



TheCityUK



# Supporting UK-Switzerland Services Trade

Seizing the opportunity to develop a  
trailblazing cross-border relationship

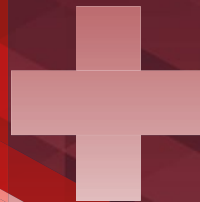
INTERNATIONAL TRADE WEEK

NOVEMBER 2022



# Contents

<b>Introduction: A golden strategic opportunity</b>	<b>2</b>
<b>Core Industry Objectives for UK-Switzerland services trade</b>	<b>6</b>
<b>Detailed background analysis</b>	<b>7</b>
<b>A UK-Switzerland Mutual Recognition Agreement</b>	<b>9</b>
<b>Regulatory cooperation</b>	<b>18</b>
<b>Mobility</b>	<b>18</b>
<b>Data and digital trade</b>	<b>19</b>
<b>Sustainability</b>	<b>20</b>
<b>Mutual Recognition of Professional Qualifications</b>	<b>21</b>
<b>Cross-border market access</b>	<b>21</b>
<b>Commercial presence</b>	<b>22</b>
<b>Domestic regulation</b>	<b>22</b>
<b>Taxation</b>	<b>22</b>
<b>Public procurement</b>	<b>23</b>
<b>Intellectual property</b>	<b>23</b>
<b>Next Steps</b>	<b>24</b>
<b>Acknowledgements</b>	<b>24</b>



## Introduction: A golden strategic opportunity

The UK and Switzerland have a golden opportunity to develop a new paradigm for 21st Century services trade which boosts growth, jobs, and prosperity.

This is a top priority for the UK-based Financial and Professional Services (FPS) sector. Industry has welcomed the strong progress on Mutual Recognition Agreement (MRA) negotiations to date and is excited by the prospect of an enhanced upcoming UK-Switzerland Free Trade Agreement (FTA). With a change of administration in the UK, and global economic headwinds threatening living standards around the world, now is the time to turn this new UK-Switzerland relationship into reality.

Finalising ongoing negotiations in line with existing deadlines would deliver real benefits to business and consumers. Furthermore, success would send a powerful message about the value of open international services trade as an engine of growth.

## **UK-Switzerland: A golden strategic opportunity**

The FPS sector supports the economic and strategic case for prioritising UK-Switzerland services trade. The stars are aligned.

### ***The economic case:***

The UK and Switzerland already enjoy a strong services trading relationship. Deepening this corridor will deliver growth across both jurisdictions by boosting mutual market access, providing businesses with certainty, and removing costly duplication.

### ***The strategic case:***

A deep and ambitious bilateral Mutual Recognition Agreement (MRA) in financial services would represent a genuinely trailblazing achievement. Anchoring this MRA within a best-in-class Free Trade Agreement (FTA) would harness all the tools of trade policy to create a ground-breaking 'Second Country' framework fit for the modern world.

### ***The timing:***

An incoming UK administration should seize this opportunity. In the near term, we must rollover soon to expire mobility arrangements. Longer term, committing two like-minded partners with uniquely complementary economies to deepening integration would send a powerful message in support of open trade and functioning global markets.

The private sector has welcomed collaboration with both UK and Swiss Governments to date. In 2020, TheCityUK and EconomieSuisse published detailed analysis in support of a bilateral MRA in financial services.<sup>1</sup> More recently, TheCityUK, the Professional Business Services Council (PBSC), and the City of London Corporation submitted evidence to HM Government's enquiry into upcoming UK-Switzerland FTA negotiations.

This body of work reflects the FPS sector's view: there is real value in deepening this relationship.

**The FPS sector supports the economic and strategic case for prioritising UK-Switzerland services trade. The stars are aligned.**

<sup>1</sup> <https://www.thecityuk.com/our-work/future-proofing-the-uk-swiss-financial-and-related-professional-services-relationship/>

## The value of deepening the UK-Swiss relationship

### *An engine for growth:*

UK and Switzerland host Europe's two largest and deeply complementary financial centres. Both share a common regulatory outlook and are aligned on the importance of open trade. In 2021, the value of UK trade with Switzerland was £38.4bn with £18.4bn coming from services.

Several agreements underpin this UK-Swiss corridor. These include a data adequacy agreement, a Services Mobility Agreement (SMA), a Citizens Rights Agreement (CRA), an FTA, and existing equivalence provisions. An MRA and enhanced FTA can combine to both strengthen and futureproof this relationship delivering jobs and growth in both jurisdictions.

### *Supporting collaboration in Innovation and Sustainability:*

Concluding these negotiations would lay firm foundations for UK-Swiss collaboration on broad policy goals into the future. Two immediate areas for UK-Swiss cooperation should be innovation and sustainable finance. Strengthening the bilateral economic relationship would lay the groundwork for future alignment and global leadership in both these areas.

**UK and Switzerland host Europe's two largest and deeply complementary financial centres. Both share a common regulatory outlook and are aligned on the importance of open trade.**

## The opportunity to develop a 'Second Country' cross-border relationship

### *Why Mutual Recognition in Financial Services?*

A UK-Switzerland MRA in financial services would represent a new paradigm in international services trade. An MRA would operationalise a more constructive way of working, with mutual trust in respective regulatory regimes freeing up cross-border access between two parties whilst protecting the rights of our independent regulators to make market-specific policy. This approach is sometimes known as 'deference'.

Implementing such a model would represent genuine global best practice: license-free market access based on aligned regulatory outcomes rather than a direct harmonisation of individual rules. Most current mechanisms rely on the latter. In the EU's case, these are known as 'Third Country provisions'. An enhanced UK-Swiss framework could, therefore, be categorised as a 'Second Country' model.

