



SWITZERLAND SIGNS FINANCIAL SERVICES AGREEMENT WITH THE UNITED KINGDOM

Mutual Recognition of Equivalence of
Financial Market Regulations: Exploring
the Benefits for the Wealth and Asset
Management Industry

On 21 December 2023, the finance ministers of Switzerland and the UK have signed the Berne Financial Services Agreement on the mutual recognition of each other's regulatory and supervisory frameworks applicable to certain financial services (the "MRA"). The MRA aims to facilitate the cross-border provision of financial services by mutually recognizing the equivalence of their regulatory standards, specifically in the banking, wealth management, asset management and insurance sectors. With this agreement, Swiss and UK financial institutions are expected to gain enhanced market access and regulatory clarity. In this Spotlight, we will focus on the benefits for the wealth and asset management industry.



With the MRA, Switzerland and the UK, two major international financial centers, have mutually recognized the equivalence of their regulatory and supervisory frameworks in a binding international treaty for the first time. The mutual recognition enables the frictionless, cross-border provision of financial services between Switzerland and the UK in the sectors covered by the MRA making it easier for Swiss financial institutions to access the UK financial market. For some financial services, Swiss based firms will even be able to serve clients in the UK while largely following Swiss rules, and vice versa.

At the same time, the MRA intends to ensure stability and integrity of the financial market and guarantee customer protection, two key elements of the agreement.

Mutual Recognition of Equivalence of Financial Market Regulations

In order to enable and facilitate cross-border market access, the two countries mutually recognize their regulatory and supervisory frameworks for financial services as equivalent. The equivalence was established through assessments based on jointly agreed criteria on financial stability, financial market integrity as well as customer and investor protection over the past two years of negotiations. The recognition of equivalence will be supplemented by increased supervisory and regulatory cooperation.

Easier Access to the UK Financial Market for Swiss Firms

Swiss market participants benefit from the MRA by having easier access to the UK financial market on a cross-border basis for a broad range of financial services:

- Swiss financial service providers will be allowed to provide financial services covered by the MRA to UK clients with assets of over GBP 2 million.
- In the area of asset management, the MRA confirms the existing access to the UK market for advertising and offering of collective investment schemes as well as the possibility to delegate portfolio management and risk management services.
- In the insurance sector, the UK confirms the possibility for Swiss companies to provide cross-border insurance services for large corporate clients under current UK law.

- For financial market infrastructures, the MRA recognizes the equivalence of the relevant framework for central counterparties, confirms the existing framework in relation to trading venues and facilitates compliance with market conduct rules for OTC derivatives transactions.

For clients within the scope of the MRA, the agreement results in more straightforward access to financial service providers and cost savings, since the financial service providers can continue to apply their home law in cross-border business.

Access to High Net-Worth Private Clients in the UK

Furthermore, the MRA will allow **Swiss financial institutions** authorized by the Swiss Financial Market Supervisory Authority ("FINMA") that are not also authorized in the UK under the Financial Services and Markets Act 2000 to supply investment services and activities, in particular executing orders on behalf of clients and portfolio management as well as ancillary services (both as defined under the domestic law of the UK) to wholesale and sophisticated clients including high net worth individuals (having net assets in excess of GBP 2 million) and professional clients in the UK. These services may be provided either on a cross-border basis or as part of temporary local operations. In areas where the UK has deferred to Swiss law, Swiss financial institutions may continue to apply Swiss law also for providing their services to covered clients in the UK. In particular, banks, securities firms, managers of collective assets, fund management companies and asset managers can benefit from a reduced regulatory burden because they do not have to follow different rules in the other country and can rely on familiar rules from their home jurisdiction. In turn, additional disclosure and reporting obligations apply for cross-border activities.

«THE MRA ALLOWS A UNIQUE FINANCIAL CO-OPERATION BETWEEN SWITZERLAND AND THE UK.»

Before providing the services to clients in the UK, Swiss firms must notify the Financial Conduct Authority (“FCA”) indicating the relevant financial services they wish to provide in the UK so that they can be registered in a register maintained by the FCA for that purpose.

