RegCORE – Client Alert

Berne meets Basel via Brussels - How access rights under the Berne Financial Services Agreement compare to CRD VI

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Financial Services

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QuickTake

On 1 January 2026, the Berne Financial Services Agreement (**BFSA**) entered into force. The BFSA is a bilateral treaty between Switzerland and the United Kingdom (**UK**), designed to facilitate cross-border wholesale financial services (primarily investment services and insurance) between the two jurisdictions on a mutual recognition ("deference") basis.[1]

In practical terms, it is a market-access instrument that permits cross-border activity without a host-state licence in the covered sectors, but only within a tightly defined perimeter (eligible firms, eligible clients, eligible instruments/services) and with a supervisory "safety valve" through dialogue and host intervention if risks crystallise.

The BFSA is built on the principle of mutual recognition of regulatory outcomes, meaning that each party recognises the other's domestic authorisation and prudential regimes as achieving equivalent regulatory objectives in specified sectors. This approach is underpinned by robust supervisory cooperation, including formalised arrangements for information exchange, joint oversight and host intervention powers in cases of systemic risk or non-compliance.

Importantly, the BFSA does not operate in isolation. For groups with European Union (**EU**) operations, its benefits must be assessed against the backdrop of the EU's enhanced third-country framework under the Capital Requirements Directive VI (**CRD VI**) and the Capital Requirements Regulations III (**CRR III**), which has impacts to and from Switzerland inasmuch as it does vis-à-vis the UK. In particular: (a) the BFSA recognition does not mitigate or displace EU third-country branch regimes; (b) it does not relax EU expectations on booking models, substance or consolidated supervision; and (c) reliance on BFSA-enabled structures may attract heightened scrutiny from EU supervisors. The published UK and Swiss guidance on the BFSA does not alter this position. Firms should therefore avoid treating BFSA access as a workaround

[1] Announcement and underlying materials available here.

to EU regulatory constraints. The BFSA provides tangible market-access relief only for UK ↔ Swiss cross-border activity and only when the supplier is a UK or Swiss entity registered for the relevant BFSA Annex. EU firms cannot rely on the BFSA directly. An EU group can, however, obtain indirect relief by:

- using a Swiss subsidiary to access UK wholesale clients under the BFSA; or
- using a UK subsidiary to access eligible Swiss clients under the BFSA.

This can materially reduce UK/Swiss host licensing frictions for the bilateral leg, but it does not relax EU requirements on governance, outsourcing/delegation, consolidated supervision, risk booking or (for EU-facing business) CRD VI.[2]

Despite the above, the BFSA in many areas differs conceptually from the EU's CRD VI regime. As explored in dedicated thought leadership from PwC Legal's EU RegCORE[3], Article 21c CRD VI introduces a general prohibition on the direct provision of "core banking services" – namely deposit-taking[4], lending[5] and guarantees/commitments – by third-country undertakings (**TCU**s) into the EU, unless the TCU establishes an authorised (i) EU incoming third-country branch (**TCB**) or (ii) subsidiary in the relevant EU Member State. To put it differently, Article 21c CRD VI clarifies the general prohibition of direct provision of core banking services into the EU directly from third countries – i.e. without a TCB or a subsidiary in the EU as well as clarifying and harmonising several exemptions and carve-outs.[6] Article 21c CRD VI is a significant shift towards a harmonised, explicit authorisation requirement for third-country banking services, aiming to ensure regulatory oversight and financial stability within the EU.

This Client Alert assesses the legal and regulatory impact of the BFSA and the CRD VI, the differing rules on market entry, client solicitation, distribution and the key considerations both in contractual, policy documentation and other relevant arrangements relevant to market access as both regimes continue to be rolled out.

The BFSA: what it does and why it matters

The BFSA between Switzerland and the UK represents a significant development in bilateral financial services cooperation outside the EU. Since its signature on 21 December 2023, the agreement has moved beyond a purely framework-level instrument, and both Switzerland and the UK have now published guidance for financial service suppliers clarifying how mutual recognition is expected to operate in practice.

These developments materially improve transparency and predictability. However, the BFSA remains a supervisory-led, non-automatic access regime and its benefits must be assessed carefully against ongoing national requirements, supervisory discretion and – critically – the EU's post-CRD VI third-country framework.

As of January 2026, the BFSA offers meaningful opportunities for cross-border activity between the UK and Switzerland, but it does not constitute a substitute for EU market access, nor does it eliminate structural,

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[2] For investment services and asset management, EU rules permit extensive delegation and servicing from the UK/Switzerland, subject to existing third-country cooperation and oversight conditions. For banking, CRD VI does not constrain EU banks' outbound services to third countries but does constrain inbound EU business being conducted from third-country entities.

Additional alleviation may exist in market infrastructure (use of recognised UK/Swiss CCPs and venues) and portfolio management delegation. By contrast, retail insurance and consumer access remain tightly host-law driven.

[3] See here and here.

[4] Which includes "taking deposits and other repayable funds".

[5] Which includes "consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting)".

[6] Importantly, the Article 21c CRD VI regime includes several exemptions and carve outs, notably:

- **Reverse solicitation**: Where the service is provided at the exclusive initiative of the EU client or counterparty, the TCU is not required to establish a TCB. This exemption is strictly construed: any form of solicitation or intermediation by the TCU or its affiliates negates the exemption.
- **Provision to credit institutions**: TCUs may provide core banking services directly to EU credit institutions without a TCB.
- **Intra-group services**: Services provided to undertakings within the same group as the TCU are exempt.
- **MiFID carve out**: Investment and ancillary services under MiFID II (Annex I, Sections A and B) provided by third country investment firms are not affected by the CRD VI regime. Appropriate MiFID II rules (and exemptions), including on permitted reserve solicitation continue to apply to such MiFID II activity.
- **Grandfathering and/or "Acquired Rights"**: Existing contracts entered into before 11 July 2026 are protected to facilitate transition, but this is narrowly framed to prevent circumvention.

conduct or operational risk. Firms should approach reliance on the BFSA as a targeted, risk-adjusted strategic tool, not as a wholesale access solution per se.

Purpose and architecture of the BFSA

The BFSA establishes a framework for the mutual recognition of regulatory and supervisory regimes in selected financial services sectors. Its objectives include:

- reducing regulatory barriers to cross-border financial services;
- safeguarding financial stability, market integrity and client protection;
- promoting a close, stable and predictable regulatory relationship;
- creating an institutional framework for further development and expansion; and
- preserving the regulatory autonomy of both parties.

The BFSA is expressly without prejudice to the parties' obligations under the World Trade Organization (**WTO**) and other international agreements.

Sectoral scope and modularity

The BFSA is modular in design, with sector-specific annexes covering:

- asset management (marketing and portfolio management);
- banking (deposit-taking and lending, focused on business clients);
- financial market infrastructures (including Central Counterparty (**CCP**s), trading venues and Over The Counter (**OTC**) derivatives);
- insurance; and
- investment services.

