss law requirements regarding the appropriateness of the UK's regulatory and supervisory framework and **Swiss CCPs** will be able to provide clearing services in the UK subject to recognition by the Bank of England (in each case also subject to an assessment of systemic importance that may lead to additional requirements being applied to a CCP).

In addition, the Agreement will allow Swiss and UK counterparties to apply the other country's margin and other risk mitigation rules in relation to OTC derivative transactions between them.

The Agreement **enhances predictability for suppliers of wholesale financial services and their clients** by imposing procedural constraints on the ability of the UK and Switzerland to withdraw new deference arrangements for a covered sector or to change existing liberal domestic law regimes covered by the Agreement. It also provides a mechanism for agreeing wind-down arrangements if deference arrangements are withdrawn for a covered sector or if the Agreement is terminated. However, it balances those constraints with provisions preserving both countries' right to regulate their respective financial sectors and an overriding 'prudential safeguard'.

The Agreement creates **a framework for supervisory and regulatory cooperation** between the UK and Switzerland. This underpins the continuation of covered services under the Agreement.

The Agreement provides **a mechanism for the future expansion** of mutual recognition to extended or new covered sectors over time, and specifically envisages that the UK and Switzerland will start by discussing sustainable finance.

There will be **a Joint Committee** to perform functions under the Agreement, including overseeing the administration of the Agreement and monitoring its implementation, and a dispute settlement process under which a Panel of Experts can make (non-binding) recommendations to the two countries.

The Agreement is without prejudice to both countries' rights and obligations under the WTO Agreement and other international agreements. The privileged access given by the UK and Switzerland to each other's financial services suppliers under the Agreement is based on the provisions of the GATS allowing countries to recognise other countries' prudential regimes.

The Agreement will enter into force after both the UK and Swiss governments have completed their respective domestic ratification and implementation procedures. The UK and Switzerland are also negotiating a new FTA to complement the Agreement with other provisions that facilitate trade in financial and other professional services.

1 Introduction

On 21 December 2023, the UK and Switzerland signed the landmark Agreement on Mutual Recognition in Financial Services (also known as the 'Berne Financial Services Agreement', or BFSA).[1] The Agreement does the following things:

- It provides for the mutual recognition of the UK and Swiss regulatory and supervisory frameworks for financial services in the 'covered sectors'.
- It removes specific regulatory barriers to wholesale cross-border financial services business between the UK and Switzerland by creating new arrangements for each country to defer to the domestic authorisation and prudential measures of the other country.
- It enhances predictability for suppliers of wholesale financial services and their clients by constraining the UK's and Switzerland's ability to withdraw recognition or to change existing liberal domestic regimes.
- It creates a framework for supervisory and regulatory cooperation between the UK and Switzerland.
- It envisages the future expansion of mutual recognition to additional cross-border services.

Importantly, the Agreement also preserves the right of the UK and Switzerland to regulate their respective markets.

The Agreement is the outcome of more than two years' negotiations following the joint statement published in June 2020 by the UK and Switzerland of their ambition to conclude an international agreement that enhances the cross-border market for financial services between the two countries.[2]

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1 For the text of the Agreement and related documents, see the webpage of HM Treasury and the webpage of the Swiss Federal Council.

2 Joint Statement between HM Treasury and the Federal Department of Finance on deepening cooperation in financial services (30 June 2020, available here).

The UK government describes the BFSA as "ground-breaking and dynamic" and the Swiss government describes it as "unique in the area of financial services in terms of approach and scope." This agreement has unique features:

- **Binding treaty.** The Agreement is an international agreement between the UK and Switzerland. It is binding under international law. Thus, it differs from unilateral actions by one country autonomously to recognise the equivalence of the regulatory and supervisory arrangements of other countries and formal or informal mutual recognition arrangements agreed by regulators which are not legally binding.
- **Cross-border business.** The Agreement addresses barriers to cross-border business rather than commercial establishment. The GATS and many other free trade agreements ensure market access with national treatment for commercial establishment by most financial services suppliers. However, the commitments under the GATS and many FTAs only cover a limited range of cross-border financial services.[3] There are some examples of bilateral mutual recognition agreements relating to commercial establishment, but few that cover cross-border services as well.
- **Broad scope of covered services.** The Agreement covers a broad range of financial services and is not limited to one sector. The Agreement also envisages that it will be expanded over time to cover new sectors.
- **Removal of barriers to cross-border trade.** The Agreement will require each country to change its domestic regulatory regime to remove some barriers to cross-border trade affecting financial services suppliers of the other country. The removal of these barriers may give those suppliers privileged business opportunities not available to third-country firms. Some international agreements affecting trade in services only commit the parties not to change existing arrangements already applied under national law or, to the extent that they require a country to change its law, result in changes that will benefit third-country firms as well.[4]
- **Outcomes-based mutual recognition.** Although each country carried out granular due diligence on the other country's regulatory framework during the negotiations, the Agreement is predicated on an outcomes-based approach to recognition based on each country's existing high regulatory standards and enhanced supervisory and regulatory cooperation arrangements. This is instead of line-by-line equivalence, or the mutual adoption of detailed rules. Each country will allow suppliers of the other country to rely on their domestic rules and supervision when supplying cross-border services under the new deference arrangements required by the Agreement.
- **Stabilising measures.** Although the Agreement preserves the countries' right to regulate, it includes provisions to provide stability and predictability for financial services suppliers. The Agreement constrains the countries' ability to withdraw new deference arrangements and, where a country's domestic regimes already permit liberal cross-border access, it imposes constraints to help maintain the status quo. In addition, it provides mechanisms to agree wind-down arrangements for existing activities after a withdrawal of deference or termination of the Agreement..

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3 See the WTO Understanding on Commitments in Financial Services (available here).

4 As a result of 'most favoured nation' obligations under Article II of the GATS and similar obligations under free trade agreements. See e.g., the UK-Singapore Digital Economy Agreement (2022, available here).

WHAT IS AN MRA? INTERNATIONAL EXAMPLES OF MUTUAL RECOGNITION ARRANGEMENTS

Mutual recognition arrangements take two main forms:

1. ARRANGEMENTS BETWEEN REGULATORS

Reciprocal arrangements between regulators in different jurisdictions providing how those regulators will exercise their powers with respect to firms or products from each other's jurisdictions, such as:

- The **2008 US-Australia mutual recognition arrangement** between the Australian authorities and the US SEC under which the parties would consider applications for exemptive relief by markets and broker-dealers doing business in each other's territory;[5]
- **The Trans-Tasman mutual recognition scheme** established by the Australian and New Zealand authorities in 2008 allowing issuers to offer certain financial products in both countries using one disclosure document prepared under its home country regulation;[6]
- **The ASEAN framework for cross-border offering of collective investment schemes** established in 2014 and the Asia Region funds passport scheme established in 2019 allowing fund managers from a member jurisdiction to offer funds authorised in that jurisdiction to retail investors in other member jurisdictions under a streamlined process;[7]
- **The common approach announced by the European Commission and the US CFTC** in 2017 on the granting of equivalence or exemptive relief with respect to each other's trading venues for the purposes of the EU and US derivatives trading obligations.[8]

5 Mutual Recognition Arrangement Between the United States Securities and Exchange Commission and the Australian Securities and Investments Commission, Together With the Australian Minister for Superannuation and Corporate Law (asic.gov.au)

6 Regulatory Guide RG 190 Offering securities in New Zealand and Australia under mutual recognition (fma.govt.nz)

7 ASEAN Capital Markets Forum (theacmf.org)

8 A Common Approach on Certain Derivatives Trading Venues (cftc.gov)

2. INTERNATIONAL AGREEMENTS

Binding international agreements between states under which they commit to granting relief from their requirements for firms or products from each other's jurisdictions, such as:

- **The 1991 EU-Switzerland agreement on direct insurance** providing for the mutual recognition of prudential standards for the purposes of the authorisation and ongoing supervision of branches of insurers of the parties established in the territory of the parties, which was replaced at the end of the Brexit transition as regards the UK and Switzerland by a 2019 agreement between them;[9]
- **The 2017 EU-US agreement on insurance and reinsurance**[10] removing local presence, collateral or similar requirements on cross-border reinsurers and defining the role of home and host state authorities in relation to group level supervision of (re)insurance groups. This was replaced at the end of the Brexit transition period as regards the UK and the US by a 2018 agreement between them.[11]

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9 UK/Switzerland: Agreement on Direct Insurance other than Life Insurance and Decision [CS Switzerland No.3/2019] - GOV.UK (www.gov.uk)

10 EU-US Agreement on Insurance and Reinsurance | EUR-Lex (europa.eu)

11 Agreement between UK and USA regarding Insurance and Reinsurance (publishing.service.gov.uk)

2 Key features of the Agreement

Mutual recognition

Under the Agreement, the UK and Switzerland each:

- recognises that the domestic regulatory and supervisory framework of the other country achieves equivalent prudential outcomes in the sectors covered by the Sectoral Annexes; and
- affirms that 'covered financial services suppliers' of the other country are permitted to provide 'covered services' to 'covered clients' from the other country into its territory, as set out and specified in the Sectoral Annexes.