### *Why now?*

- **A different political dynamic:** In 2017, the UK-based FPS sector proposed that the concept of mutual recognition underpin the future UK-EU financial services relationship. These proposals were unsuccessful. Five years on, the political dynamics surrounding the current UK-Switzerland relationship are significantly more favourable.
- **Meeting global challenges:** The challenges presented through high energy prices, in global net zero commitments, and the urgent need for innovation to underpin growth reinforce the importance of facilitating cross-border financial flows with ever increasing starkness.
- **Supporting open global markets:** A commitment to 'openness' underpins the UK Government's plans to bolster the dynamism and competitiveness of the FPS

## Making progress from here

sector. The industry is fully supportive. The UK's status as the world's most international financial centre relies on its alignment with global standards and openness to international commerce.

- **The UK Financial Services and Markets Bill:** The sector welcomed the MRA provision within the UK Financial Services and Markets Bill. Making use of these provisions to enact a UK-Switzerland MRA in short time would send a powerful message of future intent.
- **The UK's independent trade policy:** The sector has also supported the UK's first independent trade policy for more than forty years. The signing of almost 70 rollover agreements, many with significant enhancements, represents a genuine achievement and positions the UK to lead the way in global trade into the future.

The City of London Corporation, TheCityUK and the Professional Business Services Council stand ready to support both UK and Swiss Governments in delivering these objectives. We believe that continued dialogue between government and industry will be key to success.

Deepening the UK-Switzerland services trading relationship would bring real benefits to UK and Swiss consumers and firms. These would include an expansion of the supply and diversity of financial services, leading to more robust competition and lower prices, more innovative and diverse financial systems, as well as creating more jobs and growth in these challenging economic times.

## Using all the tools in the toolbox

MRA and FTA negotiations are an opportunity for the UK and Switzerland to develop a new services trading paradigm. An MRA would operationalise the concept of market access based on regulatory deference. An FTA would address the crosscutting issues so important to 21st century trade such as mobility and recognition of qualifications. An FTA would also establish the framework for ongoing regulatory cooperation needed for ensuring alignment in emerging areas like data, digital and sustainability.

By taking a coordinated approach to these two negotiations, the UK can address the entire breadth of interoperability issues facing modern global services providers for the first time. Success could open the door to the future of meaningful trade agreements in a post-FTA world.

**Deepening the UK-Switzerland services trading relationship would bring real benefits to UK and Swiss consumers and firms.**

## Core Industry Objectives

Top line industry objectives for UK-Switzerland negotiations.

### **Conclude a Mutual Recognition Agreement in Financial Services**

An MRA should be broader and more ambitious in scope than the previous sector specific MRAs the UK has concluded in the past. Ideally, a UK-Switzerland MRA should cover banking, insurance, asset management and capital markets activity. It should also establish the principles and cadence for future UK-Swiss cooperation both bilaterally and in multilateral fora in areas including innovation and sustainability.

### **Rolling over the Services Mobility Agreement**

The UK-Switzerland Services Mobility Agreement expires on 31 December 2022. This needs to be extended as a matter of urgency. Looking ahead, the SMA should be incorporated and future proofed within an FTA.

### **Secure cross-cutting trade enabling issues through an enhanced Free Trade Agreement**

An enhanced FTA should address cross-cutting issues including mobility, data flows and digital trade, and mutual recognition of professional qualifications.

**An enhanced FTA should address cross-cutting issues including mobility, data flows and digital trade, and mutual recognition of professional qualifications.**

## Detailed background analysis index

Over recent years, the UK-based FPS sector has developed a body of analysis identifying the industry's numerous objectives for UK-Swiss services trade. The information below is compiled through analysis produced by the City of London Corporation, TheCityUK, and the Professional Business Services Council (PBSC).

### 1. A UK-Switzerland Mutual Recognition Agreement: Structure and content

A Mutual Recognition Agreement (MRA) in financial services would operationalise a more constructive way of working, with mutual trust in respective regulatory regimes freeing up cross-border access between two parties without impinging upon regulators' independence.

[Click here for more information](#)

### 2. Regulatory cooperation

The main barriers to trade in high-value services are regulatory. Growing and supporting UK-Swiss trade in FPS will require regulatory cooperation and alignment.

[Click here for more information](#)

### 3. Mobility

Access to the world's best talent, and a capacity to move highly skilled labour between the UK and Switzerland is of paramount importance to the UK-based FPS sector.

[Click here for more information](#)

### 4. Data and digital

Financial Services is one of the most data intensive trading industries. The free movement of data across borders is integral to digital trade, the growth of the FPS sector and the ability of UK-based firms to grow internationally.

[Click here for more information](#)

### 5. Sustainability

Negotiations should lay the foundations for future UK and Switzerland collaboration on green and sustainable finance issues both at a bilateral and multilateral level.

[Click here for more information](#)

### 6. Mutual Recognition of Professional Qualifications (MRPQs)

Securing overseas recognition of UK professional qualifications allows UK professionals to have their expertise recognised in other jurisdictions and provide services more easily. This is especially important for professional services providers including lawyers and accountants.

[Click here for more information](#)



## 7. Cross-border market access

An FTA could support and complement MRA objectives by binding Switzerland's post-GATS liberalisation and further liberalising cross-border trade in areas which fall out of an MRA scope.

[Click here for more information](#)

## 8. Commercial presence

FTA negotiations should seek legally binding commitments to facilitate commercial presence.

[Click here for more information](#)

## 9. Investment protection

Investment protection mechanisms ensure that all overseas investors enjoy protection against expropriation, or government or regulator action bearing upon the use or value of their overseas investments.

[Click here for more information](#)

## 10. Domestic regulation

Negotiations can help ensuring that domestic regulation which impacts services trade such as licensing, authorisations, procedural benchmarks, and publication of relevant information do not become an unnecessary barrier to services trade.

[Click here for more information](#)

## 11. Tax

Different taxation structures create barriers to services trade between the UK and Switzerland.

[Click here for more information](#)

## 12. Public procurement

UK-Swiss negotiations should seek to ensure that as many FPS procurement services as possible are made open to UK businesses, and that the thresholds for public procurement rules to apply are as low as possible.