For each sector, the agreement defines the scope of covered services, providers, clients and instruments. Mutual recognition is achieved either through exemptions from certain host-state requirements or through reliance on home-state law, supplemented by cooperation, notification and information-sharing obligations.

On the investment services side, the UK has deferred to Swiss authorisation and prudential measures for cross-border investment and ancillary services to wholesale clients and high-net-worth individuals, subject to the BFSA conditions and implementing UK rules. The BFSA expressly contemplates a temporary presence model for employees of the Swiss firm in the UK, provided this does not amount to a UK (regulatory) permanent establishment and is not routed through a UK branch with UK Part 4A permissions. Conversely, UK firms may provide investment services into Switzerland through "client advisers" on a temporary basis subject to notification and disclosure requirements.

On the non-life insurance side, Switzerland has deferred to UK authorisation and prudential measures for clearly defined lines of non-life insurance supplied cross-border into Switzerland to "covered clients" (large Swiss corporates meeting threshold tests), subject to eligibility criteria, registration on FINMA's register and ongoing reporting and disclosure obligations.

Operationally, the BFSA establishes streamlined notification and registration processes via Swiss Financial Market Supervisory Authority's web-based survey and application platform (**FINMA's EHP**) and the Financial Conduct Authority (**FCA**) Connect system (depending on the direction of activity and sector), with publication on public registers as the "go-live" trigger for service commencement. The process is deliberately designed to be administratively light compared to full host-state authorisation, but it is not "hands-off"; it requires accurate service scoping, ongoing change notifications and annual reporting that gives supervisors a data-driven view of cross-border business volumes and conduct indicators (including complaints). Firms must notify their home regulator, which then coordinates with the host regulator to confirm eligibility and good standing before the firm is added to the relevant public register. Only once registered can cross-border services commence. The agreement also prescribes detailed pre-contractual disclosure requirements, annual reporting obligations (including client segmentation, turnover and complaints data) and ongoing compliance with home-state conduct and prudential rules, subject to certain host-state carve-outs (e.g., for Anti-Money Laundering/Combating the Financing of Terrorism (**AML/CFT**), tax and consumer protection).

A key innovation of the BFSA is its explicit codification of host intervention powers, coupled with a mandatory dialogue and information exchange phase intended to remediate issues before restrictions are imposed. This is an important practical "price of admission": firms benefit from deference and lighter host licensing friction, but in return accept the possibility of swift host constraints (including activity restrictions, mandated disclosures to clients, register amendment/deletion and public notice) if stability, integrity or client protection concerns arise. If the host authority (FCA, Prudential Regulation Authority (**PRA**), or FINMA) identifies material risks to financial stability, market integrity or client protection, it may, after consultation with the home authority, impose proportionate restrictions or require remedial action. This mechanism ensures that deference does not come at the expense of effective supervision or systemic risk management.

For Swiss investment services firms, the BFSA provides a significant market access advantage by allowing them to serve UK professional and high-net-worth clients without the need for UK authorisation, so long as they are incorporated and authorised in Switzerland, supply the relevant services domestically and complete the required notification via FINMA's EHP platform. The FCA then registers the firm on its BFSA register, after which cross-border business can begin. This process is designed to be efficient, with clear timelines for regulatory review and registration.

Where a Swiss firm also maintains a UK branch with Part 4A permissions, the BFSA requires a clear separation of activities: the firm must allocate each activity to either the BFSA route or the branch authorisation and cannot duplicate permissions for the same service/client/instrument category. This prevents regulatory arbitrage and ensures that UK conduct and prudential rules apply only where appropriate. Firms must also be mindful of ongoing reporting and fee obligations for their UK branch activities, separate from those under the BFSA as well as any application, including on an extra-territorial basis, of UK conduct of business (Consumer Duty, Senior Managers and Certification Regime (**SMCR**) etc.) and financial crime rules.

Pre-contractual disclosures are a cornerstone of the BFSA regime and serve two functions: first, client protection (ensuring clients understand the regulatory consequences of using a cross-border supplier); and second, enforceability and perimeter control (helping prevent implicit reliance on host-state protections). For Swiss suppliers into the UK, the disclosure must prominently cover, among other matters, Swiss incorporation/authorisation and supervision, the fact the firm is not authorised/regulated in the UK for the covered BFSA service(s), the contract's governing law/jurisdiction and the non-availability of the UK compensation scheme and the Financial Ombudsman Service.

For UK insurers into Switzerland, disclosure must cover UK authorisation (not FINMA), Swiss premium tax responsibility, specific contact points and governing law/jurisdiction, with delivery in a "text form" that can be evidenced. Swiss firms must inform UK clients of their Swiss regulatory status, the absence of UK compensation and ombudsman schemes, the applicable law and jurisdiction and any limitations on their UK authorisation. These disclosures are designed to ensure client awareness and informed consent and must be provided in a durable medium before the contract is concluded.

Annual reporting is another key compliance obligation and is best viewed as part of the BFSA's supervisory bargain: deference in exchange for ongoing transparency, enabling the host to monitor scale, client mix and potential conduct concerns. For Swiss suppliers into the UK, reporting is annual by 30 April via EHP and includes client counts, total turnover and enhanced turnover breakdowns if the £50m threshold is exceeded in two consecutive periods, anonymised information on complaints of a material nature and whether title transfer collateral arrangements were used. For UK insurers into Switzerland, annual reporting to FINMA is also expected by 30 April and requires gross premium reporting above the CHF 5m threshold, with automated copies to the UK supervisory authorities. By 30 April each year, Swiss firms must submit a detailed report via the EHP platform (copied to the FCA) covering the previous calendar year. The report must include the number of clients served (by category), turnover attributable to BFSA activities (with additional breakdowns if turnover exceeds £50m in two consecutive years), material complaints and information on title transfer collateral arrangements. This data supports ongoing supervisory oversight and market monitoring.

The BFSA also provides a detailed framework for onboarding high-net-worth clients and private investment structures. Swiss firms must conduct a net asset test (typically requiring assets exceeding £2 million), assess the client's expertise and experience, obtain a signed declaration from the client requesting high-net-worth status and provide a clear written warning about the loss of UK investor protections. Clients must acknowledge these consequences in a separate document. These requirements are designed to ensure that only sophisticated clients are eligible for the lighter-touch cross-border regime and that they do so with full awareness of the risks and limitations. The published guidance assists in interpreting client categorisation for BFSA purposes but does not eliminate differences between UK and Swiss frameworks. Misclassification – particularly for high-net-worth or borderline professional clients – remains a key enforcement and litigation risk.

Additionally, the BFSA permits Swiss firms to use sub-custodians located outside the UK or Switzerland for the safekeeping of client assets, provided they exercise due skill and care in selection, maintain records of their due diligence and ensure proper segregation of client assets. This flexibility is particularly valuable for global custody chains and supports operational efficiency for cross-border asset management.