The Sectoral Annexes also specify whether covered sector activities are permitted based on:

- **deference**, where one country commits to lower barriers to the cross-border supply of covered services into its territory and improve the market access of covered financial services suppliers of the other country by:
  - deferring to the domestic authorisation and prudential measures of the other country that apply to financial service suppliers providing the covered services; and
  - relieving those covered financial services suppliers from the obligation to comply with specified authorisation and prudential measures under the law of the country into which the services are provided;
- **other arrangements**, where one country commits to arrangements other than deference to reduce frictions affecting the cross-border provision of covered services by covered financial services suppliers of the other country; or
- **domestic law**, where one country affirms that the supply of covered services to covered clients in its territory by covered financial services suppliers of the other country is already permitted by its existing domestic law.

The Sectoral Annexes set out conditions that must be met by covered financial services suppliers wishing to rely on the new deference regimes and other arrangements. However, the Sectoral Annexes do not describe every domestic law that may apply to UK or Swiss firms conducting cross-border business covered by the Agreement.

For more information on the covered sectors, see **'Covered sectors: services from the UK into Switzerland'** and **'Covered sectors: services from Switzerland into the UK'** below and **Annex 1: Summary of Sectoral Annexes** and **Annex 2: New deference regimes: covered services, covered financial services suppliers and covered clients**.

COVERAGE THROUGH THE SECTORAL ANNEXES

1	**Asset management**	Marketing of funds Portfolio management delegation
2	**Banking**	Deposit-taking and lending services
3A	**FMIs, CCPs**	Clearing services
3B	**FMIs, OTC Derivatives**	Risk management of OTC derivatives
3C	**FMIs, trading venues**	Exchange and trading services
4	**Insurance services**	Insurance and insurance distribution services
5	**Investment services**	Investment services and ancillary services

Stabilising the basis of provision of services

The Agreement aims to create a more stable and predictable regime for financial services suppliers providing cross-border services and for their clients and counterparties.

It addresses two concerns: first, that existing equivalence regimes or other deference arrangements can be withdrawn on little or no notice (with no wind-down arrangements for existing activities), and, secondly, that, even where a country's existing domestic law provides a liberal regime for cross-border business, the country may end or change that regime at any time.

The Agreement, therefore, imposes procedural constraints on the ability of the UK and Switzerland to withdraw the deference or other arrangements established by the Agreement for a covered sector and to change existing liberal domestic law regimes covered by the Sectoral Annexes.

The Agreement provides as follows:

- A country can withdraw deference given to the domestic authorisation and prudential measures of the other country in respect of a covered sector, but this is subject to:
  - prior notice to and consultation with the other country;
  - a delay of at least 90 days after the end of consultations (or after the expiry of 90 days from the start of consultations, if earlier) before the withdrawal takes effect; and
  - consultation on arrangements for the transparent, orderly and proportionate wind down of existing covered services after the withdrawal takes effect.

  The Sectoral Annex on FMIs: OTC derivatives provides that similar constraints apply where one country wishes to withdraw the arrangements allowing a counterparty from that country to comply with the other country's risk mitigation rules in place of the rules in the counterparty's own country.
- Each country must notify the other country of any proposed measure of general application relevant to the functioning or development of a covered sector. It must also, on request, consult with the other country on the potential effects of a proposed measure on the functioning of the Agreement. However, the obligation to consult does not require a country to delay the application of a proposed measure.
- The recognition accorded by all the Sectoral Annexes will continue to apply, irrespective of the adoption of new laws, regulations or other measures of general application relevant to the functioning or development of a covered sector. However, this is subject to the right to withdraw deference or other arrangements referred to above.
- Where a Sectoral Annex provides that the supply of covered services into the territory of a country is permitted under its existing domestic law and that country proposes to change that law in ways that restrict the supply of covered services or make that supply more burdensome, the notification and consultation procedures under the Agreement referred to above will apply with a view to allow the supply of services to be continued.

The continued provision of covered services is also underpinned by the arrangements for supervisory and regulatory cooperation discussed in more detail below

USING THE AGREEMENT

What this means for firms

A country's existing domestic law may allow foreign financial services suppliers to provide financial services to clients in its territory in circumstances not covered by the Sectoral Annexes. For example, existing UK domestic law allows a broad class of foreign financial services suppliers to provide certain investment services to UK clients under the 'overseas persons exclusion'.

The Agreement does not prevent the other country's financial services suppliers relying upon those wider existing domestic law regimes but, equally, does not impose any procedural or other constraints on a country changing or withdrawing those regimes.

Preserving the right to regulate

The Agreement preserves the regulatory autonomy of the UK and Switzerland. While the Agreement imposes procedural constraints on changes to domestic law, it states that each country has the right to amend its laws and regulations to achieve domestic policy objectives in respect of covered sectors.

The prudential safeguard

Furthermore, each country can rely on a 'prudential safeguard' that is similar to provisions in many trade agreements[12]. This allows a country to adopt measures for any prudential reason, without prior notice or consultation, where circumstances arise which cannot otherwise be addressed adequately under the Agreement.

However, the country relying on the safeguard must notify the other country of the measure as soon as reasonably practicable. It must also consult with the other country upon request and must not use the safeguard as a means of avoiding its obligations under the Agreement.

USING THE AGREEMENT

What this means for firms

Inevitably, there is a tension between the aims of stabilising the basis of the provision of services and preserving regulatory autonomy but, in the end, the overriding priority is that both countries must be able to regulate their own financial sector where another solution to changing circumstances is not possible within the framework of the Agreement.

12 Compare the 'prudential carve-out' in paragraph 2 of the Annex on Financial Services to the GATS.

Treatment of retail business

The covered services do not include the provision of services to natural persons that are treated as consumers or retail clients. This is subject to limited exceptions, notably for the provision of investment services to certain high net worth individuals. Therefore, most cross-border retail business falls outside the scope of the Agreement.

Supervisory and regulatory cooperation

Each country must take steps to enable its supervisory authorities to cooperate in accordance with the Agreement. This includes collaboration in the supervision of covered financial services suppliers (and is without prejudice to other existing cooperation arrangements).

The supervisory authorities must provide reasonable assistance and furnish each other with all documents and information necessary to conduct their supervisory activities under the scope of the Agreement. They must also endeavour to share, without prior request, any further information likely to be of assistance to the other supervisory authorities to conduct their supervisory activities under the scope of the Agreement.

The Sectoral Annexes also include sector-specific arrangements for cooperation between the countries' supervisory authorities. These give effect to the new deference arrangements for insurance and investment services established under the relevant Sectoral Annexes.

Under the sector-specific arrangements, the supervisory authorities of the home country of a covered financial services supplier are primarily responsible for supervising and ensuring the compliance by the supplier with the conditions of the new deference arrangements. However, to balance that, the Agreement will give the supervisory authorities of the country into which the supplier is providing services powers to intervene to address risks to covered clients or to that country's financial system where supervisory dialogue has not resolved their concerns.

The supervisory authorities may operationalise their arrangements for supervisory cooperation via a memorandum of understanding. The Sectoral Annex on Banking also envisages that the Bank of England and FINMA will draw up a memorandum of understanding on banking resolution arrangements.

Regulatory cooperation

The Agreement does not include commitments to establish a formal bilateral regulatory dialogue like the UK's regulatory dialogues with Australia, Canada, the EU, Japan or the United States.