In addition, financial service providers must inform their clients in a disclosure document (i) that they are an authorized and supervised financial service provider incorporated in Switzerland that is not authorized or regulated in the UK, (ii) about the place of jurisdiction and applicable law of the contract to be entered into and (iii) that the financial services compensation scheme as well as the financial services out-of-court dispute resolution scheme of the UK are not available.

Additional Flexibility for UK firms

From a UK perspective, **British financial service providers**, which are (i) incorporated in, or formed under the domestic law of the UK, (ii) authorized by the relevant supervisory authority in the UK, (iii) licensed by the relevant supervisory authority in the UK to provide the relevant services in the UK and (iv) supply the relevant service in the UK, also gain additional flexibility. They may provide the following services into Switzerland (“**Covered Services**”):

1. financial services as defined in the Swiss Financial Services Act (“**FinSA**”), in particular portfolio management services and investment advice,
2. services related to trading in securities,
3. investment research and financial or portfolio analysis-related services,
4. foreign exchange services; and
5. advice and services relating to mergers and the purchase of undertakings.

These services may be provided to institutional clients and professional clients in Switzerland as defined in the FinSA. Furthermore, they may be supplied to natural persons and private investment structures created for them that have declared that they wish to be treated as professional clients and have assets at their disposal of at least CHF 2 million (“**High Net Worth Clients**”).

As a further relief, client advisers of UK firms are not required to register themselves in a Swiss register of advisers.

The financial service providers are, however, not relieved from satisfying themselves that (i) their client advisers have sufficient knowledge of the code of conduct set out in FinSA and that they possess the necessary expertise required to perform their activities, (ii) their client advisers have adequate professional indemnity insurance and (iii) they are affiliated to a Swiss ombudsman where required under the FinSA.

Before providing covered services, a UK based financial service provider must serve to its High Net Worth Clients disclosure document similar to the document that Swiss firms must provide to their UK clients. The document must also state that, inter alia, the duty to register as a client adviser under the FinSA does not apply to it and that it is affiliated to an ombudsman in accordance with the FinSA where required.

How the Asset Management Sector Benefits from the MRA

As the asset management market already has an international focus, the MRA aims at stabilizing the current status quo. This involves the respective regimes in Switzerland and the UK for advertising and offering collective investment schemes as well as the possibility to delegate investment decisions and risk management of portfolios.

Under the MRA, British financial service providers that have appointed a representative in Switzerland according to the Swiss Collective Investment Schemes Act may continue to advertise and offer collective investment schemes that are exclusively open to qualified investors and, when applicable, meet the Swiss prospectus requirements, from the UK into Switzerland.

Asset management services may be supplied in Switzerland to professional and institutional clients as defined in the FinSA as well as to high net worth retail clients and private investment structures created for them who have declared that they wish to be treated as professional clients or national and supranational public entities with professional treasury operations.

Additional Cooperation in Additional Areas such as Sustainable Finance

In addition to facilitate mutual market access, Switzerland and the UK have also agreed to cooperate more closely with respect to forward-looking areas such as sustainable finance with the goal to explore the possibility of future mutual recognition of corresponding rules and standards.

Outlook

The MRA will bring a wide range of benefits to Switzerland's financial sector. Once the agreement will have entered into force, it will make it easier for financial service providers to offer their services in the other country.

As a next step, the MRA must be approved by the parliaments of both countries and implemented into national law since it is a non-self-executing treaty and therefore, market participants cannot directly invoke the rights set out in it.

To initiate the parliamentary approval process, the Swiss Federal Council will prepare the dispatch of the MRA. The exact timetable for this process is not yet known, but it is expected that the dispatch will be submitted to the parliament in the course of 2024.



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Keyfacts

- 01** The MRA establishes the principle of mutual recognition of the Swiss and UK legal and regulatory frameworks in the field of financial services.
- 02** The MRA facilitates cross-border provision of financial services and asset management services in particular to wholesale and sophisticated clients.
- 03** The MRA provides the basis for market liberalisation steps in the areas of banking and financial services, asset management, insurance and stock exchanges.