[Click here for more information](#)

## 13. Intellectual property

The financial and related professional services industry has important interests in services-related intellectual property.

[Click here for more information](#)

**Over recent years, the UK-based FPS sector has developed a body of analysis identifying the industries numerous objectives for UK-Swiss services trade.**

## Detailed background analysis

### 1. A UK-Swiss Mutual Recognition Agreement in Financial Services

#### Background

Mutual Recognition Agreements (MRAs) are trade agreements aiming to facilitate market access and encourage greater international coherence of compliance standards. MRAs can reduce some of the burden on regulators by avoiding duplicate reporting, monitoring and registration of firms.

There are two main types of MRA – ‘traditional’ MRAs and ‘enhanced’ MRAs. A traditional MRA would not require states to harmonise their rules or to recognise each other’s requirements as aligned. The agreement would be limited to recognition by one state of the other state’s competence to assess products as compliant with the relevant rules. By contrast, under an enhanced MRA, the rules of another state may be recognised automatically. An enhanced MRA would be concluded either on the basis of a broad and deep regulatory alignment or on the basis of international standards. This would be based on harmonised, outcomes-based, common regulatory outcomes rather than a direct harmonisation of individual rules.

The basis for mutual recognition is paragraph 3 of the GATS Annex of Financial Services. This Annex allows Members to establish unilateral or mutual recognition arrangements subject to some limited restrictions (including the requirement to afford adequate opportunities for other Members to demonstrate that similar circumstances exist to enable them to benefit from recognition on the same terms, although Members are permitted to refuse to grant recognition on prudential grounds).

As of 30th June 2020, both the UK and Switzerland have agreed to pursue the mutual recognition of each other’s regulatory and supervisory regimes to deepen cooperation

of financial services<sup>2</sup>, specifically in the fields of insurance, banking, asset management and capital markets (including market infrastructure). This proposed MRA would break new ground in terms of scope and set precedent beyond existing MRAs which have tended to apply to certain specific sectors or products<sup>3</sup>.

The UK and Switzerland announced progress on the MRA in December 2021. Next steps include negotiating the legal text based on the mutually agreed principles with the negotiations estimated to conclude at the end of 2022.

Frameworks going beyond deference were initially discussed in the 2017 IRSG paper *‘Mutual Recognition – a basis for market access after Brexit’*<sup>4</sup> in the context of the future UK-EU relationship. In this paper, the IRSG outlined a framework for mutual recognition that goes beyond other FPS arrangements seen. It notes that existing regimes based on substituted compliance or equivalence run the risk of focussing narrowly on line-by-line equivalence of rules rather than on the broader outcomes. The paper suggests possible criteria for access, the mechanisms for maintaining regulatory alignment, and how possible disputes between the parties in relation to access could be resolved.

A regime based on mutual recognition (rather than strict equivalence) would also offer the UK increased flexibility as it continues to review and revise its financial regulatory framework and moves towards a system that grants a high

2 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/896778/Joint\\_Statement\\_between\\_Her\\_Majesty\\_s\\_Treasury\\_and\\_the\\_Federal\\_Department\\_of\\_Finance\\_on\\_negotiating\\_a\\_Mutual\\_Recognition\\_Agreement\\_on\\_financial\\_services.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/896778/Joint_Statement_between_Her_Majesty_s_Treasury_and_the_Federal_Department_of_Finance_on_negotiating_a_Mutual_Recognition_Agreement_on_financial_services.pdf)

3 An example could be the UK Financial Conduct Authority and Hong Kong Securities and Futures Commission MOU concerning the Mutual Recognition of Funds of 2018. <https://www.fca.org.uk/publication/mou/mou-sfc-fca.pdf>

4 IRSG’s “Mutual recognition – a basis for market access after Brexit”. <https://www.irsg.co.uk/assets/IRSG-Report-on-Mutual-Recognition-a-Basis-for-Market-Access-after-Brexit.pdf>

degree of discretion to the UK regulators to impose requirements through their rulebooks.

### Mutual Recognition as a concept

Key principles for supervision<sup>5</sup>

Ideally a Mutual Recognition Agreement would operate on the basis of deference by each supervisory authority to the rules and supervision of the other.<sup>6</sup> The International Organisation of Securities Commissions (IOSCO) outlined a series of deference principles to ensure successful mutual recognition.

- Outcomes-based – evaluating outcomes and not the method. This allows for flexibility for both systems to evolve over time as long as they achieve a consistent outcome.
- Risk-sensitive – the extent of recognition allowed is proportionate to scale of the regulatory risk.
- Transparent – ensuring all parties are informed about processes around deference determination and any upcoming changes to recognition.
- Cooperative – maintaining strong, ongoing supervisory collaboration between regulatory bodies.
- Sufficiently flexible – understanding that both regulatory and legislative landscapes will evolve over time, and embed flexibility such that the MRA will not need to be negotiated and recognition can continue.

By applying these principles during negotiations and implementation, both the UK and Switzerland can be assured of a progressive and world leading agreement. Several major benefits include:

- **Allowing national regulators the freedom to design market-specific regulation without risking market access.** The closer an agreement comes to requiring strict line-by-line equivalence, the less flexibility is built in for regulators. Regulators will continuously evolve their frameworks to meet the demands of the changing

financial markets, and both governments and industry cannot afford for trade arrangements to hinge on a repeatedly in-use review mechanism: a discouraging outcome for long-term business investment. Equivalence-based trade deals also risk leaving policy stagnant and hinders progress in a fast-moving sector. However, this can be avoided. By ensuring the regulators continue to work well together and sufficient exit mechanisms remain, trust will grow between regulators. In turn, this will increase risk appetite to match the reward industry is seeking.

- **Reduces fragmentation and complications for businesses** – with mutual recognition, as long as firms are conducting their business in compliance with the rules of one trustworthy and mature regulator, the quantity of compliance mechanisms and procedures will reduce. As a result, fewer businesses would withdraw from markets due to additional regulatory complications and costs. Reducing fragmentation should be the overall goal of established countries as it reduces financial instability in their markets.
- **A boost to client choice** - reducing barriers and opening markets can support client choice. Mutual recognition supports international firms moving into new markets thus opening routes for clients.