However, the Agreement does include wide-ranging commitments on regulatory cooperation with respect to all covered sectors, including related emerging issues of mutual interest:

- As already mentioned above, each country must notify the other country of any proposed measure of general application relevant to the functioning or development of a covered sector. It must also, on request, consult with the other country on the potential effects of a proposed measure on the functioning of the Agreement. However, the obligation to consult does not require a country to delay the application of a proposed measure.
- Both countries will endeavour to deepen regulatory cooperation and coordination in international fora relating to financial services and the functioning of financial markets. This is to ensure that they implement and apply international standards for regulation and supervision in financial services in their respective territories, and collaborate, share knowledge, experiences, and developments, and facilitate the development of new financial services.
- Both countries specifically agree to cooperate on regulatory developments relating to sustainable finance across a range of areas. These include international disclosure standards, the alignment of financial flows with the 2015 Paris Agreement on climate change, and green digital financial technologies.

In addition, the UK and Switzerland envisage discussions between them to further expand the scope of the Agreement over time (see 'Expanding the Agreement' below). The Joint Committee established under the Agreement will serve as a forum for regulatory cooperation in relation to the Agreement and its future expansion (see 'Institutional framework and dispute settlement' below).

USING THE AGREEMENT

What this means for firms

Firms will be able to feed into the Joint Committee process through their governments. Firms should stand ready to identify issues that could be addressed through the Agreement, and support UK and Switzerland governments in expanding the Agreement.

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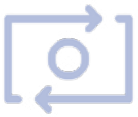


The supervisory authorities may operationalise their arrangements for supervisory cooperation via a memorandum of understanding.

Exceptions and exclusions

The Agreement contains customary exceptions protecting the national security interests of the two countries. In particular, the Agreement allows a country to deny the benefits of the Agreement to a covered financial services supplier under that country's legislation on economic sanctions.

The Agreement does not apply to activities conducted by the countries' central banks or monetary authorities in pursuit of central banking activities or operations.

Entry into force

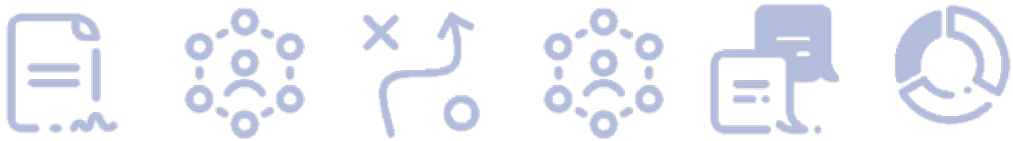
The UK and Switzerland will exchange letters confirming the completion of their domestic procedures. The Agreement will come into force at the start of the second month following receipt of the last letter.

See 'Next steps' below for more detail on the ratification and implementation process.

Termination

Either country may terminate the Agreement by 12 months' notice to the other country. They agree to consult on arrangements for the transparent, orderly and proportionate wind down of existing covered services after termination takes effect.

The Agreement does not apply to activities conducted by the countries' central banks or monetary authorities in pursuit of central banking activities or operations.



3 Covered sectors: services from the UK into Switzerland

The Sectoral Annexes include commitments by Switzerland to establish new deference arrangements for insurance services, investment services and CCP clearing services provided from the UK into Switzerland. They include other arrangements allowing the use of UK risk mitigation standards in relation to OTC derivatives.

Switzerland also affirms that its existing domestic law already permits the supply of other covered services from the UK into Switzerland as specified in the Sectoral Annexes.

The Agreement imposes procedural constraints on the ability of Switzerland to withdraw the deference and other arrangements established by the Sectoral Annexes in respect of a covered sector and to change the existing liberal domestic law regimes covered by the Sectoral Annexes.

New deference and other arrangements

Insurance services

The Agreement will allow UK authorised insurers (including UK branches of Swiss authorised insurers) to provide selected lines of non-life direct insurance business to large corporate clients in Switzerland without the need for authorisation in Switzerland. The specified classes of risks include renewable energy, directors' & officers' liability, seller's and buyer's warranty indemnity, and cyber insurance, but not accident, health or monopoly insurance or most liability insurance.

UK insurance intermediaries providing certain cross-border services to large corporate clients in Switzerland will also be relieved from the new Swiss localisation requirement that apply from 1 January 2024.

The new regime will be available to UK authorised insurers and intermediaries, subject to compliance with requirements for pre-contractual and ad hoc disclosures to clients and (for insurers) registration with and reporting to FINMA. .

USING THE AGREEMENT

PROVIDING INSURANCE SERVICES FROM THE UK INTO SWITZERLAND

What this means for firms

Covered financial services suppliers supplying covered services to covered clients are relieved from:

- for insurers, specified authorisation and prudential measures of Switzerland that apply solely to financial service suppliers under the Swiss Federal Act on Insurance Supervision;
- for insurance intermediaries (if they are in a fiduciary relationship with and are acting in the interest of a covered client and not acting as an employee), the localisation requirements under the Swiss Federal Act on Insurance Supervision that apply from 1 January 2024 (although some insurance intermediaries may already have complied with these by the time the Agreement enters into force).

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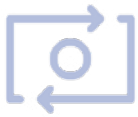

Conditions

Covered financial services suppliers wishing to rely on the Agreement must comply with the following conditions:

- Pre-contractual disclosures. Covered financial services suppliers must provide covered clients with information on the personal responsibility of the client for payment of Swiss insurance premium taxes and the governing law and place of jurisdiction of the contract. Covered financial services suppliers that are insurers must also provide covered clients with specified information on the insurer's name, address and contact details, regulatory status. These disclosures must be provided in writing a reasonable time before the contract.
- Ad hoc disclosures. Covered financial services suppliers must provide covered clients on request with a full copy of the covered client's file and other documents within the scope of their business relationship (subject to data protection and confidentiality rules).
- Reporting (for insurers). Insurers must report annually to FINMA (with a copy to the relevant UK supervisory authority) on the types of covered services provided to covered clients and, if gross premiums in the previous 12 months exceed CHF 5 million, the total value of gross premiums in that period broken down by type of covered service (and class of insurance).

Covered financial services suppliers that are insurers wishing to rely on the Agreement must also meet certain solvency requirements, ensure staff have relevant knowledge of Swiss insurance legislation and register with FINMA (with a copy to the FCA).

USING THE AGREEMENT

PROVIDING INSURANCE SERVICES FROM THE UK INTO SWITZERLAND

Investment services

The Agreement will relieve client advisers employed by UK authorised firms from the requirement to register individually with a Swiss registration body when providing specified investment and ancillary services on a temporary basis in Switzerland. This will remove the need for client advisers to sit examinations and provide other documentation as part of the registration process.

The relief will apply where services are provided to institutional clients, other professional clients and high-net worth clients (with assets of at least CHF 2 million) who have opted to be treated as professional clients under Swiss law.

The new regime will be available to UK firms subject to compliance with requirements for prior notification to the FCA and compliance with prior disclosure and other Swiss law requirements. In particular, the UK employer will still have to ensure that client advisers have sufficient knowledge of the Swiss code of conduct, have necessary expertise, meet the requirements for professional indemnity insurance or collateral and are affiliated to a Swiss ombudsman where required by Swiss law.

See Annex 2 for more detail on the covered services, covered financial services suppliers and covered clients.

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USING THE AGREEMENT

PROVIDING INVESTMENT SERVICES FROM THE UK INTO SWITZERLAND

What this means for firms

Client advisers employed by covered financial services suppliers supplying covered services to covered clients are relieved from the duty to register individually with a Swiss registration body in accordance with the Swiss Federal Act on Financial Services when providing specified investment and ancillary services on a temporary basis in Switzerland. Under existing Swiss domestic law, the duty to register arises unless the client adviser is dealing exclusively with institutional and 'per se' professional clients.

However, the covered financial services supplier must comply with other requirements of that Act including the requirements to ensure that client advisers have sufficient knowledge of the relevant Swiss code of conduct, have the required expertise to perform their duties and have professional indemnity insurance (or equivalent collateral exists), and that they are affiliated to a Swiss ombudsman where required. Client advisers must also comply with relevant Swiss visa and other entry requirements.

Conditions

Covered financial services suppliers wishing to rely on the Agreement must, before supplying covered services to covered clients through client advisers:

- notify FCA of their intention to do so; and
- provide the covered clients with a document disclosing: the supplier's place of incorporation or formation; their UK regulatory status; that the duty to register as a client adviser is disapplied; and their affiliation with an ombudsman where required in accordance with the Swiss Federal Act on Financial Services.

