

# New Financial Services Agreement with the United Kingdom

## Areas of action for insurers



In late December 2023, Switzerland and the United Kingdom signed the “Berne Financial Services Agreement” on mutual recognition in the area of financial services. With the aim of facilitating cross-border market access, the legal and supervisory framework for financial services will be mutually recognized as equivalent and supplemented by increased supervisory and regulatory cooperation. Among the areas covered by the agreement are banking, investment services, asset management, financial market infrastructures and insurance. We will highlight the specific implications of the agreement and can offer support in this regard.

In the insurance sector, the provisions of the agreement apply to Swiss insurers providing direct insurance or reinsurance that are licensed and supervised in accordance with Article 2(1)(a) of the Insurance Supervision Act (ISA). The Agreement will require insurers from the United Kingdom to provide the services covered by the Agreement in relation to risks outside Switzerland and to meet certain solvency requirements. Additionally, UK insurers are required to notify FINMA of the services covered and the relevant insurance classes.

Provided the insurers meet the Agreement’s requirements, they are permitted to provide certain services to certain clients from the other country.

### Services in scope

Under the agreement, Swiss insurers may conclude or fulfill insurance contracts in the United Kingdom in the following classes of insurance, subject to certain restrictions:

- Maritime shipping, commercial aviation and space launches/cargo
- Goods in international transit
- Loans and guarantees
- Land vehicles
- Fire and natural disasters
- Other property damage
- Motor vehicle liability (with the exception of third-party liability, which must be insured with an authorized insurer)
- General liability (with the exception of liability, which must be insured with an authorized insurer)
- Miscellaneous financial losses
- Cover for difference in conditions or sums

Also permitted are insurance-related ancillary services such as consulting, actuarial services, risk assessment and claims settlement as well as the conclusion or fulfillment of reinsurance contracts.



These foreign activities are not subject to notification or approval in the business plan (Form C) for Swiss insurers.

Under certain restrictions, insurers from the United Kingdom may grant insurance cover for the following classes of insurance:

- Land or rail vehicles and inland sea, river and canal vessels
- Goods in non-cross-border traffic, incl. goods and luggage
- Property damage in connection with theft, damage or other causes (with the exception of fire, explosion, flooding, inundation, storm, hail, avalanches, snow pressure, rockfall and landslides)
- Nuclear facilities
- Credit (including general insolvency, export credit, installment sales and mortgages)
- Direct and indirect guarantees
- Various financial losses such as occupational risks, bad weather, loss of profit, loss of value and loss of rent or income
- Legal protection
- Business travel insurance for employees
- Liability towards third parties (responsibility claims, warranty claims from buyers and sellers as well as indemnification claims for cyber risks)

Explicitly excluded are insurances that are subject to a public law regime, especially in the area of federal monopolies and cantonal monopolies of building insurers.

Reinsurance contracts are not explicitly mentioned for insurers from the United Kingdom, as insurance companies domiciled abroad providing only reinsurance in Switzerland are already not subject to supervision under the ISA.

### **Clients in scope**

A key point of the agreement is that it does not apply to retail customers. The relief under the agreement applies only to companies domiciled in the respective country that meet at least two of the following three requirements at the time of concluding, renewing or amending an insurance contract:

- Turnover of more than GBP 36 million / CHF 40 million;
- total assets of more than GBP 18 million / CHF 20 million; or
- more than 250 employees.

Another relevant factor is that insurers from the United Kingdom may only provide benefits to clients in respect of risks located in Switzerland for their own risks and their own direct and indirect losses.



## Other key regulations

Switzerland exempts UK insurers from the applicable regulations and declares the licensing and supervisory requirements of the UK to be applicable. Thus, they are exempt from any obligation to comply with the Swiss licensing and supervisory requirements under the ISA. However, it requires insurers to inform customers in writing within a reasonable period of time before concluding the contract that they are not authorized and supervised by FINMA and that the customer is personally responsible for paying the mandatory taxes levied on the insurance premiums in Switzerland. Likewise, information must also be provided on the place of jurisdiction and the applicable contract law.

Policyholders also have the right to receive documents. In addition, British insurers must inform FINMA annually about the total value of the gross premiums generated in the

respective insurance class if the income exceeds CHF 5 million, as well as about the services provided, including the insurance classes.

The agreement does not grant such an exemption for Swiss insurers. They will have to comply with the law of the United Kingdom.

It is currently still unclear when the agreement will definitely come into force. The Federal Council now has to prepare a dispatch and submit it to Parliament. This is because the parliaments in both the UK and Switzerland must approve the agreement before it can enter into force.

## How KPMG supports insurers

The financial services agreement between Switzerland and the UK creates both strategic and legal opportunities and risks. Whether you are an insurer or a reinsurer, we can help you to position yourself in the best possible way in this area.

### Our offer

- Providing straightforward answers relating to issues of interpretation and implementation
- Consulting on location and sales strategy
- Reviewing or preparing directives, forms and similar documents
- Training staff and management committees
- Developing and carrying out implementation plans and projects

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