Implementing mutual recognition can be challenging. In negotiations, there is a natural tendency to lean towards equivalence models and making detailed comparisons as it is safer territory for regulators. Sufficient political will on both sides is required to achieve mutual recognition and secure its rewards. IOSCO has outlined a series of good practices during the assessment of 'deference':

- General and specific analyses of foreign securities laws, regulations, requirements, and standards, both as written and implemented.
- The level of investor protection in the foreign jurisdiction.
- Enforcement capability of the foreign jurisdiction.

<sup>5</sup> <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD659.pdf>

<sup>6</sup> FR06/2020 Good Practices on Processes for Deference (iosco.org)

- The level of supervisory oversight in the foreign jurisdiction.
- Legal framework for and implementation of international co-operation.
- Analysis of results from standardised assessments by international organisations.
- Membership and status in international organisations, regional communities, or groups.

These principles are derived from previous successful negotiations and industry encourages regulators to revisit these principles during the next stages of the MRA negotiations to optimise the deference in the agreement.

### Framework for a Mutual Recognition Agreement

Models of mutual recognition arrangements

While negotiators have not yet released the chapter outline of the mutual recognition agreement, there are various content suggestions for successful regulatory and supervisory cooperation. This will outline standards which SIF and HMT will expect their regulators to uphold as part of the agreement.

HMT has suggested the agreement will be underpinned by an institutional framework, including mechanism for recognition of evolving supervisory and regulatory regimes, and a transparent approach to withdrawing recognition.

All regulators should align with a consistent set of principles of cooperation. This may include:

- **Commitment to 'deference':** Ongoing commitment to deference as the basis for regulatory cooperation. Where international principles such as IOSCO Principles exist for a particular activity, deference may be based on the compliance of each jurisdiction with those international principles.
- **A system for periodic review:** A process for review of updates to regulation and guidance in order to determine whether any updates might compromise mutual recognition.
  - This should arrive with sufficient warning

time with the option to appeal/review the circumstances if further evidence is provided.

- Processes to re-align should be a priority over termination of the agreement, particularly during the review period.
- **Regulatory cooperation:** Including a clear structure of working groups and commitments at both official, working level and senior decision making, with a clear cadence between meetings.
  - Industry asks to ensure public-private sector dialogue features within the regulatory cooperation.
  - Transparent regulatory cooperation fora, based on a technical assessment of materiality, and should be expertise-led. This could include a regulatory Forum with additional technical meetings, committee at finance ministers/ Commissioner/broader political level, and be supported by various sub-committees as appropriate.
- **Commitment to cooperation during critical periods and outline processes/ extent of powers:**
  - Each party should be clear on who is responsible in each situation and their rights in relation to each firm.
  - While the mutual recognition agreement is built on trust between two mature regulators, difficult situations should be outlined clearly to ensure fair and proportionate actions in extremis.
- **Respecting the sovereignty of each regulator to regulate,** but within a set of principles (e.g. with consistency, proportionality, accuracy).

There should also be a substantial, fair, independent, and prescriptive **dispute resolution system** in the situations where regulators and supervisors do not agree. This should include an appeals mechanism.

Given the ambition of industry with this agreement, we anticipate that the recognition agreement will extend to cover all four modes of supplying services.

## Key issues to be considered in relation to the MRA

It will be necessary to identify what activities or products would be subject to mutual recognition and on what basis (e.g., benchmarking against international standards or an assessment that the UK and Swiss rules are broadly aligned – i.e., they have consistent regulatory objectives and aim to deliver comparable outcomes rather than being strictly “equivalent”).

The table below provides an example of this process with respect to banking, capital markets and investment services.

ISSUE AREA	BACKGROUND
<b>Authorisation</b>	<p><b>Example</b></p> <p>Authorisation requirement for carrying on investment services by way of business</p>
	<p><b>Basis for mutual recognition</b></p> <p>Both the UK and Switzerland have licensing regimes for broker-dealer business that are broadly comparable to EU MiFID.</p> <p>No relevant international standards</p>
	<p><b>Other issues to consider</b></p> <p>A firm that benefits from mutual recognition would not need to seek authorisation (either for a branch or cross-border business) in the other jurisdiction. Notification procedure may be necessary.</p> <p>The UK / Switzerland would need to consider how to deal with activities that are subject to authorisation in one jurisdiction but not in the other.</p>
	<p><b>Advantages / disadvantages</b></p> <p>For cross-border business into the UK, the main advantage of an MRA would be the potential to create more flexibility in dealing with certain client types (e.g., high net worth clients) than is currently available under the UK’s cross-border regime.</p>

**ISSUE AREA**

**BACKGROUND**

**Conduct of  
business  
regulation**

**Example**

Requirements around treating customers fairly, client reporting obligations, documentation and record keeping obligations

**Basis for mutual recognition**

Both the UK and Switzerland have licensing regimes for broker-dealer business that are broadly comparable to EU MiFID.

No relevant international standards

**Other issues to consider**

A firm that benefits from mutual recognition should also not be required to comply with local conduct of business and organisational requirements.

The relevant NCA would therefore need to ensure its protection mechanisms can support investors on either side (a Swiss investor in the UK would be protected by the UK and vice versa).

Where requirements vary depending on client type, the MRA should address whether business with all client types is subject to mutual recognition or only business with some client types.

For example, additional protections may be available to retail clients or consumers. The MRA should take into account whether mutual recognition is appropriate for all client types. The MRA could also distinguish subsets of client types (e.g., high net worth clients) who may technically benefit from additional protections but where mutual recognition may be appropriate.

**Advantages / disadvantages**

Non-UK firms that provide cross-border business under the scope of the UK's cross-border regime are not currently subject to UK conduct of business obligations in any event.

The main advantage of mutual recognition would be increased flexibility as discussed above.