FMIs, CCPs

The Agreement will relieve UK authorised CCPs from the obligation to comply with certain Swiss law requirements with respect to the appropriateness of the UK's regulatory and supervisory framework governing UK CCPs. This relief will be available where the CCP is providing clearing services to supervised Swiss direct participants and Swiss FMIs.

However, the Swiss supervisory authorities may still assess the specific circumstances of the CCP, including its systemic importance, and whether the Bank of England meets certain Swiss law requirements, including in relation to the CCP (and, if the CCP is assessed to be systemically important in Switzerland, it may be subject to additional Swiss requirements).

FMIs, OTC derivatives

Swiss counterparties to an uncleared OTC derivatives transaction with a UK counterparty that comply with UK margin and other risk mitigation obligations will be deemed to have complied with Swiss risk mitigation obligations.

See Annex 2 for more detail on the covered services, covered financial services suppliers and covered clients.

Existing domestic law arrangements

Switzerland affirms that its existing domestic law already permits the supply of the following covered services from the UK into Switzerland:

- **Asset management (marketing)**. UK suppliers entitled to market funds under Swiss law may advertise and offer collective investment schemes that are exclusively open to qualified investors to covered clients, so long as they ensure that the funds comply with Swiss law requirements. For these purposes, covered clients are professional clients, high net worth retail clients and investment structures that have opted to be treated as professional clients and certain public entities.
- **Asset management (delegation)**. Swiss entities authorised to provide portfolio or risk management for assets of collective investment schemes, occupational pension schemes and insurance companies may delegate to UK entities authorised under UK law to supply those services if the UK entities meet specified additional requirements under Swiss law.
- **Banking**. UK entities may provide deposit-taking and lending services to Swiss entities that are not consumers (but the UK entity must be authorised in the UK if it provides deposit-taking services).
- **FMIs: trading venues**. UK entities that are stock exchanges or MTFs recognised by FINMA may conduct any activity of a trading venue with Swiss issuers (for listing and admission) and parties to trades (trading activities).
- **Investment services**. UK authorised entities may supply specified investment and ancillary services to institutional clients, other professional clients and high-net worth clients (with assets of at least CHF 2 million) who have opted to be treated as professional clients under Swiss law.

Switzerland affirms that its existing domestic law already permits the supply of the following covered services from the UK into Switzerland

4 Covered sectors: services from Switzerland into the UK

The Sectoral Annexes include commitments by the UK to establish new deference arrangements for investment services and CCP clearing services provided from Switzerland into the UK. They include other arrangements allowing the use of Swiss risk mitigation standards in relation to OTC derivatives.

The UK also affirms that its existing domestic law already permits the supply of other covered services from Switzerland into the UK as specified in the Sectoral Annexes.

The Agreement imposes procedural constraints on the ability of the UK to withdraw the deference and other arrangements established by the Sectoral Annexes in respect of a covered sector and to change the existing liberal domestic law regimes covered by the Sectoral Annexes.

New deference and other arrangements

Investment services

The Agreement will allow Swiss authorised firms to provide specified investment and ancillary services to UK high-net worth individuals and private investment structures (with net assets over £2 million), as well as 'per se' professional clients and eligible counterparties as defined in UK law, without the need for authorisation in the UK or compliance with specified prudential measures, including conduct of business rules.

The new regime will be available to Swiss firms that are not already authorised to provide the services in the UK when providing the services cross-border from Switzerland, subject to registration with the FCA and compliance with pre-contractual disclosure, client verification, client consent and reporting requirements and requirements regarding the use of third-country sub-custodians. The new regime will also extend to activities relating to those cross-border services conducted in the UK on a temporary basis by employees of those Swiss firms.

USING THE AGREEMENT

PROVIDING INVESTMENT SERVICES FROM SWITZERLAND INTO THE UK

What this means for firms

Swiss firms will have to opt in by registering with the FCA if they wish to rely on the new regime. However, they can choose to continue to rely on existing means of cross-border access to the UK, such as the UK 'overseas persons exclusion' which provides less extensive access to UK clients but does not require compliance with the conditions to the use of the new regime. Covered financial services suppliers supplying covered services to covered clients are relieved from specified UK authorisation and prudential measures, including conduct of business rules, that apply solely to financial service suppliers.

The regime extends to activities relating to the cross-border supply of covered services to covered clients by a covered financial services supplier conducted by its employees in the UK on a temporary basis not amounting to a permanent establishment. However, this relief does not apply to services conducted by employees of a UK branch of a covered financial

Swiss firms will have to opt in by registering with the FCA if they wish to rely on the new regime. However, they can choose to continue to rely on existing means of cross-border access to the UK, such as the UK 'overseas persons exclusion' which provides less extensive access to UK clients but does not require compliance with the conditions to the use of the new regime.

services supplier authorised in the UK and is without prejudice to relevant UK visa and other entry requirements.

Covered financial services suppliers must comply with obligations relating to trading activities on trading venues under UK domestic law (and trading venues are not relieved from obligations to report transactions of covered financial services suppliers to the FCA).

Conditions

Covered financial services suppliers wishing to rely on the Agreement must comply with the following conditions:

- Pre-contractual disclosures. Covered financial services suppliers must provide covered clients in good time with a disclosure document stating their place of incorporation or formation, regulatory status, the governing law and place of jurisdiction of the contract and that the UK financial services compensation scheme and out-of-court dispute resolution scheme will not be available. The FCA will specify the detail of these disclosures.
- Reporting. Covered financial services suppliers must report annually to the FCA (with a copy to FINMA) on: the number of covered clients supplied in the past 12 months (broken down by category of covered service and covered client); the total turnover attributable to those supply of those services and (if total turnover exceeds GBP 50 million for two consecutive years) a breakdown of turnover by category of covered services and the turnover by covered financial instruments for dealing on own account, execution of orders and reception and transmission of orders; information on material complaints; and whether the supplier has entered into title transfer collateral arrangements with covered clients.
- Verification of high net worth clients. Covered financial services suppliers will have to take specified steps to verify the status of high net worth clients, including satisfying themselves that the net assets tests are met, assessing the expertise, experience and knowledge of relevant individuals, obtaining specified signed declarations and written statements and giving clear written warnings of the protections and rights that will be lost.
- Client consent. Covered financial services suppliers must obtain consent from covered clients to disclosure of relevant information relating to the supply of covered services to UK supervisory authorities (and must cease supplying covered services if the covered client withdraws that consent).
- Sub-custodians. Where covered financial services suppliers deposit covered financial instruments held for covered clients with sub-custodians outside the UK or Switzerland, they must: exercise due skill, care and diligence in the selection and periodic review of the sub-custodian and the sub-custody arrangements; maintain a record of the grounds for its initial selection and of its periodic review (and maintain such records for five years after it ceases to use the sub-custodian); and ensure that clients' assets are segregated from the assets of the supplier and the sub-custodian.

Covered financial services suppliers wishing to rely on the Agreement must also register with the FCA (with a copy to FINMA). Swiss firms with UK branches that are authorised in the UK may need to vary their existing UK permissions if they wish to rely on the Agreement to provide covered services from Switzerland into the UK.

USING THE AGREEMENT

PROVIDING INVESTMENT SERVICES FROM SWITZERLAND INTO THE UK

See Annex 2 for more detail on the covered services, covered financial services suppliers and covered clients.

FMIs, CCPs

The Agreement will relieve Swiss authorised CCPs from the obligation to comply with specified UK prudential measures where the CCP is providing clearing services to UK clearing members and trading venues.

However, this is subject to recognition of the Swiss CCP by the Bank of England in accordance with UK law and effective cooperation arrangements being in place between the Bank of England and the Swiss supervisory authorities. In addition, the Bank of England may determine that the CCP is systemically important, in which case additional UK requirements may apply (or the CCP may be required to establish in the UK).

The Swiss CCP, SIX x-clear AG, currently benefits from the UK temporary recognition regime for non-UK CCPs. The Agreement will pave the way for the Bank of England to grant full recognition to SIX x-clear AG similar to that already granted to CCPs from other countries, subject to fulfilment of the other conditions to recognition.