For UK insurers, Switzerland defers for specified lines of non-life insurance to large Swiss corporate clients. Eligibility requires UK incorporation/authorisation, confirmation that the insurer supplies the relevant classes outside Switzerland already, compliance with Solvency II without certain capital reliefs and registration on FINMA's BFSA register following a Connect-based notification that the PRA/FCA confirm to FINMA within 30 days. FINMA then registers within 30 further days. Pre-contract disclosures to Swiss clients must highlight UK authorisation (not FINMA), the client's responsibility for Swiss premium stamp duties, contact points for competence/complaints and governing law/jurisdiction. Annual reporting to FINMA (copied automatically to

PRA/FCA) is due by 30 April, including gross premium data by class above a CHF 5m threshold. "Untied" UK insurance intermediaries are exempt from Swiss localisation but remain subject to Swiss supervisory rules and BFSA-mandated disclosures/annual reporting.

Importantly, the BFSA expressly codifies a process for host intervention and regulatory cooperation, and it is critical that firms treat this as an operational risk factor (not merely a legal backstop). A host authority that has reasonable grounds to suspect non-compliance or material harm may require dialogue and information exchange and can escalate to restrictions if dialogue fails. Practically, this means firms should design a "BFSA incident" playbook that anticipates information requests, client communications (including potential mandated disclosures) and orderly wind-down/transfer of affected activities. This is necessary because intervention powers include arranging orderly termination and informing the public. If the host authority (FCA, PRA or FINMA) identifies risks to financial stability, market integrity or client protection, it must first consult with the home authority. If concerns persist, the host may impose proportionate restrictions on the cross-border provider, such as limiting activities or requiring remedial action. The agreement sets out clear procedures for notification, dialogue and the eventual lifting of such measures. This mechanism ensures that the benefits of deference do not undermine the host's ability to protect its market and clients.

The legal text of the BFSA also draws a clear line between what is subject to deference (authorisation and prudential requirements that apply exclusively to financial service suppliers) and what is not (so-called horizontal regimes, such as anti-money laundering, tax and consumer protection). This preserves the host supervisor's powers in areas of systemic importance and ensures that cross-border business does not create regulatory blind spots.

In short, the BFSA provides streamlined, rules-of-the-road access for bilateral UK-Swiss wholesale business predicated on mutual recognition, with clear scoping, notifications, disclosures and reporting, underpinned by supervisory cooperation and targeted host powers.

Implementation status and published guidance (as of January 2026)

A critical development since signature has been the publication of guidance by both Swiss and UK authorities addressed to financial service suppliers seeking to rely on the BFSA. This guidance represents an important step towards operationalisation. However, the guidance:

- does not constitute binding secondary legislation;
- does not create directly enforceable rights; and
- does not eliminate supervisory discretion.

Rather, it articulates supervisory expectations, procedural steps and interpretative positions that are likely to shape how recognition is applied in practice.

Implementation remains uneven across sectors and reliance on BFSA recognition may still depend on additional supervisory engagement, notifications or confirmations. Firms should therefore distinguish carefully between:

- sectors where BFSA reliance is operationally viable today; and
- sectors where recognition remains conditional or evolving.

Rather importantly, the BFSA and the published guidance are (currently) largely silent on:

- cross-border data transfers;
- cloud outsourcing;
- Information and Communication Technology (**ICT**) risk; and
- Artificial Intelligence (**AI**)-driven financial services.

Firms should therefore assume that existing national requirements on outsourcing, operational resilience, data protection and technology governance apply in full. The BFSA does not provide a safe harbour for digital or technology-driven delivery models.

Supervisory practice and regulatory behaviour

The BFSA is inherently supervisory led. The publication of guidance by FINMA and the UK authorities signals an intention to facilitate use of the agreement, but within a controlled framework emphasising early supervisory signals suggest a cautious, case-by-case approach rather than automatic or purely formalistic recognition. Mutual recognition under the BFSA therefore operates in practice through supervisory trust, not legal entitlement. Ultimately, as a bilateral agreement outside the EU framework, the BFSA remains exposed to political and geopolitical developments. While the publication of guidance enhances predictability, it does not guarantee long-term stability.

Enforcement, withdrawal and dispute resolution

The BFSA provides for structured dispute resolution, including consultations, mediation and independent expert panels. However, these mechanisms are non-binding and do not preclude unilateral supervisory action.

The agreement also allows for sector-specific withdrawal of recognition, subject to consultation and wind-down arrangements. The existence of published guidance does not constrain these rights. Firms should therefore plan for adverse scenarios, including partial or sudden loss of recognition.

Why the BFSA is different from the EU's CRD VI third-country regime

While the BFSA represents a progressive model for cross-border market access between two highly developed financial centres, it is fundamentally different from the EU's approach under CRD VI. The BFSA is a bilateral treaty that applies only to UK-Swiss business and is based on mutual recognition and regulatory deference. It does not create any rights or passporting privileges for access to the EU internal market.

By contrast, the EU's CRD VI regime and specifically Article 21c, imposes a general prohibition on the direct cross-border provision of "core banking services" (deposit-taking, lending and guarantees/commitments) by third-country undertakings into EU Member States unless the provider establishes an authorised EU TCB or subsidiary. Conceptually, Article 21c is not a "mutual recognition" regime. It is an internal market perimeter rule that re-anchors supervision and enforceability in the EU by requiring an EU presence for core banking activities, with limited and tightly constrained carve-outs. The principal exemptions and carve-outs are (i) provision to EU credit institutions, (ii) intra-group services, (iii) reverse solicitation at the exclusive initiative of the EU client/counterparty (strictly construed) and (iv) the Markets in Financial Instruments Directive II (**MiFID II**) carve-out for investment and ancillary services. The European Banking Authority's (**EBA**) July 2025 report is explicit that reverse solicitation is not available where a firm actively markets, uses intermediaries (including affiliates/close links) to solicit or offers additional services not originally requested; the exemption is intended to be exceptional and anti-circumvention in character. MiFID II investment and ancillary services are carved out from Article 21c, but the boundaries of this carve-out are subject to ongoing regulatory clarification, especially where custody, cash accounts or margin lending are bundled with investment services.

A transitional "acquired rights" safeguard allows contracts concluded before 11 July 2026 to continue temporarily, but it is narrowly framed to facilitate transition rather than to preserve business-as-usual models. Critically, because many business models rely on evergreen master agreements with periodic drawdowns, rollovers and amendments, firms should assume supervisors will scrutinise whether later changes amount to a new contract or a material variation that falls outside acquired rights.

The EBA's Article 21c(6) report provides important context for the EU's approach. The EBA has advised against expanding the Article 21c exemptions beyond credit institutions, citing limited and concentrated use of direct third-country services by non-bank financial sector entities (**FSE**s) and the need to maintain a level playing field and supervisory visibility. The report highlights ongoing uncertainty at the interface with sectoral regimes such as Alternative Investment Fund Managers Directive (**AIFMD**), Undertakings for Collective Investment in Transferable Securities (**UCITS**) and the Money Market Funds Regulation (**MMFR**), particularly where these frameworks permit the use of third-country banks for custody or cash management. The EBA has committed to providing further clarification through its Q&A process but acknowledges that national interpretations may diverge.