ISSUE AREA	BACKGROUND
<p><b>Prudential regulation</b></p>	<p><b>Example</b></p> <p>Capital requirements, liquidity requirements</p>
	<p><b>Basis for mutual recognition</b></p> <p>Basel Capital Accords</p>
	<p><b>Other issues to consider</b></p> <p>A firm that benefits from mutual recognition should not be required to comply with local prudential regulation.</p> <p>We understand that the mutual recognition agreement would primarily relate to cross-border provision of services. A firm with a branch in the UK or Switzerland may be subject to some local prudential regulation, and a firm that operates as a separate legal entity in Switzerland or the UK should be subject to the same prudential regulation as any other Swiss or UK entity.</p>
	<p><b>Advantages / disadvantages</b></p> <p>Non-UK firms that provide services in the UK under the UK's cross-border services regime are not currently subject to UK prudential regulation.</p> <p>The main advantage of mutual recognition would be increased flexibility as discussed above.</p>
<p><b>Financial promotion</b></p>	<p><b>Example</b></p> <p>Promotion of the firm's own services and products</p>
	<p><b>Basis for mutual recognition</b></p> <p>No relevant international standards</p>
	<p><b>Other issues to consider</b></p> <p>A firm that benefits from mutual recognition should be permitted to market its own services in the relevant jurisdiction.</p> <p>Exemptions may be required if the service is not permitted in the other jurisdiction.</p>
	<p><b>Advantages / disadvantages</b></p> <p>Non-UK firms that provide services in the UK under the UK's cross-border services regime are typically also exempt from the restriction on financial promotions.</p> <p>The main advantage of mutual recognition would be increased flexibility, as discussed above.</p>

**ISSUE AREA**

**BACKGROUND**

**Consumer protection**

**Example**

Consumer credit regulation, unfair terms in consumer contracts, deposit protection, investor protection

**Basis for mutual recognition**

No relevant international standards

**Other issues to consider**

The UK and Switzerland would need to agree whether consumer protection regulation is also subject to mutual recognition or if they would want UK consumer credit protections to be broadly equivalent to those under Swiss law (and if so whether these would address contract law protections as well as regulatory protections).

**Advantages / disadvantages**

UK consumer protection requirements are not currently subject to specific exemptions or relief (although many will only apply to English law agreements or to services provided through a UK establishment).

Mutual recognition could provide some additional flexibility here.

**Insolvency / resolution**

**Example**

Bank Recovery and Resolution Directive (BRRD)

**Basis for mutual recognition**

IOSCO Principles for Effective Resolution Regimes

No general international standards for insolvency regimes.

**Advantages / disadvantages**

The insolvency or resolution regime in the UK / Switzerland may be part of the reason why the jurisdiction was assessed as offering mutual recognition. However, any MRA may wish to stop short of a commitment to recognise and give effect to any resolution action taken against the entity (e.g., resolution authorities in the UK and Switzerland will not necessarily want to commit to recognition of each other's resolution action ahead of time).

Where a Swiss entity operates through a UK branch, the PRA will 'look through' to the home regulator's regime and ensure that it is content with the whole entity's compliance with this.



**ISSUE AREA**

**BACKGROUND**

**Product  
specific  
regulation**

**Example**

Prospectus Regulations, UCITS, PRIIPs

**Basis for mutual recognition**

No relevant international standards

**Other issues to consider**

Regulations that require specific disclosures (e.g., prospectuses, PRIIPs KIDs) or that impose specific requirements around product distribution (eg. AIFMD, UCITS) may need to be the subject of separate mutual recognition arrangements. E.g., arrangements could be put in place for mutual recognition of prospectuses / offering documents, but this recognition should not automatically follow from the fact that the issuer / product manufacturer benefits from mutual recognition for the purposes of authorisation.

Where existing equivalence or recognition regimes exist, the UK / Switzerland should consider whether to continue to make use of these regimes rather than replace them with the mutual recognition agreement. They should also consider whether the mutual recognition agreement is consistent with these regimes or whether the regimes need to be repealed in order to allow the mutual recognition agreement to take effect (e.g., is retaining an equivalence regime while entering into mutual recognition arrangements consistent with GATS).

Product distribution rules (UCITS, AIFMD, product specific restrictions/bans) should be considered further; it is key that the right approach is found here as these limitations apply on top of the licensing question.

**Advantages / disadvantages**

Mutual recognition may offer a solution that is less complex than the current regimes for cross-border product regulation.

**ISSUE AREA**

**BACKGROUND**

**Recognition  
of market  
infrastructure**

**Example**

Equivalence / recognition of CCPs, CSDs, trade repositories, benchmark administrators, credit rating agencies

**Basis for mutual recognition**

IOSCO principles exist in some cases (e.g., PFMI, Principles for Financial Market Infrastructure)

**Other issues to consider**

As above, where existing equivalence or recognition regimes exist, the UK / Switzerland should consider whether to continue to make use of these regimes rather than replace them with the mutual recognition agreement.

The UK / Switzerland would also need to consider what other provisions of domestic law are connected to the relevant equivalence or recognition regimes and what the impact would be of establishing mutual recognition instead of following an existing equivalence regime (e.g., QCCP status under UK CRR, which follows from Art 25 equivalence under UK EMIR).

If the FMI operator wanted to operate in the other jurisdiction it would need to seek necessary approvals from the host.

If the operator wanted recognition from the other jurisdiction and the existing authorisation mechanisms in place offer same outcomes, then they would not need to seek authorisation and oversight would be handled by the home regulator.

**Advantages / disadvantages**

Mutual recognition would have the benefit of being less complex than the current patchwork of equivalence and recognition regimes. However, it would be necessary to consider any unintended consequences of amending the existing regimes.