The Agreement will relieve Swiss authorised CCPs from the obligation to comply with specified UK prudential measures where the CCP is providing clearing services to UK clearing members and trading venues.

FMIs, OTC derivatives

Counterparties to an uncleared OTC derivatives transaction with a Swiss counterparty that comply with Swiss margin and other risk mitigation obligations (as applicable to the relevant type of financial or non-financial counterparty) will be deemed to have complied with UK risk mitigation obligations (except for the UK standards and supervision of initial margin models and variation margin on physically settled foreign exchange swaps and forwards).

This will provide relief similar to the relief that already applies under UK law in relation to the application of UK margin requirements in relation to transactions with counterparties established in the European Economic Area and certain Japanese and US counterparties (but, unlike those existing reliefs, the new regime for transactions with Swiss counterparties provides relief from all UK risk mitigation requirements, not only UK margin requirements, albeit subject to the exceptions for models and foreign exchange transactions).

The UK temporary intragroup exemption regime (TIGER) provides exemptions from margin requirements for certain transactions in OTC derivatives between UK entities and their non-UK affiliates (where there is no equivalence determination in place in relation to the margin rules of the relevant non-UK jurisdiction). TIGER ends on 31 December 2026 unless an equivalence determination is made in respect of the relevant non-UK jurisdiction before then. A side letter between the UK and Switzerland indicates that they intend to discuss enhancing their cooperation in relation to the existing and any future application of over-the-counter derivatives intragroup exemptions for domestic firms.

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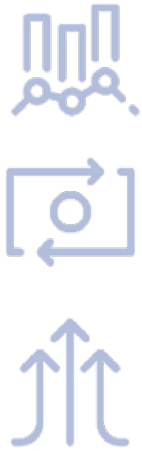


Existing domestic law arrangements

The UK affirms that its existing domestic law already permits the supply of the following covered services from Switzerland into the UK:

- Asset management (marketing). Suppliers authorised under Swiss law may market AIFs to UK professional investors if they have notified the FCA and comply with the UK private placement regime.
- Asset management (delegation). UK entities authorised to provide portfolio or risk management for assets of AIFs, UCITS, occupational pension schemes or insurance companies may delegate to Swiss entities authorised under Swiss law to supply those services if the UK entities comply with specified requirements under UK law.
- Banking. Swiss entities may provide deposit-taking and lending services to UK entities that are not 'relevant recipients of credit' under UK consumer credit law (but, if the Swiss entity provides deposit-taking services, it must be authorised as a bank or securities firm in Switzerland and must accept the deposit in Switzerland).
- FMIs: trading venues. Swiss entities that are UK recognised overseas investment exchanges or operators of MTFs may conduct their activities with: for ROIEs, UK issuers (for listing and admission) and parties to trades (trading activities); and, for operators of MTFs, UK authorised firms, in accordance with UK domestic law.
- Insurance services. Insurance companies and intermediaries authorised in Switzerland may provide specified general insurance lines, auxiliary services, reinsurance and (re)insurance distribution services to UK enterprises that meet at least two of the following three tests: turnover over GBP 36 million; balance sheet total over GBP 18 million; more than 250 employees.

5 Institutional framework and dispute settlement

Institutional framework

The Agreement provides for the establishment of a Joint Committee composed of representatives of the parties to perform functions under the Agreement, including overseeing the administration of the Agreement and monitoring its implementation. The Joint Committee will also serve as a forum for regulatory cooperation between the two countries, for discussing the expansion of the Agreement and for resolving disagreements between the parties.

The Joint Committee will meet at least annually and will take decisions by consensus. The Joint Committee can, among other things, decide to amend the Agreement to correct errors or to address omissions or other deficiencies (but this is without prejudice to the internal procedures of the UK and Switzerland).

The Agreement provides that the UK and Switzerland will review the operation of the Agreement every five years.

Dispute settlement

Either country may refer any matter relating to the interpretation or application of the Agreement to the Joint Committee for consultations. If those consultations do not resolve the issue, the country that made the referral may require the formation of a Panel of Experts to examine the matter (except that a country may not refer decisions of a supervisory authority to a Panel).

The Panel will be composed of one expert appointed by each country and an independent chair and will take its decision by majority vote. The Panel will submit a report to both governments with findings and recommendations, but these will not be legally binding and the establishment and proceedings of the Panel will not have any suspensive effect in relation to the matter referred for examination. The proceedings of the Panel will be confidential unless both governments otherwise agree.

The Agreement does not include a mechanism for the binding arbitration of disputes comparable to those usually included in free trade agreements.

If a dispute regarding the same matter arises under both the Agreement and the WTO Agreement, the country requesting dispute settlement can elect that the dispute is settled via an Expert Panel appointed under the Agreement or using the WTO's dispute resolution mechanism (which provides for arbitration of disputes). The UK and Switzerland may also agree to use alternative methods of dispute resolution, such as good offices, conciliation or mediation.

Like many trade-related international agreements, the Agreement states that it does not confer rights or impose obligations on natural and legal persons and that it cannot be directly invoked in the domestic legal systems of either country, including on grounds that a country has acted in breach of the Agreement.

The Joint Committee will also serve as a forum for regulatory cooperation between the two countries, for discussing the expansion of the Agreement and for resolving disagreements between the parties.

USING THE AGREEMENT

What this means for firms

The dispute settlement mechanism can only be used by the UK and Swiss governments. The Agreement does not allow financial services suppliers to bring claims against the UK or Switzerland for breach of the Agreement (unlike the investor-state dispute resolution provisions included in some international trade or investment agreements).

If firms from one country consider that the other country is not applying the Agreement correctly, they can raise the matter with their own government to see if it is willing to pursue the matter through the dispute settlement mechanism or by other means.

6 Expanding the Agreement

The Agreement is intended to be the start, not the end, of a process of mutual recognition and it includes a mechanism for expanding the scope of the Agreement over time to extended or new covered sectors.

The Agreement provides that:

- where both countries agree to explore expanding the scope of recognition under the Agreement, they will instruct the Joint Committee to suggest the criteria that are to be applied in relation to the expanded or new covered sector;
- where those criteria are agreed, each country will assess whether the domestic regulatory and supervisory frameworks of the other country in the expanded or new covered sector achieve equivalent prudential outcomes, or would do so subject to adjustments, based on those criteria; and
- if both countries agree that an expansion to or addition of new covered sectors is feasible and desirable, the Joint Committee will be tasked to propose appropriate amendments to the Agreement.

This mechanism can be used at any time, not only at the five yearly review points required by the Agreement. The UK and Switzerland can also agree alternative procedures for the expansion of the Agreement.

As a first step, the Agreement includes a specific commitment by both countries to negotiate disciplines for recognising their respective rules and standards on sustainable finance based on international standards, including on the mutual recognition of the quality and scope of mandatory climate-related corporate disclosures and the role of private finance and the need to support private sector action for net-zero greenhouse gases.

A side letter to the Agreement records the understanding that both countries will engage in further discussions on cooperation on and possible expansion of the Agreement to cover the following areas:

- benchmarks (after completion of their reviews of their domestic regulatory regimes);
- credit rating agencies;
- trade repositories;
- recognition of reporting and clearing obligations for OTC derivatives; and
- OTC derivatives intragroup exemptions for domestic firms.

USING THE AGREEMENT

What this means for firms

Firms may wish to continue to engage with the UK and Swiss government to support the development of the Agreement to address other barriers to cross-border business.

The Agreement is intended to be the start, not the end, of a process of mutual recognition and it includes a mechanism for expanding the scope of the Agreement over time to extended or new covered sectors.

7 Relationship with other international agreements

The obligations of the UK and Switzerland under the Agreement overlap with their obligations under other international agreements. For example, both countries have made commitments under the GATS with respect to the cross-border supply of some of the financial services covered by the Sectoral Annexes in accordance with the Understanding on Commitments in Financial Services under the WTO Agreement.

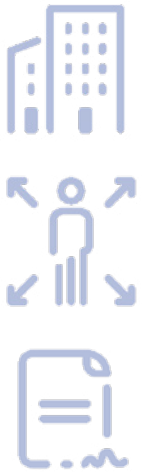
The Agreement states that it is without prejudice to both countries' rights and obligations under the WTO Agreement and any other international agreement to which they are both party (which includes the 2019 UK-Switzerland Agreement on Direct Insurance other than Life Insurance and the UK-Switzerland Services Mobility Agreement, which was agreed in December 2020 and came into force 1 January 2021[13]). Each country confirms its understanding that nothing in the Agreement requires it to act in a manner inconsistent with those agreements.