The EBA also takes a strict approach to reverse solicitation, making clear that any form of direct or indirect marketing, use of intermediaries or group affiliates or provision of services beyond the client's original request will defeat the exemption. Firms must maintain robust documentation, internal policies and audit trails to evidence genuine client-initiated business and to withstand regulatory scrutiny.

Complementing Article 21c, the EBA's draft Guidelines on TCB authorisation set a harmonised authorisation playbook expected to apply from 11 January 2027, with proportional Class 1/Class 2 categorisation (e.g., ≥ EUR 5bn assets; retail deposit triggers; AML/CFT high-risk head undertaking; non-equivalent home regime), reinforced governance/booking/liquidity to avoid "empty shells" and structured home-host-AML cooperation; the Banking Union interface is acknowledged although TCB authorisation remains national. Some Member States apply a "subsidiary-like" approach (e.g., Germany), in which case parts of the aforementioned Guidelines still apply for TCB-specific CRD VI requirements.

In summary, the BFSA is a powerful enabler of cross-border UK-Swiss business, but it does not provide a passport or facilitate access to the EU market. The critical distinction is that the BFSA is an outcomes-equivalence and deference arrangement with ex-post host intervention, whereas CRD VI Article 21c is an ex-ante market-access restriction that conditions cross-border core banking on an EU presence and imposes a strict approach to "no-solicitation" business.

This difference matters operationally. Under the BFSA, a firm can design a cross-border distribution model that includes proactive prospecting (within the BFSA perimeter), provided it is registered and meets disclosure/reporting obligations, including explicit recognition that communications to assess whether a person qualifies as high net worth can be "covered services". Under CRD VI, by contrast, a third-country bank cannot use "reverse solicitation" as a scalable distribution channel for EU clients: active outreach, introducer models and "umbrella" onboarding frameworks risk invalidating the exemption and creating perimeter breaches.

Any UK or Swiss firm wishing to serve EU clients with core banking services must comply with the CRD VI regime: this means establishing an EU TCB, subsidiary or relying on a narrow exemption. The EBA's ongoing work highlights the complexity and uncertainty at the intersection of sectoral rules and Article 21c, especially for custody, liquidity and bundled services. The BFSA does not resolve these issues for EU-facing activity and firms must be vigilant in mapping their service flows and compliance obligations.

What this all means for market entry, client solicitation and distribution

The practical implications for financial services firms under the BFSA and CRD VI are significant. Market entry and distribution strategies must be carefully segmented according to the applicable regime, with clear operational and legal separation between UK-Swiss business under the BFSA and EU-facing business under CRD VI and MiFID II as well as other sectoral legislation and chapters in the Single Rulebook.

A practical way to frame the difference for senior stakeholders is to treat the BFSA as a "registered cross-border distribution permission" (subject to transparency and intervention) and Article 21c as a "default prohibition" (subject to narrow exemptions and a structural EU-presence solution).

Importantly, while the BFSA may facilitate cross-border service provision, it does not displace national expectations regarding:

- local substance;
- effective decision-making;
- risk ownership; and
- accountability to supervisors.

The published guidance confirms that mutual recognition cannot be used to justify the hollowing-out of regulated entities or the offshoring of core management functions. Intragroup services – such as portfolio management, execution or treasury – remain subject to scrutiny, particularly where they affect risk transfer or client outcomes.

The following table highlights the practical contrasts that drive implementation decisions:

Topic	BFSA (Switzerland <-> UK)	CRD VI Article 21c (third country into EU) and other Single Market legislation	What this may mean for operating models
Geographic scope	UK ↔ Switzerland	EU ↔ third countries	• BFSA: only Swiss ↔ UK cross-border and not domestic activity; • CRD VI/Solvency II: EU branches and cross-border operations are regulated.
Sectoral coverage	Banking, asset management, investment services, FMIs and insurance.	Credit institutions, investment firms and insurance undertakings.	Insurers: BFSA provides recognition for cross-border insurance but requires careful interpretation of permissible lines and client groups.
Local Substance Requirements	Indirect, supervisory-driven	Explicit	All sectors must maintain adequate governance, risk management and local oversight; insurers must hold appropriate local technical provisions and solvency coverage.
Third-Country Branch Regime	Not applicable	Strengthened and harmonised	BFSA does not replace EU licensing for branches; insurers must comply

			with Solvency II equivalence/third-country authorisation rules.
Regulatory design	Outcomes-based deference: host exempts covered suppliers from certain licensing/supervision obligations in covered sectors.	Internal market perimeter: direct provision of core banking services into the EU is prohibited absent EU TCB/subsidiary, save narrow exemptions.	BFSA reliance is **supervisory and guidance-based**, not statutory. CRD VI/Solvency II and other Single Market legislation are binding and where a Directive still subject to "national specifics" unless streamlined.
Supervisory control	Host intervention after dialogue and information exchange; powers include restrictions, mandated disclosures and register changes.	Ex-ante authorisation and ongoing prudential expectations for TCBs, including governance/booking/liquidity to avoid "empty shells".	• Banks: tactical cross-border booking flexibility; • Asset Managers: delegation and marketing; Insurers: cross-border underwriting and distribution still governed by EU rules.
Supervisory discretion	High	High	All sectors must factor in supervisory discretion; boards should embed contingency plans.
Legal effect for firms	Conditional; relies on supervisory guidance.	Binding	BFSA guidance clarifies expectations but is **non-binding**; CRD VI/Solvency II impose enforceable requirements.
Market access model	Sector-specific mutual recognition.	Third-country access with local substance/branch requirements.	• Banks: may streamline treasury and corporate lending; • Asset Managers: portfolio delegation/marketing; • Insurers: distribution and underwriting subject to local EU licensing rules.
Substitute for EU Access?	No	Yes (within EU)	• BFSA cannot replace EU regulatory compliance; only complements it for specific cross-border operations.
Automatic Passporting	No	No	• No automatic rights under either regime; notifications and approvals required.
"Go-live" trigger	Registration on the relevant public register following notification (EHP/Connect workflows).	Authorisation of an EU TCB (or establishing an EU subsidiary) where in-scope. Exemptions require case-by-case legal analysis and documentation.	Largely the same. Supervisory consent required.
Client Scope	Primarily professional/institutional; retail mostly excluded.	All clients, with strong retail/protection rules.	Insurers: retail insurance products may still be restricted; BFSA mainly supports corporate or wholesale lines.
Retail / Consumer Access	Largely excluded	Permitted via authorised entities	Banks: retail lending mostly excluded; AMs: EU clients subject to local rules; Insurers: retail access constrained – focus on institutional or cross-border corporate policies.