**Other**

**Example**

Market abuse, short selling, position limits, pre and post trade transparency

**Basis for mutual recognition**

No relevant international standards

**Other issues to consider**

Not appropriate for coverage within a mutual recognition agreement

## Complementing and future-proofing an MRA with an enhanced Free Trade Agreement

Enhancing the existing UK-Switzerland Free Trade Agreement (FTA) would address many of the cross-cutting issues so important to international services trade which an MRA would not cover. An enhanced FTA would also future-proof the UK-Switzerland MRA by providing a framework into which an MRA could fit.

### 2. FTA provisions covering regulatory cooperation

- The industry expects the MRA to include provisions and mechanisms for regulatory cooperation. In the case of the UK-Switzerland FTA, given the close relationship between UK and Swiss financial regulators and the fact that the MRA negotiations will take place before FTA negotiations, industry would urge that the regulatory co-operation FTA chapter makes explicit mention of the MRA and provides some basic governance for it, for example by noting some basic terms of reference for the MRA and noting that UK and Swiss regulators will meet on a regular basis (at least annually) to discuss matters arising under the MRA, and consult with industry and other civil society stakeholders as part of the process.

### 3. FTA provisions covering mobility issues (Mode 4)

- FTA negotiations represent an opportunity to develop much-needed policy stability and continuity around UK-Switzerland labour mobility routes. Under the UK-Switzerland Services Mobility Agreement (SMA) 2020, service-providers of both countries can benefit from visa-free travel arrangements for up to 90 days. An MoU between the two countries grants additional permits for UK nationals in Switzerland for up to 3500 workers, comprised of 2100 residence permits and 1400 short-term permits. In the first instance, we would support the extension of the SMA beyond its current time limit.
- The SMA's sunset clauses mean it is frequently under review, making SMA routes an unstable, long-term investment for businesses to adopt. Similarly, the UK-Swiss MoU provides that grants of additional permits for UK nationals are renewed on a yearly basis. Agreements that operate at short notice are consistently unfavourable to the sector which plans on a much longer-term basis.
- Industry would welcome efforts to broaden the definitions of mobility categories under the SMA so that investors and intra-corporate transferees (ICTs) could make use of the SMA. Business would also welcome more clarity on the treatment of cross-border remote workers and short-term business visitors. The UK should push Switzerland to expand its definition of ICTs. Negotiators should seek a broader range of ICT categories, recognising the benefits to both sides from collaboration and training. Simplified and expanded agreements will encourage business to make increased use of the mobility provisions.
- For the future migration regime between Switzerland and the UK, both countries should extend the length of stay for UK professionals of all categories further than was agreed in the SMA. It is vital that all FRPS practitioners are included within all relevant categories of UK professionals permitted to work in Switzerland, including legal services professionals. The UK and Switzerland should mutually agree faster turnaround times for business visas and reduce the costs to businesses of sponsoring high-skilled work visas. Visa application fees should not exceed the cost of processing an application.

- In addition, negotiations should pursue the following goals.<sup>7</sup>
  - Mutually agree a new flexible work/travel visa that combines the efficiency of a visa-free business travel regime with the flexibility of a short-term work scheme.
  - Mutually agree more flexible ICT visa requirements.
  - Mutually agree a list of permissible activities for high-skilled work visas that is at least as clear and comprehensive as that contained within the UK's own immigration rules.
  - Mutually agree a youth mobility scheme (YMS) which reduces the burden on costly visa sponsorship routes.
- recognise the international validity of e-signatures, digital authentication and electronic contracts and provide for electronic invoicing;
- protect confidential information relating to software, source codes and encryption technologies by:
  - prohibiting requirements for source code disclosure or transfer as a condition for market access;
  - prohibiting governments from requiring the disclosure of algorithms expressed in source codes except in certain clearly defined and restricted circumstances; and
  - prohibiting governments requiring technology transfer or access to proprietary information for products using cryptography.

#### 4. FTA provisions covering digital trade

- Digital trade restrictions make it hard for UK-based FPS firms to service international customers and clients with new technology solutions. The UK should take the opportunity of FTA talks to secure commitments from Switzerland to support an open approach to digital trade.
- In particular, the UK should seek to include the following measures in a new FTA:
  - prevent cross-border data flow restrictions, including restrictions on transferring financial data across borders;
  - prevent unjustified data localisation requirements which compel business to store data originating in a particular jurisdiction on servers located within that jurisdiction, and ensure that financial services are not excluded from agreements on localisation;
- Secure a Permanent agreement not to impose customs duties on electronic transmissions; and
- cooperate on consumer and business safeguards.
- As outlined in a recent City of London report on *'The Practical Implications of Digital FTA Provisions on the UK Financial Services Sector'*<sup>8</sup> provisions as those highlighted above benefit firms by 'locking in' openness and best practice. FTA provisions can, however, be significantly undermined by a lack of government and regulator buy-in, and a litany of carve outs and exceptions. Given the UK and Switzerland's common goal of trade liberalisation, both countries should ensure their digital trade commitments deliver tangible commercial benefits for financial services firms. The UK and Switzerland should:
  - Involve financial regulators in defining negotiation terms and objectives. This would allow for a greater level of specificity in the negotiation

<sup>7</sup> More detail around these recommendations can be found in International trade agreements and UK immigration policy: a practical blueprint for evolution (September 2020, TheCityUK and EY), available at: [International-trade-agreements-and-UK-immigration-policy-a-practical-blueprint-for-evolution.pdf](https://www.thecityuk.com/research/global-talent-mobility-ensuring-uk-competitiveness-one-year-on-our-scorecard/) (thecityuk.com). Please see also: Global Talent Mobility: Ensuring UK competitiveness (September 2021, TheCityUK, the City of London Corporation, and EY), available at: <https://www.thecityuk.com/research/global-talent-mobility-ensuring-uk-competitiveness-one-year-on-our-scorecard/>

<sup>8</sup> <https://www.cityoflondon.gov.uk/assets/Business/digital-fta-provisions.pdf>

and the direct linkage of trade provisions to existing and proposed regulatory interventions. Involving financial regulators to help develop the detail around their role within the agreement would also ensure that they have a vested interest in the full implementation of digital commitments, and increase their level of comfort with commitments made.