The GATS Annex on Financial Services allows a WTO Member to recognise prudential measures of any other country in determining how the Member's measures relating to financial services are applied (either autonomously or through an arrangement or an agreement, such as the Agreement).[14] Therefore, the privileged access given by the UK and Switzerland to each other's financial services suppliers under the Agreement does not contravene their commitments under the GATS to give 'most-favoured nation' treatment to other WTO Members (that is, to accord services and service suppliers of any other WTO Member treatment no less favourable than that it accords to like services and service suppliers of any other country).[15] FTAs concluded by the UK or Switzerland with other trade partners may also allow similar exceptions to the most-favoured nation commitments under those agreements.[16]

However, under the Annex on Financial Services, a WTO Member granting recognition to another country's prudential measures under an arrangement or agreement must afford other interested WTO Members an adequate opportunity to negotiate their accession to the arrangement or agreement, or to negotiate a comparable arrangement or agreement. This obligation only applies in circumstances where there is equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the arrangement or agreement. Where a WTO Member accords recognition autonomously, it must also afford other WTO Members an adequate opportunity to demonstrate that those circumstances exist. Similar obligations may apply under the FTAs concluded by the UK or Switzerland with other trade partners. Therefore, the Agreement may form the basis for negotiations with third countries seeking similar recognition for their financial regulatory regimes in the UK or Switzerland.

The UK and Switzerland are negotiating a new, enhanced FTA to replace the existing arrangements adopted in 2019 in advance of the UK's withdrawal from the EU. The new FTA is expected to cover financial services and investment and therefore commitments under the new FTA may also overlap with some of the commitments in the Agreement.[17]

The Agreement states that it is without prejudice to both countries' rights and obligations under the WTO Agreement and any other international agreement to which they are both party.



13 The 2019 UK-Switzerland Free Trade Agreement incorporated by reference relevant provisions of the trade-related EU-Switzerland agreements mutatis mutandis but does not cover financial services.

14 Paragraph 3 of the Annex on Financial Services to the GATS.

15 Article II GATS.

16 For example, see Article 130(2)(b) of the UK-EU Trade and Cooperation Agreement and Article 9.20 of the UK-Australia Free Trade Agreement.

17 For more information see the UK government webpage on its approach to negotiating an enhanced free trade agreement with Switzerland.

8 Next steps

Ratification and implementation

The Agreement will enter into force after both the UK and Swiss governments have completed their respective domestic ratification and implementation procedures.

UK ratification of the Agreement is subject to the Constitutional Reform and Governance Act 2010 which requires treaties to be laid before Parliament for scrutiny. Under this Act, the House of Commons has the power to delay ratification.

It is also a convention that the UK does not ratify a treaty until the treaty has been fully implemented in UK law. The UK government can use its powers under the Financial Services and Markets Act 2023 to make the necessary changes to domestic legislation to implement the new deference and other arrangements established by the Agreement, using secondary legislation subject to the positive approval of both Houses of Parliament (and thus subject to the Parliamentary timetable).[18] These powers include the ability to grant any additional powers to the UK regulators required to give effect to the Agreement.

However, the UK government may use other existing powers under UK law to implement some provisions of the Agreement. For example, it may implement the Sectoral Annexes on FMIs using its powers under 'onshored' EU legislation to recognise the equivalence of the Swiss legal and supervisory arrangements relating to the supervision of CCPs or the equivalence of the Swiss legal, supervisory and enforcement arrangements relating to the risk management of OTC derivatives.[19]

18 Section 24 Financial Services and Markets Act 2023.
19 See Articles 13 and 25 of the 'onshored' European Market Infrastructure Regulation.

The UK government also has powers to direct the UK regulators to take or refrain from taking action to ensure compliance with the UK's international obligations, including the UK's obligations under the Agreement (such as the obligations for supervisory cooperation).[20] If the UK government notifies the UK regulators of the deference given to Switzerland under the Agreement for this purpose, the UK regulators will also be required to consider the effect of any proposed rules or changes to their supervisory policies or practices on the Agreement and consult with the UK government if those rules or changes would result in UK law and practice ceasing to be equivalent to the law and practice of Switzerland in a way that could affect the operation of the Agreement.[21]

When the Agreement was concluded, the Swiss government stated that the Federal Council will submit the Agreement to the Federal Parliament for approval in 2024.

The UK and Swiss regulators will have to set up the new registers envisaged by the new deference arrangements and to specify the form of notifications and details of disclosures required by some of those arrangements. They may also agree new memoranda of understanding to underpin the implementation of the agreement.

USING THE AGREEMENT

What this means for firms

Firms will need to monitor how the Agreement is implemented in and interrelates with UK and Swiss domestic law to understand the full practical impact of the new arrangements.

20 Section 410 Financial Services and Markets Act 2000.
21 Section 409A Financial Services and Markets Act 2000.

The Agreement will enter into force after both the UK and Swiss governments have completed their respective domestic ratification and implementation procedures.

Free Trade Agreement negotiations

There have been four rounds of talks since the negotiations on the new, enhanced FTA launched in May 2023. The negotiations aim to complement the BFSA with other provisions that facilitate trade in financial and related professional services and that enhance the arrangements put in place in 2019.

The FTA could improve UK-Swiss trade for financial and related professional services in the following areas:

- **Mobility**. The existing Services Mobility Agreement was extended in 2023, but the UK and Swiss governments will be discussing how to improve and future proof existing mobility provisions in the FTA structure. Top priorities for financial and professional services firms include improved short term business travel and provisions to improve application procedures for visa and work permits.
- **Recognition of professional qualifications**. Under the UK-Switzerland Recognition of Professional Qualifications Agreement (RPQ Agreement), UK-qualified professionals in regulated sectors will have a smooth and transparent route for their qualifications to be recognised in Switzerland and vice versa from January 2025 (when temporary RPQ arrangements end). The FTA could build on this agreement, for example providing support for the negotiation of sector specific recognition arrangements by the relevant bodies.
- **Data flows**. An FTA could restrict the imposition of restrictions on cross-border data flows and other data localisation requirements.
- **Financial services provisions**.
  - A new FTA could include provisions on cross-border (Mode 1) market access to support and complement the objectives of the BFSA by binding Switzerland's post-GATS liberalisation and further liberalising cross-border trade in areas which fall outside of the scope of the BFSA.
  - A new FTA could include provisions of (Mode 3) establishment removing trade barriers that restrict UK operations in the Swiss market, such as the requirement for at least one manager of a Swiss branch of a foreign bank to be resident in Switzerland and the requirement that the majority of the board of directors of a Swiss financial services subsidiary must have citizenship in an EU or EFTA country.

The negotiations aim to complement the BFSA with other provisions that facilitate trade in financial and related professional services.

Annex 1 Summary of Sectoral Annexes

The Sectoral Annexes to the Agreement provide that covered services may be supplied by covered financial services suppliers to covered clients based on new deference or other arrangements established by the Agreement or based on existing domestic law. The Agreement imposes procedural constraints on the ability of the UK and Switzerland to withdraw the deference and other arrangements established by the Sectoral Annexes in relation to a covered sector and to change the existing liberal domestic law regimes covered by the Sectoral Annexes.

From the UK into Switzerland

Sectoral Annex	Covered Services	Covered Financial Services Suppliers	Covered Clients	Supply based on	Comment
1. Asset management (marketing)	Advertising and offering of collective investment schemes that are exclusively open to qualified investors.	Suppliers entitled to market under Swiss law.	Professional clients, high net worth retail clients and investment structures that have opted to be treated as professional clients and certain public entities.	Domestic law.	
1. Asset management (delegation)	Delegation of portfolio or risk management for assets of collective investment schemes, occupational pension schemes and insurance companies.	UK entities authorised under UK law to supply the covered services that meet specified additional requirements under Swiss law.	Swiss entities authorised under Swiss law that delegate in accordance with Swiss law.	Domestic law.	Covered clients may delegate covered services to covered financial services suppliers.