Client solicitation	Active solicitation is not inherently prohibited once registered, provided business stays within covered services/clients and disclosures are made.	Reverse solicitation must be at the exclusive initiative of the EU client; marketing, intermediaries/affiliates and "umbrella" chaperoning defeat it.	Differing interpretations of active and reverse solicitation.
Booking Models	Permitted but subject to substance/risk expectations.	Restricted	• Banks: core risk functions need local presence; AMs: delegation with supervision; Insurers: risk retention and capital requirements must meet home/host standards.
Intragroup Services	Permitted but scrutinised	Closely monitored	• Banks/AMs: delegation permitted if adequately supervised; Insurers: cross-border underwriting and back-office support allowed if risk and capital remain compliant.
Sustainable Finance	Cooperative framework; non-binding	Increasingly embedded via EU directives and regulations	• All sectors: EU ESG, climate risk and SFDR/CSRD requirements remain mandatory; BFSA guidance offers alignment advice but not relief.
Operational data demands	Annual reporting (e.g., turnover, client metrics, complaints) supports ongoing oversight.	Authorisation files, programme of operations, three-year plans, AML/CFT controls, supervisory cooperation and ongoing reporting depending on class.	Strong differences in detail of operational data despite conceptual commonalities.
Technology & Outsourcing	Largely governed by national law	Explicitly regulated	All sectors must comply with ICT, data and operational resilience standards under local law.
Supervisory Cooperation	Joint committees, information exchange	Limited third-country influence	BFSA: facilitates dialogue; CRD VI/Solvency II: formal notifications required.
Dispute Resolution	Non-binding panels, mediation	Binding enforcement mechanisms	BFSA: limited recourse; CRD VI/Solvency II: formal supervisory enforcement possible.
Withdrawal of Access	Sector-specific, consultative	Supervisory powers	All sectors: plan contingencies in case of partial or full withdrawal.
Legal Certainty	Medium (enhanced by published guidance)	High	BFSA guidance reduces ambiguity but is non-binding; CRD VI/Solvency II define hard regulatory boundaries.
Political Durability	Medium – bilateral	High – EU legislative framework	BFSA access may be affected by political changes; EU rules more stable.
Strategic Use Case	Targeted cross-border UK–Swiss activity	Core EU prudential compliance	Banks: treasury, corporate lending and clearing; AMs: portfolio delegation and marketing; Insurers: corporate and wholesale underwriting, cross-border client servicing.
Common considerations for operating models **Banks**			

- Use BFSA for tactical cross-border treasury, corporate lending and clearing activity between UK and Switzerland.
- CRD VI continues to govern EU-facing operations, booking models and prudential requirements.
- Must maintain contingency planning for potential withdrawal of recognition.

Asset Managers

- BFSA allows marketing and delegation of portfolio management to UK/Swiss entities for institutional clients.
- EU regulatory requirements remain binding for EU investors (UCITS, (Alternative Investment Fund Manager) **AIFM**, (Environmental, Social and Governance) **ESG** rules).
- Boards should document delegation arrangements and compliance with supervisory guidance.

Insurers

- BFSA provides targeted access for cross-border underwriting and corporate/wholesale insurance products.
- Retail insurance is largely excluded; Solvency II and EU third-country rules still apply for EU clients.
- Must ensure appropriate local capital, risk retention and governance consistent with both supervisory guidance and domestic law.

From a practical project perspective, this means that “market entry” into the UK from Switzerland (or vice versa) can be treated as a registration and conduct-documentation exercise under a defined perimeter, whereas “market entry” into the EU for core banking must be treated as a structural authorisation and operating-model exercise. Firms must also be acutely aware of the compliance risks associated with client solicitation, marketing and ongoing service provision across these regimes.

A robust market entry strategy should distinguish between three primary channels, each with distinct regulatory requirements and risk profiles. The key is to avoid designing a single “pan-European” distribution playbook that assumes the BFSA’s permissive solicitation model can be replicated in the EU; Article 21c is designed precisely to prevent that kind of scalable third-country outreach for core banking.

- **BFSA channel (UK-Swiss only)**: For cross-border business between the UK and Switzerland, firms should leverage the streamlined notification, registration and reporting processes under the BFSA. This includes ensuring eligibility, completing the required notifications, providing all mandated disclosures and maintaining ongoing compliance with annual reporting and client onboarding requirements. Firms should also implement controls to ensure that activities conducted under the BFSA are not inadvertently extended to EU clients and that any UK branch activities are clearly separated from BFSA activities.

- **EU core banking services channel (CRD VI)**: For any business involving deposit-taking, lending or guarantees/commitments with EU clients, firms must plan to establish or use an EU TCB or subsidiary unless a narrow exemption applies. Reverse solicitation should be treated as exceptional and only relied upon with robust, contemporaneous documentation. Firms should review and, where necessary, restructure legacy contracts to ensure compliance with the acquired rights transition and prepare for the full application of the new regime from 11 January 2027.

- **EU MiFID II investment services channel**: Where the activity is limited to investment and ancillary services under **MiFID II**, Article 21c does not apply. However, firms must carefully map their product and operational flows to ensure that no element of the service constitutes a core banking activity that would trigger CRD VI requirements. Ongoing monitoring of EBA Q&A and national guidance is essential, particularly for custody, cash management and margin lending arrangements.

BFSA channel (UK-Swiss only): For Swiss firms targeting the UK, ensure FINMA-to-FCA notification, FCA register entry, client disclosures and annual reporting by 30 April with required turnover breakdowns and complaint data; align high-net-worth onboarding tests and sub-custody record-keeping; where a UK branch exists, allocate activities cleanly between the BFSA route and Part 4A permissions to avoid mis-scoping and fee/reporting errors. For UK insurers into Switzerland, verify eligibility (including the “outside Switzerland” supply test), make disclosures on authorisation and taxes and file the annual FINMA report with gross premiums by class above the CHF 5m threshold; intermediaries must register with FINMA and comply with Swiss supervisory law despite BFSA deference on localisation.

EU core banking services channel (CRD VI): For any EU-facing deposit-taking, lending or guarantees/commitments, plan to establish or use an EU TCB/subsidiary unless a narrow exemption applies. Treat reverse solicitation as exceptional and document contemporaneously client-initiated scope, “no solicitation” and linkage of any follow-on services; where business is ongoing or bundled (e.g., custody cash accounts, overdrafts, margin financing), assume TCB/subsidiary positioning will be needed and triage legacy contracts for acquired-rights transition only until migration is complete.

EU MiFID II investment services channel: Where activity is purely within MiFID II investment and ancillary services, CRD VI Article 21c does not apply; however, care is needed where custody, cash accounts and financing are intertwined with investment services. Map product and operational flows to confirm whether any step constitutes core banking that would re-trigger Article 21c requirements; monitor EBA Q&A for clarifications at the AIFMD/UCITS/MMFR interface.

Distribution frameworks and booking models should be re-engineered to ensure strict compliance with the relevant regime and to mitigate regulatory risk:

- **For UK-Swiss distribution under the BFSA:** Firms should embed standardised disclosure templates, high-net-worth client onboarding procedures and explicit client consents for regulatory information sharing. Annual reporting workflows should be automated and integrated with the EHP and FCA Connect platforms. Where Swiss employees are temporarily present in the UK, firms must ensure that their activities do not create a permanent establishment and that all conditions of the BFSA are met. UK firms sending client advisers to Switzerland must comply with notification and disclosure requirements for temporary presence.

