

CRD VI: Key considerations for non-EU banks

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The implementation of the Capital Requirements Directive VI (CRD VI) represents one of the most significant regulatory developments affecting third-country banks operating in the EU. With member states required to transpose CRD VI by 10 January 2026, and the new third-country branch regime applying from 11 January 2027, attention has recently focused on 11 July 2026, which marks the practical deadline for many institutions wishing to ensure that existing cross-border banking relationships are capable of benefiting from the grandfathering provisions.

For non-EU banks with European clients, this is an important opportunity to review existing documentation and future business models.

Grandfathering

The most pressing issue for financial institutions concerns grandfathering. CRD VI contains transitional provisions designed to preserve existing contractual relationships that were entered into before the new regime becomes fully operational. While the precise implementation will depend on individual member states, the policy objective is clear: existing cross-border banking services should not be unnecessarily disrupted merely because a third-country bank would, under the new rules, require authorisation or a third-country branch to continue carrying on certain activities. However, the protection is not unlimited. Material amendments to legacy transactions after the relevant cut-off date may jeopardise grandfathered status, particularly where changes are viewed as creating a new contractual relationship rather than simply administering an existing one.

This has led many non-EU banks to undertake extensive reviews of their European loan portfolios before the 11 July deadline. Banks are identifying facilities that may require amendment in the coming years, and considering whether documentation should be updated now while grandfathering remains available. Amendments extending maturity, increasing commitments or fundamentally changing commercial terms may attract particular scrutiny. By contrast, operational changes that merely facilitate the administration of an existing facility are generally viewed as presenting lower risk, although the legal analysis remains highly fact specific.

The treatment of novation with respect to grandfathering

How novation is used in the context of loan participation is also attracting attention. Novation is frequently used in syndicated lending to transfer participations between lenders. Under English law, a novation extinguishes the existing contractual relationship and creates a new one between the borrower and the incoming lender. The question therefore arises as to whether an incoming financial institution participating through a novation after the grandfathering cut-off can itself rely upon grandfathering.

The issue is important because, unlike an assignment, a novation typically results in the incoming institution becoming a lender of record under a newly constituted contractual relationship. A regulator could therefore conclude that the incoming bank is entering into a new lending arrangement after the relevant grandfathering date, preventing reliance on the transitional provisions. While there remains debate within the market, many institutions are approaching post-cut-off novations cautiously and considering alternative transfer mechanisms where commercially feasible. Careful analysis of both the governing law documentation and the relevant national implementation measures will be essential before assuming that grandfathering continues to apply following a transfer.

Reverse solicitation

As third-country banks consider alternative methods of serving European clients, the issue of reverse solicitation has become increasingly important. Reverse solicitation is a regulatory concept under EU financial services law that allows a non-EU financial institution to provide services to an EU client where the client has approached the institution entirely on its own initiative, rather than because of any marketing or solicitation by the institution itself. CRD VI recognises that banking services provided exclusively at the unsolicited initiative of a client should not ordinarily trigger the third-country branch requirements. However, regulators have consistently interpreted reverse solicitation narrowly across several areas of European financial services legislation.

For non-EU banks, this means reverse solicitation should not be viewed as a business model capable of supporting systematic EU client coverage. Genuine reverse solicitation requires that the client approaches the bank entirely on its own initiative, without prior marketing, promotion or other solicitation by the institution, or persons acting on its behalf. Follow-on services closely connected with the original client request may be permissible, but any evidence of organised marketing into the EU could undermine reliance on this exemption. Internal governance, record keeping and clear policies documenting how client relationships originate and develop with time, will therefore become increasingly important.

The broader message for Indian banks is that CRD VI is not simply a licensing exercise, but a catalyst for reassessing European operating models, as part of a regulatory shift. Institutions should identify which relationships are capable of benefiting from grandfathering, understand how future amendments and transfer mechanics may affect such protection, as well as avoid assuming that reverse solicitation provides a broad exemption from the new regime. With regulators expected to scrutinise cross-border banking activity more closely, detailed legal analysis and careful transaction planning will be essential to minimise disruption while maintaining access to European clients under an evolving regulatory framework.

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