

New Financial Services Agreement between Switzerland and the UK

On December 21st, Switzerland and the United Kingdom entered into an agreement on the mutual recognition of financial services (the Berne Financial Services Agreement). This Agreement is largely based on mutual recognition of the equivalence of national legislations and regulations. It aims at fostering competitiveness and cooperation between these two jurisdictions which, while being both outside of the European Union, constitute major European financial centers.

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AUTHORS	François Rayroux Laurence Vogt Scholler	Partner, Head of Asset Management Counsel
EXPERTISE	Asset Management Banking and Finance Capital Markets Insurance	

Context

The negotiation process had been initiated more than two years ago with the signing, on June 30, 2020, of a Joint Statement between the Federal Department of Finance and Her Majesty's Treasury on deepening cooperation in financial services.

Switzerland and the UK, both being outside of the European Union, are both confronted to challenges regarding market access at the European level and thus share a common interest for reciprocity. The announced objective was to conclude a legally binding agreement with common standards in order to improve the cross-border market for financial services between Switzerland and the UK. The agreement's intended focus is the provision of services to wholesale and sophisticated clients in the fields of insurance, banking, asset management and capital markets (including market infrastructure). Thus, the Agreement aims at avoiding market fragmentation and thereby benefits consumers, the financial sector as well as the broader global economy.

While the Agreement is welcome, it does not remediate the absence of passporting at the European level.

Key characteristics and scope of the agreement

The *Berne Financial Services Agreement* is the first of its kind: It is the first time that Switzerland and the UK mutually recognise the equivalence of their respective legal and supervisory frameworks in selected areas of the financial sector, thus facilitating access to the other party's market.

The authorities of both jurisdictions first conducted an in-depth review of each other's financial legislations, based on equivalence. This also means that key legislative changes that could challenge the equivalence assessment might affect the agreement in the future. Enhanced regulatory and supervisory cooperation complement the principle of equivalence, ensuring stability, integrity and the protection of clients. Compared to unilateral recognition of equivalence, the agreement provides greater legal certainty by establishing a solid bilateral foundation for mutual market access.

The Agreement recognizes equivalence in the areas of banking, investment services, insurance, asset management and financial market infrastructures for sophisticated clients. For investment and banking services, in particular wealth management, it enables Swiss financial service providers to supply certain cross-border activities into the UK and confirms the current framework for UK firms for the supply of such activities into Switzerland. Based on the Agreement, Swiss firms may provide UK clients, including individuals, with financial assets exceeding GBP 2 million, with cross-border investment services directly from Switzerland.

The Agreement also provides greater flexibility for the asset management industry, including by confirming the existing access for advertising and offering collective investment schemes, as well as delegating portfolio and risk management in asset management.

Regarding financial market infrastructures, the *Berne Financial Services Agreement* acknowledges the equivalence of the relevant framework for central counterparties, confirms the existing framework for trading venues, and facilitates compliance with certain obligations in cross-border over-the-counter (OTC) derivatives transactions.

The impact of the Agreement is particularly important for the insurance sector, as the *Berne Financial Services Agreement* covers certain types of non-life insurances for large corporate clients. It allows insurance companies from the UK to engage in cross-border activities, while also enabling Swiss firms to provide cross-border insurance services to large corporate clients. The provision in Switzerland of life, accident, health, and most types of liability insurance, as well as monopoly insurance of all kinds for professional policyholders, is not covered. According to the agreement, certain insurance intermediaries from the UK will be exempt from the localization requirement under the revised Insurance Oversight Act, which will come into effect on January 1, 2024.

The UK represents a crucial export market for Swiss financial institutions' cross-border wealth management. The agreement will benefit Swiss banks in particular by providing legal certainty and enhancing their ability to meet the needs of wealthy private clients (so-called high-net-worth individuals or HNWI), who account for a significant proportion of their cross-border banking business.

Consequently, the industry has welcomed the signature of the *Berne Financial Services Agreement*, particularly the Swiss Bankers Association (SBA), the Asset Management Association Switzerland (AMAS), and SIX Swiss Exchange. These organizations have already expressed their satisfaction in a [press release](#), in which the SBA specifies that it supported the Swiss authorities throughout the whole process and was actively involved in drafting the agreement.

Next steps

Following its signature, the *Berne Financial Services Agreement* must now be approved by the Parliaments of both countries before it can enter into force. The Federal Council will prepare and submit the dispatch of the Agreement to the Parliament in 2024. The exact timing is still unknown but is expected to happen in the first part of 2024.

There is still some uncertainty as to the practical implementation of the Agreement, insofar as no regulatory authority has commented on it; further guidance is thus further awaited in the coming months. We will be providing our clients with regular updates in this respect.

The agreement establishes the principle of mutual recognition of the Swiss and UK legal and regulatory frameworks in the field of financial services.

Please do not hesitate to contact us if you have any further questions on this subject.

Legal Note: The information contained in this Smart Insight newsletter is of general nature and does not constitute legal advice.

Shelby R. du Pasquier	Partner, Head of Banking and Finance, Geneva shelby.dupasquier@lenzstaehelin.com Tel: +41 58 450 70 00
François Rayroux	Partner, Head of Asset Management, Geneva francois.rayroux@lenzstaehelin.com Tel: +41 58 450 70 00
Olivier Stahler	Partner, Co-Head of Asset Management, Geneva olivier.stahler@lenzstaehelin.com Tel: +41 58 450 70 00
Fedor Poskriakov	Deputy Managing Partner, Head of Fintech, Geneva fedor.poskriakov@lenzstaehelin.com Tel: +41 58 450 70 00
Valérie Menoud	Partner, Co-Head of Investigations, Head of ESG, Geneva valerie.menoud@lenzstaehelin.com Tel: +41 58 450 70 00
Patrick Schleiffer	Partner, Zurich patrick.schleiffer@lenzstaehelin.com Tel: +41 58 450 80 00
Marcel Tranchet	Partner, Head of Banking and Finance, Zurich marcel.tranchet@lenzstaehelin.com Tel: +41 58 450 80 00
Patrick Schärli	Partner, Co-Head of Capital Markets, Zurich patrick.schaerli@lenzstaehelin.com Tel: +41 58 450 80 00