- **For EU distribution:** Firms must avoid any cross-contamination between BFSA and EU channels. Marketing or soliciting EU clients for core banking services from a third-country entity is strictly prohibited unless the firm has an EU TCB or subsidiary, or a valid exemption applies. Reliance on introducers, affiliates or group companies can undermine the reverse solicitation exemption, so firms should implement a comprehensive “Market Access and Reverse Solicitation” policy, including staff training, pre-clearance of client approaches and detailed audit trails to evidence compliance.

Client solicitation rules are a critical area of divergence between the BFSA and CRD VI and they are where firms most often create inadvertent perimeter risk through marketing, relationship management and distribution governance.

- **Under the BFSA**, active solicitation of covered clients in the counterparty market is permitted once the firm is registered and complies with the specified disclosure requirements. The agreement even treats certain communications aimed at determining high-net-worth status as a covered service, enabling firms to prospect for eligible clients within defined parameters. However, host intervention remains a possibility if conduct risks or regulatory breaches are identified, so firms must monitor the content and appropriateness of their communications and have escalation procedures in place.

- **Under CRD VI**, solicitation of EU clients for core banking services by third-country firms without an EU presence is strictly prohibited. The reverse solicitation exemption is narrowly construed: the client must initiate the relationship entirely on their own initiative and any form of marketing, use of intermediaries or provision of additional services beyond the original request will invalidate the exemption. Firms must maintain granular, contemporaneous evidence for each instance of reverse solicitation, including client communications, internal approvals and compliance checks.

Practical steps for firms navigating these regimes should be framed as governance, contracting, operational model and control-framework workstreams. The critical practical challenge is that supervisory expectations do not turn solely on what is written in policies, but on whether the firm’s end-to-end operating model makes compliance “easy to do” and non-compliance “hard to do”.

BFSA: practical considerations for implementation and ongoing compliance

For BFSA programmes, firms should focus on making perimeter compliance operationally durable. Registration is not the end of the process; the ongoing obligations (annual reporting, change notifications, record retention for sub-custody due diligence and client consent mechanisms for regulatory information sharing) create recurring compliance and operational demands that need ownership, controls and evidencing.

A recurring practical pitfall is mis-scoping services. The BFSA requires firms to specify services, instruments and client categories in the notification and additional services cannot be performed until the register is updated. Firms should therefore hard-wire notification scoping into product governance, including change management whenever a desk proposes a new instrument type, a new client segment or a new service line that might fall outside the notified perimeter.

Operationally, firms should treat BFSA disclosures as part of onboarding “gating”, not a legal formality. For Swiss firms into the UK, the disclosures about non-availability of the UK compensation scheme and Financial Ombudsman Service are likely to drive client questions and may require front-office scripting and training to ensure consistency and to avoid creating misleading impressions. In parallel, the high-net-worth testing and separate acknowledgements required by the BFSA should be implemented as system-enforced steps with evidence capture, rather than manual processes, because the treaty conditions are explicit and highly documentary in nature.

Where firms rely on global custody chains, the BFSA’s sub-custody flexibility is useful, but it is not a free pass: due skill/care selection, periodic review and record retention (including retention for five years after ceasing use of the sub-custodian) should be integrated into third-party risk management frameworks. This is particularly relevant for groups whose Swiss entities also service EU funds, because custody and cash management are precisely the areas where CRD VI Article 21c creates potential friction when a third-country bank provides deposit-taking/overdraft functionality.

Finally, firms should treat the host intervention mechanism as a live risk. The treaty empowers the host to restrict activities, mandate disclosures, organise orderly winding-down and publicise measures. In practice, that means firms should pre-define escalation and engagement protocols with home and host regulators and have contingency arrangements for client continuity (including alternative providers and transition communications) for the products and client groups in scope.

CRD VI: practical considerations for EU market entry and distribution

For EU-facing core banking services, the central strategic question is not “how do we rely on reverse solicitation?”, but “what is our EU presence solution and operating model?”, with reverse solicitation reserved for genuinely exceptional cases that can be evidenced.

From an implementation standpoint, firms should map EU client journeys and product lifecycles to identify where “core banking services” are embedded in what the business considers investment/custody activity. The EBA report highlights precisely this uncertainty: deposit-taking linked to custody, overdrafts associated with custody and certain margin lending/portfolio monetisation structures may fall outside a comfortable MiFID carve-out analysis, especially where custody is provided on a standalone basis.

Firms should also treat payment and treasury flows as perimeter-relevant. The EBA notes that non-bank payment service providers and other FSEs may face increased complexity and costs in foreign currency clearing (e.g., US-Dollar (**USD**) payment chains) if they must route through EU intermediaries or TCBs. This has practical implications for client experience, cut-off times, liquidity buffers and operational resilience and it may require renegotiation of service level agreements and contingency arrangements.

For third-country groups choosing the TCB route, the draft EBA Guidelines make clear that authorisation will require a credible programme of operations, a three-year business plan (baseline and stress), capital endowment and liquidity calibrated to the envisaged class, robust governance/risk management and booking arrangements designed to prevent “empty shell” branches. Class 1 triggers (including assets ≥ EUR 5bn and certain retail deposit thresholds, AML/CFT high-risk head undertakings or a non-equivalent home regime) drive heightened expectations and supervisory focus.

The booking model is not merely a prudential technicality; it becomes a distribution constraint. If a third-country group aims to keep decision-making, risk ownership and balance sheet outside the EU while distributing into the EU, supervisors may treat this as a risk transfer/“empty shell” issue, increasing the likelihood of additional conditions, limitations or supervisory friction. In practice, firms should expect their EU market entry decisions (branch vs subsidiary and Member State choice) to be shaped by their willingness to locate risk management, governance and sufficient substance in the EU.

Solicitation and distribution controls: what firms need in practice

The EBA report’s articulation of reverse solicitation (no marketing, no intermediaries/close links, scope limited to what was solicited, no “umbrella” usage) means firms need a distribution control framework that goes well beyond disclaimers in email footers. In practical terms, this implies (i) marketing governance (what content can be EU-visible, what is gated, how websites and webinars are structured), (ii) introducer governance (how EU-based introducers, affiliates and relationship managers are used without turning them into “intermediaries” acting on behalf of the third-country provider) and (iii) lifecycle controls (how follow-on services, renewals, amendments and upsells are handled without breaching the scope limitation).

Documentation is necessary but not sufficient. The EBA recommends clear client-initiated request evidence, internal no-solicitation confirmations, service scope documentation (including assessment of what is “closely related”) and ongoing monitoring. Firms should anticipate that supervisors will test these controls by sampling files, reviewing marketing materials and relationship manager communications and asking how the firm prevents affiliate-driven “soft solicitation” practices.

