

The Berne Financial Services Agreement

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In December 2023, the UK and Switzerland signed the Berne Agreement, a groundbreaking mutual recognition agreement ("MRA") designed to enhance cross-border financial and insurance services. This agreement simplifies regulatory compliance for firms in both countries, resulting in new business opportunities in sectors such as asset management, banking, insurance, and investment services.

This agreement creates a framework where each country recognises the other's financial regulatory standards. This allows authorised firms to avoid duplicative regulatory compliance, which will promote efficiency and growth. However, firms must still adhere to certain procedures, such as registration and disclosure obligations for specific client types.

Benefits for the UK

For UK firms working with Swiss clients, a few key benefits for UK firms are:

- UK firms will have expanded market access by offering a wider range of services to Swiss clients with fewer regulatory barriers which could result in a competitive edge over other international firms who may face more stringent restrictions.
- There are further insurance opportunities for wholesale insurance providers who can now sell certain policies in areas like renewable energy, liability, cyber, as well as selected lines of non-life insurance business cross-border to large Swiss corporates without requiring authorisation in Switzerland.
- There will also be streamlined compliance for UK professional advisers acting for investment firms will no longer need to register individually in Switzerland or meet Swiss-specific requirements to sit Swiss examinations or provide evidence of complying with requirements.
- The UK will also be exempt from Swiss legislation requiring overseas financial insurance brokers to establish a local presence in Switzerland.
- Where Switzerland has agreed to align with UK rules in certain areas, certain UK firms can access the Swiss market without the need to comply with separate Swiss regulations leading to UK firms using familiar regulatory frameworks from the UK.
- UK banks will maintain stable access to Swiss corporate clients for services such as deposit taking and lending to maintain a smooth operation of international banking transactions.
- Swiss asset managers can continue marketing funds to UK investors who will continue to benefit from their expertise and products available in Switzerland's investment sector.

Benefits for Switzerland

Swiss firms will also benefit from the MRA, with the following key advantages:

- **Asset Management:** Existing frameworks for marketing funds, delegation of investment decisions, and offering collective investment schemes remain unchanged, providing stability.
- **Banking and Securities houses:** Swiss banks can accept deposits and provide lending services to UK clients, although consumer credit activities remain excluded.
- **Investment Services:** Swiss institutions, such as banks and wealth managers, have greater access rights to the UK market, for example:
They can serve UK professional clients and high-net-worth individuals (HNWI) with assets of £2 million or more which includes private investment structures owned or managed by HNWIs. These services can be provided on a cross-border basis or with a temporary presence of the Swiss financial institution in the UK, as long as this presence does not constitute a permanent establishment.

When providing these services, there are several conditions that must be met, for example, the financial institution must be established under Swiss law and must be authorised by the Swiss Financial Market Supervisory Authority ("FINMA"). In addition, these services and the targeted clients must be declared to the Financial Conduct Authority ("FCA") in the UK. The financial institution must also be registered in a public register held by the FCA.

Although still subject in Switzerland to the rules of the Financial Services Act, the financial institutions will have to inform their UK clients in advance that they don't have UK authorisation, specify which legal framework will apply to their business relationship and that they do not necessarily benefit from certain rights or protections under UK legislation.

- **Insurance Access:** Swiss insurance companies already perform numerous activities in the UK, but now can expand services to the UK market, targeting larger professional policyholders (corporate clients). These insurance companies will have restrictions when accessing the UK market, for example, they may not provide accident and health insurance and monopoly insurances are also not covered by the Berne Agreement.

Joint Benefits for the UK and Switzerland

The Berne Agreement provides several joint benefits that reinforce regulatory cooperation, market flexibility and legal certainty between the UK and Switzerland.

Both countries benefit from a deference-based regulatory model whereby each will uphold its own standards while minimising redundant compliance obligations. It will also be easier for financial firms to manage cross-border risks, which are a challenge and costly for these firms.

Additionally, the agreement enhances supervisory cooperation by facilitating an information sharing framework that upholds high standards and strengthens market integrity.

For OTC derivatives, both UK and Swiss firms can choose whether to apply UK or Swiss mitigation rules when trading OTC derivatives which may reduce compliance costs and increase efficiency.

The Berne Agreement recognises the existing legal and supervisory framework for trading venues, central counterparties and OTC derivatives which promotes smoother cross-border financial transactions and regulatory cooperation between the UK and Switzerland.

The MRA is also designed with flexibility in mind which allows it to evolve and potentially cover additional financial sectors, such as sustainable finance, which could benefit both markets. This approach creates a benchmark for innovative and streamlined financial services regulations that could inspire similar frameworks in other jurisdictions.

Implementation in the UK & Switzerland

The agreement must be ratified and implemented by both countries before taking full effect.

In the UK, this process falls under the Constitutional Reform and Governance Act 2010 which first requires the UK parliament to review the agreement. The UK's Financial Services and Markets Act 2023 gives the UK government the power to implement the agreement through secondary legislation. It is expected that regulations giving effect to the agreement will be tabled before parliament shortly, with full implementation likely by 2026.




In Switzerland, on the 4 September 2024, the Swiss Federal Council released its official dispatch regarding the Berne Agreement and submitted it for review. The latter is now pending and currently under consultation with the Economic Affairs Committee of the Council of States. Consultation will then move to the Economic Affairs Committee of the National Council for further examination, before being approved by both Chambers of the Swiss Federal Assembly. This process will take at least another year to complete.

If you require further information regarding the Berne Agreement you are welcome to contact the **Regulatory Team at Herrington Carmichael LLP** in the UK (**Brendon Lesar** brendon.lesar@hc.law or +44 1276 748 378), or the **Regulatory Team at Reiser Avocats** in Switzerland (**Olivier Rivoire** or@reiser.law or +41 22 320 42 42).

This article is co-authored by experts from both the UK and Switzerland and offers a bilateral perspective on the Berne Agreement. The article reflects the law and market position at the date of publication and is written as a general guide. It does not contain definitive legal advice, which should be sought in relation to a specific matter.






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