- Build regulatory processes around specific concrete commitments. Carve-outs and exceptions mean that there is little obligation on financial services regulators to accommodate new FTA commitments, or alter pre-existing approaches, unless they want to do so. Trade agreements should clearly outline the conditions applicable to financial data, provide clarity on how terms within the agreement should be interpreted by regulators and the parties, and be constructed in a way to limit the scope for de-facto data localisation.
- Include a formal mechanism for firms to escalate complaints. The FTA should expand on the existing consultation provisions for financial services – which only allow governments to raise concerns – and include a consultation mechanism for relevant stakeholders and firms themselves. Such a mechanism should have a formal governance framework that sets the process for good faith engagement and structured escalation, allowing stakeholders to flag and challenge both existing and emerging concerns.
- Prioritise data adequacy. Financial data is increasingly caught up in the rules governing, and restricting, the cross-border transfer of personal data. The UK should also be careful to maintain existing data adequacy arrangements with the EU and Switzerland to enable personal data to flow between the UK and Switzerland in frictionless ways.
- Looking to the future, in the FTA the

UK and Switzerland should establish regulatory dialogues or cooperation arrangements on e-commerce issues such as cyber-security, Digital Identities, FinTech, LawTech, AI and other emerging technologies. The goal should be to foster more regulatory alignment in these areas.

## 5. Sustainability: Using an FTA and other mechanisms to ensure alignment

- The UK and Switzerland should work together to develop aligned approaches to green and sustainable finance. Both countries should recognise the validity of one another's ESG standards. The UK has requirements already for premium listed companies to disclose their consistency with Task Force on Climate-Related Financial Disclosures (TCFD) requirements in their annual reports and it would be helpful if the Swiss regulators could recognise the validity of this approach. The UK has also committed to using International Sustainability Standards Board (ISSB) standards as the backbone to its disclosure regulations and should use regulatory dialogues to urge Switzerland to follow a similar approach. When discussing joint efforts to shape green taxonomies, the UK and Switzerland should aim to shape taxonomies that are compatible with the EU taxonomy while learning from some of the challenges industry has had with working on some of the more prescriptive elements of the EU taxonomy.
- The FTA should include commitments (perhaps in a financial regulation chapter or annex) that encourage UK and Swiss regulators to develop more aligned approaches towards sustainable finance, especially on green finance disclosure standards, green ratings, and green taxonomies, to facilitate trade in environmental services, build scale in green finance markets, and support the green transition. The agreement should also seek the liberalisation of trade in wider environmental services.
- The FTA should provide for industry

engagement in these regulatory dialogues: industry involvement is vital, not least because it would allow UK and Switzerland financial regulators to learn about the financial and professional services industry's experiences of eliciting carbon emissions data and other kinds of ESG reporting data from businesses in a wide range of real economy sectors in the UK and Switzerland. It is important that governments build an evidence base about ESG reporting to inform future policymaking in this area.

## 6. FTA provisions covering mutual recognition of professional qualifications (MRPQs):

- On the Mutual Recognition of Professional Qualifications (MRPQs), the UK and Switzerland agreed that their professionals would continue to have their qualifications recognised where they obtained a recognition decision before the date that the Citizens' Rights Agreement came into force in January 2021; and that, provided they have obtained a qualification or were in the process of obtaining one by the date the agreement comes into force, they would have a four year grace period to start the application process for a recognition decision. The UK government put in place a new temporary general system of recognition for EEA and Swiss qualifications upon leaving the European Union. But this was a time-limited agreement. The UK now needs to renegotiate arrangements for continuation of MRPQs with Switzerland. Renegotiating such arrangements is especially important in the legal services and statutory audit sector. The legal services sector, in particular, would welcome the replication of the provisions of the CRA and SMA (see further under legal services asks below).
- Some aspects of MRPQ may be taken forward in the MRA and industry would welcome this where possible. But the UK should push for ambitious ground rules on MRPQs in the UK-Switzerland FTA. UK negotiators should deliver a clear path for the recognition of UK professional

qualifications (auditors etc) when UK professionals seek to both demonstrate eligibility for employment and the related work permits based on the comparability of their professional qualifications, and enter Swiss regulated professions. If an MRPQ framework is agreed, the UK should provide guidance to UK regulatory authorities and professional bodies on how best to take advantage of the framework.

- Given that Swiss professional standards are sometimes at cantonal level, decisions about recognising qualifications may sometimes need to take place at cantonal level. However, the FTA should provide a clear framework for MRPQ discussions and permit relevant authorities to engage in discussions on market access and requalification systems with their counterparts. A helpful precedent to consider when considering how to structure FTA provisions around MRPQ is the UK-EEA EFTA FTA. This agreement created a mandatory recognition system, noting that authorities of one party must recognise professional qualifications obtained in the other party, subject to certain conditions being met. This mandatory recognition system is strongly preferable to simply establishing a framework for considering future potential MRPQ, which was the approach set out in the UK-EU TCA.

## 7. FTA provisions covering cross-border market access (Mode 1)

- An FTA could support and complement MRA objectives by binding Switzerland's post-GATS liberalisation and further liberalising cross-border trade in areas which fall out of an MRA scope.
- Under the GATS, restrictions on cross-border fire and natural damage insurance and aviation insurance are in place; membership in stock and options and futures exchanges and participation in settlement and clearing networks requires a commercial presence in Switzerland; mutual funds have to be lead-marketed through banks having a commercial

presence in Switzerland; and Swiss franc denominated issues can be lead managed only by a bank having a commercial presence (registered office or branch office) in Switzerland.