Contracting and legacy remediation

Firms should assume that “acquired rights” will not protect business models that depend on ongoing amendments, rollovers or adding new products under legacy master agreements. As a result, a contract remediation programme should be aligned to product mapping: identify which client relationships involve core banking services, determine whether the service can be migrated to an EU entity/TCB and define the client communication strategy for novation, amendment or re-papering.

Supervisory engagement and sequencing

Finally, the sequencing of market entry matters. Under the BFSA, the notification and registration timelines are relatively structured (e.g., FINMA confirmation to FCA within 60 days and FCA register placement within 30 days for Swiss suppliers). Under CRD VI, TCB authorisation is a more substantive supervisory process with information requirements and cooperation with home supervisors and AML/CFT authorities and the Guidelines are designed to harmonise but not necessarily shorten that process. For groups with Banking Union footprints, the Guidelines also anticipate interfaces with the European Central Bank – Single Supervisory Mechanism (**ECB-SSM**) and Single Resolution Board (**SRB**) where prudential/resolution implications arise, which can add additional stakeholders and review layers.

Taken together, firms should treat UK-Swiss market entry under the BFSA as a contained perimeter and compliance programme and EU core banking market entry as a structural authorisation and substance programme, with distribution governance (especially solicitation controls) as a common, high-risk theme across both.

- **Develop a comprehensive BFSA operating playbook for UK-Swiss business**, covering eligibility mapping, notification and registration processes (EHP/Connect), standardised disclosure documents, sub-custody due diligence and record-keeping, high-net-worth client onboarding and annual reporting (including turnover thresholds and complaint metrics). Regularly review and update procedures in line with evolving regulatory guidance and supervisory expectations.

- **For EU market entry involving core banking services**, initiate a TCB authorisation strategy in target Member States. This should include an assessment of whether the business will be classified as Class 1 or Class 2 under the EBA Guidelines, capital and liquidity planning, booking model design, AML/CFT compliance and engagement with both home and host supervisors. Firms should also review legacy contracts for acquired rights and plan for transition by 11 January 2027.

- **For EU investment services without core banking elements**, conduct a detailed mapping of all service flows to ensure that activities remain within the MiFID II carve-out. Re-architect custody, liquidity and margin lending arrangements as needed to avoid inadvertent triggering of Article 21c requirements. Monitor EBA Q&A and national guidance for further clarification, especially at the AIFMD/UCITS/MMFR interface.

What EU groups can do in practice with the BFSA

While the question of what EU groups can do in practice is very counterparty and activity fact specific the following common considerations typically may include the following:

Structuring advantages

The BFSA is only available to Swiss- or UK-authorised suppliers. Therefore, the “via” structure that delivers genuine alleviation is corporate – not contractual. EU firms seeing avenues for alleviation to access the EU via Switzerland could whether to:

- Incorporate or maintain a Swiss entity authorised for the relevant activity and register it under the BFSA to service UK wholesale/HNW segments cross-border without UK Part 4A permissions for the covered services. This avoids a full UK authorisation for those services/clients/instruments within scope of the BFSA Annexes.

- Conversely, incorporate or maintain a UK entity and register under the BFSA to service eligible Swiss corporate clients for the defined non-life insurance lines or to provide investment services into Switzerland, as applicable.

From an EU perspective, this offers three concrete potential advantages:

- Host licensing relief in the UK/Switzerland for the precise BFSA perimeter.
- Faster time to market compared to full host authorisation.
- Lower ongoing host prudential overhead where reliance on home-state rules is allowed.

But the following EU overlays still bite:

- **Consolidated supervision, governance and booking:** The EU parent must ensure risk ownership, senior management oversight and booking are consistent with EU prudential expectations; empty-shell or "risk remote" models routed entirely offshore will attract supervisory challenge.

- **Group outsourcing/delegation controls:** Delegation of portfolio management or other functions to UK/Swiss affiliates remains subject to AIFMD/UCITS/MiFID oversight, cooperation arrangements and "substance" in the EU management entity.

- **Operational resilience and data:** Digital Operational Resilience Act (**DORA**)/ICT, outsourcing and data transfer requirements continue to apply to third-country affiliates and vendors.

- **Conduct and distribution governance:** EU firms must segregate EU client solicitation from BFSA activity. Materials, RM coverage and digital channels accessible in the EU must not market BFSA-routed services to EU clients.

Bottom line: this is a viable and often efficient path for wholesale business, particularly investment services and specified non-life insurance lines, provided the group accepts the corporate footprint in the UK/Switzerland and maintains robust EU group controls.

EU investment services and asset management: third-country delegation and servicing

EU rules continue to permit:

- Delegation of portfolio management and certain functions to UK or Swiss entities, supported by cooperation arrangements and oversight by the EU management company or firm.

- Provision of investment services by EU firms to UK/Swiss clients under those countries' third-country regimes (outside the BFSA), using national private placement or professional-client frameworks.

Where the EU group also operates a UK or Swiss entity, the BFSA can then be layered in to reduce local licensing frictions for the UK-Swiss bilateral leg (for example, a Swiss MiFID-like firm registered under the BFSA serving UK professionals/High Net Worth Individuals **HNWI**, sitting under an EU Alternative Investment Fund Manager (**AIFM**)/UCITS Management Company (**ManCo**) that delegates portfolio management to Switzerland). Potential alleviation gained might include:

- Continued use of highly qualified UK/Swiss managers under well-trodden delegation and servicing models.

- BFSA adds a predictable route for cross-border distribution and servicing between the UK and Switzerland.

Constraints, however, include:

- Tight adherence to delegation substance, oversight and "no letter-box" rules under AIFMD/UCITS and MiFID II.

- Careful mapping where custody, cash accounts and margin financing are bundled, to avoid drifting into "core banking" characterisation for EU-facing activities.

EU banking groups: outbound services and the limits of "via" structures

- EU law does not generally prohibit EU credit institutions from providing services to third-country clients on a cross-border basis, but host-state UK/Swiss rules apply. The BFSA does not help unless the EU group uses a UK or Swiss entity; a Swiss bank can then rely on the BFSA to serve UK wholesale clients.

- CRD VI Article 21c matters mainly for inbound services into the EU by third-country entities, not for EU banks' outbound UK/Swiss business. However, EU supervisors will still assess booking models, risk transfer, significant outsourcing to third countries and large exposures at the group level.

- Using a Swiss entity to face UK clients under the BFSA (or a UK entity to face Swiss clients) can streamline the non-EU leg, but it does not change EU expectations on where decisions are taken, where balance- sheet risk sits and how liquidity/Interest Rate Risk in the Banking Book (**IRRBB**)/credit risk are controlled in the group.

Alleviation gained may include:

- Reduced UK/Swiss host licensing burden for the bilateral leg when routed through a BFSA-registered local entity.

- Potentially cleaner client documentation and disclosure framework under the BFSA than multiple national exemptions.

Constraints typically may include:

- No EU regulatory "credit" for relying on BFSA; groups must still meet EU governance, risk and booking expectations.