Sectoral Annex	Covered Services	Covered Financial Services Suppliers	Covered Clients	Supply based on	Comment
2. Banking	Deposit-taking and lending services.	Deposit-taking: UK entities authorised under UK law to supply that service. Lending services: UK entities.	Swiss entities other than 'consumers'.	Domestic law.	
3A. FMIs, CCPs	Clearing services relating to trading in financial instruments.	UK entities authorised under UK law to supply the covered services.	Supervised Swiss direct participants and Swiss financial market infrastructures.	Deference.	Suppliers are relieved from Swiss authorisation requirements and requirements regarding the appropriateness of the UK's regulatory and supervisory framework. Additional requirements may apply if the CCP is assessed as systemically important.
3B. FMIs, OTC Derivatives	OTC derivatives.	Counterparties to OTC derivatives.	N/A	Other arrangements.	Swiss suppliers complying with UK risk mitigation rules are deemed to comply with Swiss risk mitigation rules.
3C. FMIs, CCPs	FMIs, trading venues	UK entities that are stock exchanges, multilateral trading facilities or recognised entities under Swiss law.	Listing or admission: issuers Trading: parties to trades	Domestic law.	

Sectoral Annex	Covered Services	Covered Financial Services Suppliers	Covered Clients	Supply based on	Comment
4. Insurance	Specified general insurance lines and insurance distribution activities relating to those lines provided by a covered financial services supplier or to insurance provided by a Swiss insurer (including auxiliary services, such as consultancy, actuarial, risk assessment and claim settlement services)	UK entities and UK branches of Swiss entities authorised under UK law to supply the covered services (and, for insurers, that are subject to Solvency II requirements, have no or limited life insurance business, have appropriate staff training and have registered with FINMA).	Large enterprises.	Deference.	Insurers are relieved from Swiss authorisation requirements and intermediaries are relieved from Swiss localisation requirements. Suppliers must comply with pre-contractual disclosure, ad hoc disclosure and (for insurers) reporting requirements.
5. Investment services	Specified investment and ancillary services.	a) UK entities authorised under UK law to supply the covered services; and b) For the supply of covered services in Switzerland through employees on a temporary basis (Client Advisors), UK entities that are authorised under UK law to supply the covered services and have notified the FCA.	Institutional clients, other professional clients and high-net worth clients (with assets of at least CHF 2 million) that have opted to be treated as professional clients under Swiss law.	a) Domestic law. b) Deference.	Client Advisors are relieved from the obligation to register individually with registration bodies but must comply with client notification requirements (and their employers must comply with specified Swiss law requirements).

From Switzerland into the UK

Sectoral Annex	Covered Services	Covered Financial Services Suppliers	Covered Clients	Supply based on	Comment
1. Asset management (marketing)	Marketing of AIFs to covered clients under the UK national private placement regime.	Suppliers authorised under Swiss law to supply the covered services that have notified the FCA and comply with the UK regime.	Professional investors under the UK national private placement regime.	Domestic law.	
1. Asset management (delegation)	Delegation by covered clients of portfolio or risk management.	Swiss entities authorised and supervised under Swiss law to supply the covered services.	UK legal persons authorised to supply the Covered Services that delegate in accordance with specified UK rules.	Domestic law.	Covered clients may delegate covered services to covered financial services suppliers.
2. Banking	Deposit-taking (deposits accepted in Switzerland) and lending services.	Deposit-taking: Swiss authorised banks and securities firms; and Lending: Swiss entities	UK entities other than 'relevant recipients of credit'.	Domestic law.	
3A. FMIs, CCPs	Clearing services relating to trading in financial instruments.	Swiss entities authorised and supervised under Swiss law to supply the covered services.	Clearing members and trading venues.	Deference.	Swiss CCPs are relieved from UK authorisation requirements but are subject to recognition by the BofE. Additional requirements may apply if the CCP is assessed as systemically important.

Sectoral Annex	Covered Services	Covered Financial Services Suppliers	Covered Clients	Supply based on	Comment
3B. FMIs, OTC Derivatives	OTC derivatives.	Counterparties to OTC derivatives.	N/A	Other arrangements.	Counterparties complying with Swiss risk mitigation rules are deemed to comply with UK risk mitigation rules (except for standards and supervision of initial margin models and variation margin on physically settled foreign exchange swaps and forwards)
3C. FMIs, trading venues	Business activities of recognised overseas investment exchanges (ROIEs) and operators of multilateral trading facilities (MTFs).	Swiss entities that are ROIEs or operate an MTF.	ROIEs: issuers and parties to trades. MTFs: UK authorised persons.	Domestic law.	
4. Insurance	Specified general insurance lines, auxiliary services, reinsurance and (re) insurance distribution.	Insurance companies and intermediaries authorised in Switzerland.	Large enterprises.	Domestic law.	
5. Investment services	Specified investment and ancillary services.	Swiss entities authorised under Swiss law as a bank or securities firm to supply the covered services, that are not authorised in the UK to supply those services and have registered with the FCA.	High-net worth individuals and private investment structures (with assets exceeding £2 million), 'per se' professional clients and eligible counterparties.	Deference.	Suppliers are relieved from UK authorisation requirements but must comply with pre-contractual disclosure, client verification, client consent and reporting requirements and requirements on the use of third country sub-custodians.

Annex 2 Covered Services

The following summarises the definitions of the covered services, covered financial services suppliers and covered clients relevant to the new deference regimes established by the Agreement for firms providing insurance and investment services from the UK into Switzerland and firms providing investment services from Switzerland into the UK.

1. Providing insurance services from the UK into Switzerland

Covered services – insurance

The following classes of non-life insurance business are covered services when provided from the territory of the UK into the territory of Switzerland:

- damage to or loss of land or railway vehicles, and lake, river and canal vessels;
- damage to or loss of goods in non-cross border transit including merchandise, baggage and all other goods, irrespective of the form of transport;
- damage to property caused by theft, wilful damages caused by third parties or other causes of any kind such as frost, except for damages caused by fire, explosion, flood, inundation, storm, hail, avalanche, snow pressure, rockfall and landslide;
- damage to nuclear facilities;
- credit (general insolvency, export credit, instalment credit, mortgages, agricultural credit);
- suretyship, direct and indirect;
- miscellaneous financial losses, such as employment risks, insufficiency of income, bad weather, loss of profits, continuing general expenses, unforeseen trading expenses, loss of market value, loss of rent or revenue, indirect trading losses and other non-trading financial losses (excluding financial interests in a subsidiary or affiliate which may be sought through a financial interest clause in a contract of insurance):
- legal protection (legal expenses and costs of litigation);
- business travel assistance for employees (including members of the board of directors) of covered clients;
- third party liability exclusively for:
  - directors and officers claims resulting from breaches of their duty towards covered clients as their employer and committed by them in their capacity as directors and officers of covered clients;
  - seller's and buyer's warranty and indemnity for covered clients in the context of mergers and acquisitions, project finance, capital markets transactions and other transactions of that nature; and
  - cyber risks indemnity covering claims which are made exclusively by large enterprises against covered clients.

The classes of non-third party liability cover include:

- for cyber and renewable energy, business interruption, property damage (including cover for an installation or equipment but excluding damages caused by fire, explosion, flood, inundation, storm, hail, avalanche, snow pressure, rockfall and landslide) and miscellaneous financial loss relating to the replacement or recovery of software; and

- for renewable energy, delays in commencement of projects.

The covered classes do not include insurance subject to a public law regime in particular on state monopolies and cantonal monopolies of building insurers or requiring a legally enforceable pool participation.

Covered services – insurance distribution

Insurance distribution activities are covered services when provided from the territory of the UK into the territory of Switzerland if the insurance services are:

- covered insurance services provided by a covered financial services supplier; or
- insurance services written under the Swiss Federal Act on Insurance Supervision by an insurance company authorised and supervised by FINMA.

Insurance distribution activities relating to insurance services provided by insurers authorised and supervised in third countries are not covered services.

Covered services – general

Services are only covered services where they are supplied to covered clients concerning risks situated in Switzerland for their own risks, and own direct and own consequential losses or for the own risks, and own direct and own consequential losses of Swiss or UK entities that are 50% owned or majority controlled by covered clients for their risks situated in Switzerland or the UK respectively (if those entities are referred to as insured in the insurance contract).

A side letter to the Agreement confirms that covered services include the supply of services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services in accordance with Swiss domestic law.

