

The branch requirement for retail and professional clients

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Article 28 paragraph 3 and Article 29-ter paragraph 3 TUF contain the decisive rule. Third-country firms and third-country banks may provide investment services to retail clients or to professional clients on request, as defined by Article 6 TUF, exclusively through branches established in Italy.¹ Italian law thereby exercises the option in Article 39 MiFID II in full, extending the requirement to the elective professional client. A Swiss bank that wishes to offer portfolio management, investment advice or the reception and transmission of orders to an Italian private client must therefore open a branch in Italy, obtain authorization from the Banca d'Italia and subject the branch to Italian supervision, Italian rules of conduct and Italian investor compensation. The cross-border service from Lugano is excluded for this category of client, subject only to the reverse solicitation exemption discussed below.

For eligible counterparties and professional clients by law the TUF keeps the national regime that Article 46 paragraph 4 MiFIR allows in the absence of an equivalence decision. Under Article 28 paragraph 6 TUF a third-country firm may provide services to these clients without a branch if it meets the conditions in paragraph 1 letters b to e and submits a programme of activity, and CONSOB authorizes the activity. Article 29ter paragraph 6 contains the same rule for banks, with authorization by the Banca d'Italia after consulting CONSOB. Paragraph 6-bis of both provisions applies the national regime even after an equivalence decision for services that the decision does not cover. Under paragraph 7 of each article, the authority may indicate in general terms which services or activities third-country firms may not provide without a branch.²

1 The first Swiss authorizations and the 2026 amendments

The professional client route has begun to be used. Shortly after the memorandum of 2023, the Italian lawyer Edoardo Guffanti described the agreement as the end of a long period in which Swiss intermediaries had been in practice excluded from the Italian market. He identified two paths: free provision of services to eligible counterparties and professional clients by law, and a branch for retail clients and professional clients on request. He also pointed to the possibility for Italian intermediaries, including pension funds, to delegate portfolio management to Swiss banks without a branch.³ LGT Capital Partners AG, a Swiss asset manager of the Liechtenstein LGT group, was later reported to have obtained the first CONSOB authorization granted to a Swiss thirdcountry firm other than a bank to provide investment services in Italy without a branch, to eligible counterparties and professional clients.⁴ The text of Article 28 TUF continues to move. Legislative Decree No. 201 of 5 November 2021 amended it, and Legislative Decree No. 47 of 27 March 2026, the reform of the TUF adopted under the delegation in Article 19 of Law No. 21 of 5 March 2024 (the *Legge Capitali*), amended paragraphs 3, 5 and 6 on the classification of clients. According to the annotated text, the amendment applies nine months after the decree's entry into force, which places its application in 2027.⁵ The scope of the change was not yet clear from published commentary at the time of writing. Practitioners should check the consolidated text before relying on the client categories quoted in this section.

In figures. Article 28 paragraph 1 TUF sets six conditions for the branch of a third-country firm, letters a to f.⁶ The cooperation agreement between FINMA, CONSOB and the Banca d'Italia dates from August 2023.⁷ The tax condition was met for Switzerland by the Protocol of 23 February 2015.⁸ CONSOB had by September 2026 blocked 1,829 websites of unauthorized providers since July 2019.⁹

The resulting regime is coherent on its own terms. Italy treats private clients as deserving the full protection of Italian supervision and therefore requires a local establishment. Institutional business is left open to firms whose home supervisor cooperates with the Italian authorities. For Lugano, whose business with Italy is the opposite of institutional, the coherence of the regime is little consolation. The Federal Council observed in 2021 that Switzerland had repeatedly pointed out to Italy that the abolition of the cross-border regime in favour of a branch requirement was an obstacle to any improvement in market access.¹⁰

2 Notes

1. TUF, Art. 28 para. 3 and Art. 29-ter para. 3 (above). ↩
2. TUF, Art. 28 para. 6, 6-bis and 7; Art. 29-ter para. 6, 6-bis and 7 (above). ↩
3. Edoardo Guffanti, "Banche svizzere, via libera ai servizi d'investimento in Italia", We Wealth, 25 September 2023, <https://www.we-wealth.com/?p=16705>. ↩
4. Leaders League, "LGT Capital Partners Receives Consob Authorization to Provide Investment Services in Italy", <https://www.leadersleague.com/en/news/lgt-capital-partners-receives-consob-authorization-to-provide-investment-services-in-italy> (undated online; advisers Gianni & Origoni). ↩
5. Brocardi.it, annotation to Art. 28 TUF (above), recording amendments by D.Lgs. 5 November 2021, n. 201 (paras. 4, 5 and 7; insertion of paras. 6-bis and 7-bis) and D.Lgs. 27 March 2026, n. 47, Art. 2 para. 1 lit. bb (paras. 3, 5 and 6), which under its Art. 11 para. 3 applies nine months after its entry into force; on the decree generally Gaia Viani, "Riforma del TUF e Legge Capitali: le novità del d.lgs. n. 47/2026", EC News, 30 April 2026, <https://www.ecnews.it/legale/societa-e-crisi-di-impresa/diritto-e-reati-societari/riforma-del-tuf-e-legge-capitali-le-novita-del-d-lgs-n-47-2026/>. The date of Law No. 21 of 5 March 2024 is confirmed by Brocardi.it, annotation to Art. 7-octies TUF, <https://www.brocardi.it/testo-unico-intermediazione-finanziaria/parte-ii/titolo-i/capo-i/art7octies.html>. ↩
6. TUF, Art. 28 para. 1 (above). ↩
7. FINMA press release of 16 August 2023 (above). ↩
8. Convention of 9 March 1976, Art. 27, as amended by the Protocol of 23 February 2015, in force since 13 July 2016 (above); see Chapter E.II. ↩
9. Teleborsa, "Abusivismo finanziario, Consob oscura 7 siti. Totale sale a 1.829", Borsa Italiana, 24 September 2026, https://www.borsaitaliana.it/borsa/notizie/teleborsa/finanza/abusivismo-finanziario-consob-oscura-7-siti-totale-sale-a-1829-141_2026-09-24_TLB.html. ↩

10. Federal Council, report of 27 October 2021 (above), 20–21. ↩

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