- For any future EU-facing components of a bundled product (custody cash, overdrafts, margin), Article 21c triggers an EU TCB/subsidiary solution – routing via the UK/Switzerland does not fix that.

Insurance groups

- The BFSA grants defined relief for UK insurers writing specified non-lifelines to large Swiss corporate clients and, conversely, deference to Swiss suppliers for UK wholesale lines. EU insurers cannot use the BFSA directly; they must operate via a UK or Swiss insurer/intermediary to benefit.

- From an EU perspective, this can be efficient where an EU group already has a UK insurer: the UK entity can access Switzerland under the BFSA with clearer disclosures and reporting, compared to relying solely on Swiss national third-country regimes.

Constraints remain on:

- Solvency consolidation, risk retention and governance at EU group level.

- Retail lines remain largely out of scope; host conduct/tax rules continue to apply.

Market infrastructures and trading: practical alleviation already embedded

- Recognitions/equivalence for certain UK and Swiss CCPs and trading venues allow EU firms to clear and trade instruments without incurring punitive capital or use-restrictions. This is an indirect but material alleviation for execution, clearing, collateral and liquidity channels between the EU, UK and Switzerland.

- Repo, derivatives and collateral management can therefore be structured operationally through UK/Swiss CCPs and venues under existing EU recognition decisions, separate from BFSA.

Constraints typically concentrate on:

- Supervisory scrutiny of concentration risk and third-country dependencies (including tiering and location policies).

- Collateral/custody chains must be reviewed for banking-service elements if any part of the client service touches the EU under CRD VI.

What does not work as "alleviation"

- Using the BFSA as a bridge into the EU: it is not available to EU firms, nor does it create EU rights. A Swiss or UK entity's BFSA status does not facilitate EU market access and does not mitigate Article 21c for core banking into the EU.

- "Umbrella" onboarding via a UK or Swiss entity for EU clients: for core banking components, CRD VI requires an EU TCB or subsidiary unless a narrow exemption applies; reverse solicitation is strictly construed and not a scalable distribution strategy.

- Treating delegation as a substitute for local substance: AIFMD/UCITS and MiFID II require genuine oversight and decision-making within the EU management entity; extensive re-offshoring will be challenged.

Governance and control implications for EU groups

- **Keep strict channel separation.** Build a governance wall between EU-facing distribution and BFSA-routed UK-Swiss business to avoid perimeter breaches or evidence gaps on solicitation.

- **Map products end-to-end.** Identify where custody cash, overdrafts or margin financing might re-characterise a service as "core banking" for EU clients; if present, plan for an EU TCB/subsidiary for that EU leg.

- **Hard-wire BFSA scoping and reporting.** For the UK/Swiss entity, treat BFSA notifications, disclosures and annual reports as operational gating items, with clear ownership and MI back to the EU parent.

- **Evidence delegation substance.** For AIFMD/UCITS/MiFID delegation to UK/Swiss entities, maintain oversight artefacts, Key Performance Indicators (**KPI**s)/Key Risk Indicators (**KRI**s), site visits and exit strategies consistent with EU expectations.

- **Align booking with risk.** Ensure the legal/entity facing the client is the entity bearing the risks, with clear transfer-pricing, liquidity and capital support arrangements documented at group level.

Bottom line

From an EU perspective, the only meaningful “via” alleviation is corporate: use a UK or Swiss subsidiary to exploit the BFSA for the UK-Swiss bilateral leg, while keeping EU requirements firmly in view. Investment services and asset management benefit most, because EU rules already accommodate third-country delegation and servicing. Banking and retail insurance gain far less – EU prudential expectations and host conduct regimes still drive structure. The BFSA is a powerful bilateral tool for UK–Swiss business, but it is not an EU access bridge; it complements, rather than replaces, EU-compliant operating models.

Outlook

As of January 2026, the BFSA – supported by published UK and Swiss guidance – offers a meaningful and innovative model for bilateral financial services cooperation. It improves transparency and reduces certain barriers, but it remains supervisory-led, conditional and politically contingent.

Firms should treat the guidance as a necessary but not sufficient condition for reliance on the BFSA, embedding it within a broader legal, structural and risk-based assessment – particularly in a post-CRD VI environment.

As of January 2026, the publication of UK and Swiss guidance represents a material step forward in the operationalisation of the BFSA. However, the guidance clarifies process and expectations, does not create binding rights, does not displace EU law and does not eliminate supervisory discretion. Firms should treat the published guidance as a necessary – but not sufficient – condition for reliance on the BFSA. A robust analysis must therefore integrate the guidance as an interpretative layer, not as a substitute for legal, structural and risk-based assessment.

The publication of guidance enhances predictability and transparency but does not immunise the BFSA from political or geopolitical risk. As with past equivalence-based arrangements, the durability of access ultimately depends on continued regulatory alignment and political will.

In conclusion, the BFSA is a valuable and innovative facilitator of cross-border wholesale business between the UK and Switzerland, offering streamlined access, regulatory certainty and operational efficiency for eligible firms. However, it does not function as an EU passport and does not alter the strict perimeter established by CRD VI for core banking services into the EU. Firms must maintain clear operational and contractual segregation between UK-Swiss and EU business, design their distribution and booking frameworks to comply with each regime and implement robust solicitation governance and compliance controls in line with the EBA’s strict expectations under Article 21c. Ongoing monitoring of regulatory developments, supervisory guidance and market practice is essential to ensure continued compliance and to capitalise on cross-border opportunities in a rapidly evolving landscape.

About us

PwC Legal is assisting a number of financial services firms and market participants in forward planning for changes stemming from relevant related developments. We have assembled a multi-disciplinary and multijurisdictional team of sector experts to support clients navigate challenges and seize opportunities as well as to proactively engage with their market stakeholders and regulators.

Moreover, we have developed a number of RegTech and SupTech tools for supervised firms, including PwC Legal’s Rule Scanner tool, backed by a trusted set of managed solutions from PwC Legal Business Solutions, allowing for horizon scanning and risk mapping of all legislative and regulatory developments as well as sanctions and fines from more than 2,500 legislative and regulatory policymakers and other industry voices in over 170 jurisdictions impacting financial services firms and their business.

Equally, in leveraging our Rule Scanner technology, we offer a further solution for clients to digitise financial services firms' relevant internal policies and procedures, create a comprehensive documentation inventory with an established documentation hierarchy and embedded glossary that has version control over a defined backward plus forward looking timeline to be able to ensure changes in one policy are carried through over to other policy and procedure documents, critical path dependencies are mapped and legislative and regulatory developments are flagged where these may require actions to be taken in such policies and procedures.

The PwC Legal Team behind Rule Scanner are proud recipients of ALM Law.com's coveted "2024 Disruptive Technology of the Year Award" as well as the "2025 Regulatory, Governance and Compliance Technology Award".

If you would like to discuss any of the developments mentioned above, or how they may affect your business more generally, please contact any of our key contacts or PwC Legal's RegCORE Team via de_regcore@pwc.com or our website.

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