Covered financial services suppliers

Insurance services suppliers are covered financial services suppliers if:

- they are authorised and supervised in the UK as an insurer or insurance intermediary;
- they are a UK entity, a UK resident or a UK branch of a Swiss entity that is a covered financial services supplier for the purposes of the supply of insurance services into the UK under the Sectoral Annex on insurance services;
- they supply the covered services in respect of risks located outside Switzerland; and
- (for insurers):
  - they are at an entity level generally subject to Solvency II regulatory requirements (except for UK branches of Swiss entities), meet their solvency requirements without capital relief measures, fulfil the company specific management buffer requirement and have no or limited life insurance liabilities;
  - they ensure that their staff involved in the distribution of insurance contracts under Swiss domestic law have relevant knowledge of Swiss insurance legislation;
  - they have notified FINMA (with a copy to the relevant UK supervisory authority) of the covered services it wishes to supply to covered clients, have been entered on the FINMA register and notify FINMA (with a copy to the UK supervisory authorities) of any relevant change to its register entry.

Covered clients

Entities incorporated in Switzerland are covered clients where they meet at least two of the following three tests: net turnover over CHF 40 million; balance sheet total over CHF 20 million; more than 250 employees.

2. Providing investment services from the UK into Switzerland

Covered services

For the purposes of the new deference regime, the following services are covered services when provided from the territory of the UK into the territory of Switzerland: financial services in accordance with the Swiss Federal Act on Financial Services in relation to covered financial instruments, i.e., acquisition and disposal of financial instruments, receipt and transmission of orders, portfolio management, personal recommendations, loans to finance transactions in financial instruments (for these purposes covered financial instruments include equity securities, debt instruments, units in collective investment schemes, structured products, derivatives, structured deposits and bonds as defined in the Act on Financial Services);

Covered services include investment research and financial and portfolio analysis services, foreign exchange services and M&A services.

Covered financial services suppliers

For the purposes of the new deference regime, suppliers are covered financial services suppliers where they are supplying covered services to covered clients through employees acting on their behalf in Switzerland on a temporary basis (client advisers) if:

- they are UK entities authorised in the UK to supply the covered services;
- they supply the covered services in the UK;
- their activities do not amount to a permanent establishment in Switzerland; and
- they have notified the FCA that they wish to provide specified covered services through client advisers in Switzerland.

Covered clients

The following are covered clients:

- institutional and other professional clients in accordance with the Swiss Federal Act on Financial Services; and
- natural persons and private investment structures qualifying as high net worth clients under that Act that have declared that they wish to be treated as professional clients and have qualifying assets of at least CHF 2 million.

3. Providing investment services from Switzerland into the UK

Covered services

The following services are covered services when provided from the territory of Switzerland into the territory of the UK:

- investment services and activities as defined in UK domestic law in relation to covered financial instruments, i.e., reception and transmission of orders, dealing on own account, portfolio management, investment advice, underwriting and placing and communications aimed to determine whether a person qualifies as a 'high net worth covered client'; and
- services ancillary to the main business of a supplier (including on a standalone basis), i.e., safekeeping and administration of covered financial instruments and related services (including custody and cash or collateral management but excluding certain depository services), granting credits or loans to allow a transaction in a covered financial instrument where the firm is involved in the transaction, advice on capital structure, industrial strategy and M&A services, foreign exchange services connected to investment services, investment research and financial analysis relating to covered financial instruments and services related to underwriting.

Covered financial instruments are transferable securities, money market instruments, collective investment schemes and AIFs, and derivatives which are financial instruments (all as defined in UK domestic law).

Covered financial services suppliers

Suppliers are covered financial services suppliers if:

- they are authorised as a bank, securities firm, fund management company, manager of collective assets or portfolio manager under relevant Swiss law;
- they are Swiss entities authorised in Switzerland to supply the covered services;
- they supply the covered services in Switzerland;
- they are not already authorised in the UK to supply the relevant covered services (Swiss firms with UK branches that are authorised in the UK may have to vary their existing UK permissions if they wish to rely on the Agreement to provide covered services from Switzerland into the UK);
- they have notified the FCA (with a copy to FINMA) of the covered services they wish to supply to covered clients, have been placed on the FCA register in relation to those services and notify the FCA (with a copy to FINMA) of any changes relevant to its entry on the register.

The FCA and FINMA will specify the form of notification to be provided by covered financial services suppliers.

Covered financial services suppliers that are authorised persons in the UK may not provide covered financial services notified to the FCA from or under the supervision or control of their UK permanent establishment.

Covered clients

The following persons resident or established in the UK are covered clients:

- high net worth clients, i.e.:
- natural persons with net assets over GBP 2 million who are capable of making their own investment decisions and understanding the risk involved and who have provided a declaration that they wish to be treated as a high net worth client for the services in question and are aware of the loss of the protections and investor compensation rights that would otherwise be available to them and of the consequences;
- private investment structures which have at least one qualified financial expert to whom a UK resident natural person with net assets over GBP 2 million has entrusted the principal responsibility for managing his or her assets on a continuous basis where: the person transacting on behalf of the structure is capable of making investment decisions and understanding the risk involved; and an officer of the structure has provided a declaration that he or she is aware of the loss of the protections and investor compensation rights that would otherwise be available to the structure and of the consequences and wishes the structure to be treated as a high-net worth client for the service in question;
  - private investment structures (with no qualified financial expert) through which a UK resident natural person with net assets over GBP 2 million invests where: the natural person is capable of making his or her own investment decisions and understanding the risk involved; the natural person has provided a declaration that he or she is aware of the loss of the protections and investor compensation rights that would otherwise be available and of the consequences; and an officer of the structure has provided a declaration that the structure wishes to be treated as a high net worth client for the service in question; and
- eligible counterparties and per se professional clients as defined in UK domestic law.

For these purposes, 'net assets' means property, rights, entitlements and interests excluding: the client's primary residence (or any proceeds of a loan secured on that residence); rights under certain long-term contracts of insurance; benefits in the form of pensions or otherwise payable on termination of service, death or retirement; and withdrawals from pension savings except where used for retirement income.

Glossary

Agreement or BFSA	Agreement between the UK and Switzerland on Mutual Recognition in Financial Services (the Berne Financial Services Agreement)
AIF	Alternative investment fund
CCP	Central counterparty
covered client	Client as defined in a Sectoral Annex
covered financial services supplier	Financial services supplier as defined in a Sectoral Annex
covered sector	Covered services that may be supplied by covered financial services suppliers to covered clients under a sector covered in a Sectoral Annex
covered service	Service as defined in a Sectoral Annex
EU	European Union
FCA	UK Financial Conduct Authority
FINMA	Swiss Financial Market Supervisory Authority
FMI	Financial market infrastructure
FTA	Free trade agreement
GATS	General Agreement on Trade in Services
MTF	Multilateral trading facility
OTC derivative	Over-the-counter derivative
ROIE	Recognised overseas investment exchange
Sectoral Annex	Sectoral Annex to the Agreement
Swiss entity	Entity incorporated in or formed under the laws of Switzerland
Switzerland	Swiss Confederation
third country	Country that is not a party to the Agreement
UCITS	Undertaking for collective investment in transferable securities
UK	United Kingdom of Great Britain and Northern Ireland
UK entity	Entity incorporated in or formed under the laws of the UK
WTO	World Trade Organisation
WTO Agreement	1994 Marrakesh Agreement establishing the WTO, its annexes and related decisions, declarations and understandings.

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About the City of London Corporation

The City of London Corporation is the governing body of the Square Mile dedicated to a vibrant and thriving City, supporting a diverse and sustainable London within a globally successful UK.

We aim to:

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- Support a thriving economy
- Shape outstanding environments

By strengthening the connections, capacity and character of the City, London and the UK for the benefit of people who live, work and visit here.

About the Global City campaign

The Global City campaign is the City of London Corporation's overarching initiative to promote the UK as a world-leading international financial centre. It showcases the UK as a great place for financial and professional services firms to invest, locate and grow.

theglobalcity.uk

About Clifford Chance LLP

Clifford Chance is one of the world's pre-eminent law firms, with significant depth and range of resources across the globe and with deep expertise relevant to the financial investor community, governments, regulators, trade bodies and many more. Clifford Chance provides the highest-quality advice and legal insight based on global standards combined with practical on-the ground expertise.

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