## 8. FTA provisions covering commercial presence (Mode 3)

- An FPS firm benefiting from mutual recognition would not need to seek authorisation either for a branch or subsidiary in the other jurisdiction (though notification procedure may be necessary). The UK should still seek to secure as many legally binding commitments from Switzerland to facilitate commercial presence as possible.
- Switzerland is generally open to international business establishment, although there are still some restrictions that make it harder for a UK business to operate in market. For example, at least one manager of a foreign-owned bank branch must be resident in Switzerland and the majority of the board of directors of a Swiss financial services subsidiary must have citizenship in an EU or EFTA country. Public monopolies still exist for fire and natural damage insurance in 19 cantons and for the insurance of workplace accidents in certain industries. Moreover, the acquisition and use of land and real estate by foreigners is restricted for some overseas FRPS businesses. Industry would favour the removal of these trade barriers.

## 9. FTA provisions covering investment and investment protection

- It should be a UK policy priority to ensure that all UK overseas investors, including financial services businesses, enjoy protection against expropriation or government or regulator action bearing upon the use or value of their investment. Such measures will help UK businesses have the confidence to expand in overseas markets and, when reciprocated by the UK, will attract more investment to the UK.

- While Switzerland offers good levels of investment protection, as a matter of good practice the UK should push for investment protection for UK business assets in the market.
- To attract more investment from Switzerland based businesses and financial institutions, the UK should continue to implement policies that promote its international competitiveness, such as implementing the recommendations of Lord Hill's review of UK capital markets (to attract more international listings), reducing the disproportionate levels of tax on the UK financial services industry (to attract more FDI into the industry), implementing the new investment screening regime set out in the National Security and Investment Act 2021 in an investor-friendly way, and making it easier for UK businesses to attract and employ high-skilled international talent.

## 10. FTA provisions on domestic regulation

- The 2019 WTO World Trade Report found that the costs of trading services are about twice as high as trade costs for goods. A significant portion of these costs are the result of regulatory divergence, as well as opaque regulations and cumbersome procedures. Ensuring that domestic measures which impact services trade such as licensing, authorisations, procedural benchmarks and publication of relevant information do not become an unnecessary barrier to services trade should be a core component of any UK-Swiss trade agreement.
- At a minimum, the UK should seek to incorporate the recently agreed Joint Statement Initiative on Domestic Regulation into the revised UK-Switzerland trade agreement. Ensuring robust commitments on Domestic Regulation will aid any regulatory cooperation which has been set out in this consultation response.

## 11. FTA provisions on taxation

- Industry have reported difficulties in cross-

border taxes in Switzerland, particularly in navigating the federal-canton split. Industry has specifically recommended further clarification around which tax-collecting body is responsible across each canton. One other particular tax issue with secondees is generating challenges for firms. There is a lack of clarity around whether secondees, whilst employed in the UK, will be demanded to continue paying Swiss tax. In implementing FTA and MRAs, there needs to be regard for any challenges facing industry that arise with the devolved canton structure.

- The investment sector has over the years struggled to access certain Articles of the UK / Swiss Double Tax Convention. The Swiss approach to common double tax entitlements for investment funds is different from international norms. This means that for the over £31bn worth of UK investment in Switzerland via collective investment schemes, investors are suffering higher rates of Swiss tax than they should ordinarily. The UK should compel Switzerland to recognise the tax entitlement of common forms of UK-based investment funds under the tax treaty and adopt internationally established and accepted OECD standards to facilitate double tax relief.

## 12. FTA provisions on public procurement, subsidies and competition issues

- Switzerland is a member of the WTO Government Procurement Agreement (GPA) and generally has competitive procurement regimes. However, there are still some explicit preferences for local suppliers in procurement matters, especially at the cantonal level, and procurement processes below the value thresholds agreed to in the GPA continue to set the conditions of competition in ways that favour local firms.
- The UK should try to get detailed commitments from Switzerland to create more contestable public procurement markets that relate to services. National, cantonal and city state procurement

should be equally accessible to UK services businesses. The UK should seek to ensure that as many financial and professional services procurement services as possible are made open to UK businesses, and that the lower bound threshold for public procurement rules to apply are as low as possible.

## 13. FTA provisions on intellectual property

- The financial and related professional services industry has important interests in services-related intellectual property. These interests arise in relation to, for instance:
  - FinTech;
  - IP in services products, including electronic versions of products
  - Product names
  - IP in IT connected with selling and managing products (for example, robo-advisers and on-boarding)
  - Trade secrets: this is increasingly relevant for the industry and covers situations such as to what extent employees of an FRPS business who helped develop an algorithm for their employer can take their knowledge/know-how of the algorithm creation process with them to a new employer
  - Other IP (for example, business names, logo design).
- Switzerland offers strong protections for intellectual property and has agreed to the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. It is important that any new UK-Switzerland FTA not only confirms TRIPS commitments but also includes safeguards to prevent theft of trade secrets, including by cyber theft and to cover digital IP issues too (i.e. to protect IP related to source codes and algorithms). The circumstances where disclosure of source codes and algorithms may be required should be clearly set out. The information disclosed should remain confidential and must not be shared with domestic competitors.



## Next steps

The City of London Corporation, TheCityUK and the Professional Business Services Council stand ready to support both UK and Swiss Governments in delivering these objectives. This report, and our previous work, have highlighted the economic and strategic importance of the UK-Switzerland relationship for the Financial and Professional Services sector. Looking ahead, we believe that continued dialogue between government and industry will be vital as we develop and implement the mechanisms for deeper integration. We look forward to facilitating this collaboration.

Success will deliver real benefits to business and consumers in both countries, and position the UK and Switzerland as champions of open international services trade as an engine of growth and prosperity.

## Acknowledgements

The City of London Corporation, TheCityUK and the Professional Business Services Council would like to thank all contributors to this report and those who have given their time to discuss its contents over the recent past. Without their invaluable and detailed insights, the production of this research paper would not have been possible.

The City of London Corporation would like to extend specific thanks to Clifford Chance for analysis of potential UK-Switzerland Mutual Recognition arrangements, and to Lily Furber from the UK Civil Service Fast Stream whose invaluable analysis on the holistic UK-Switzerland services trading relationship underpinned much of this report.

### **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:

- Contribute to a flourishing society
- 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.

