



Information session

Single-member companies under FinIA: what requirements must be met, what exemptions are possible?

Your speaker

Simon Wälti

CEO FINcontrol Suisse Ltd

simon.waelti@fincontrol.ch

+41 41 763 28 20

Today's programme

09:00 a.m.	Welcome and general information
09:05 a.m.	Most important updates from the supervisory world – hints, tips and recommendations
	Main presentation 1st part
09:50 a.m.	Break
10.00 a.m.	Main presentation 2nd part
10.45 a.m.	Break
10.55 a.m.	Q&A

Today's programme – the most important topics of today

- Most important updates from the supervisory world – Hints, tips and recommendations
 - News from the business activities of FINcontrol Suisse
 - Recommendation from FINMA

- Regulatory requirements for qualified managing directors

- Possible solutions for institutions with only one qualified managing director

- Outsourcing of key activities

- Case studies

- Q&A

Most important updates from the supervisory world – Hints, tips and recommendations

- Transitional period of FinSA expires at the end of 2021
- From 1 January 2022, all obligations under the FinSA must be complied with - this will be checked (both as part of the application for affiliation or authorisation and as part of the following regulatory audit)
- Each license application must be examined in advance by a Supervisory Organisation and deemed approvable
- Supervisory Organisations have comprehensive audit competence and corresponding duty to audit



It is FINMA that has exclusive competence to grant an authorisation.

However, every such authorization is based on the preliminary work of a Supervisory Organisation.

Most important updates from the supervisory world – Hints, tips and recommendations

- Implementation of obligations under FinSA by the end of 2021:
 - Adjustment of portfolio management agreement (and repapering with clients) in particular with regard to:
 - Customer segmentation
 - Suitability and/or adequacy test
 - Information obligations vis-à-vis customers
 - Adaptation of directives to FinSA with regard to duties of conduct, best execution, etc.
 - Adaptation of the organisation to implement and comply with the obligations of conduct under FinSA

Most important updates from the supervisory world – Hints, tips and recommendations

Implementation of obligations under the FinSA by the end of 2021:

- Replace obligations according to BOVV membership, but go further
- Cancellation of BOVV is not necessary, membership expires at the end of 2021.



Examination of compliance with the duties of conduct takes place on the one hand within the scope of the affiliation or authorisation examination, and on the other hand within the scope of the first supervisory audit, with retroactive effect as of 1 January 2022.


Most important updates from the supervisory world – Hints, tips and recommendations

- Status of applications at FINcontrol Suisse AG as of today: ca. 70 applications submitted
- As of mid-September 2021, 188 applications had been received by all Supervisory Organisations throughout Switzerland.
- Approved by FINMA (as of 19 October 2021): 30
- approx. 2,400 applications are expected by the end of 2022



Time is running out - we strongly recommend prioritising the implementation of the obligations and the submission of the permit application


Most important updates from the supervisory world – Hints, tips and recommendations

 Self-analysis has to be done NOW:

- where do I stand?
- what is my (current and future) business model?
- Personnel questions?
- what (internal) instructions do I need?

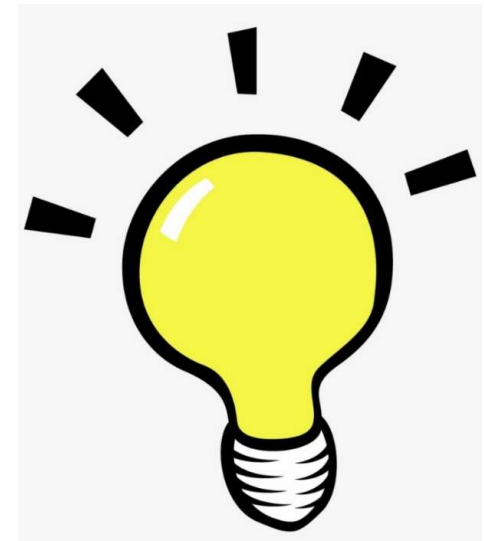


Most important updates from the supervisory world – Hints, tips and recommendations

 Draft corporate mission statement

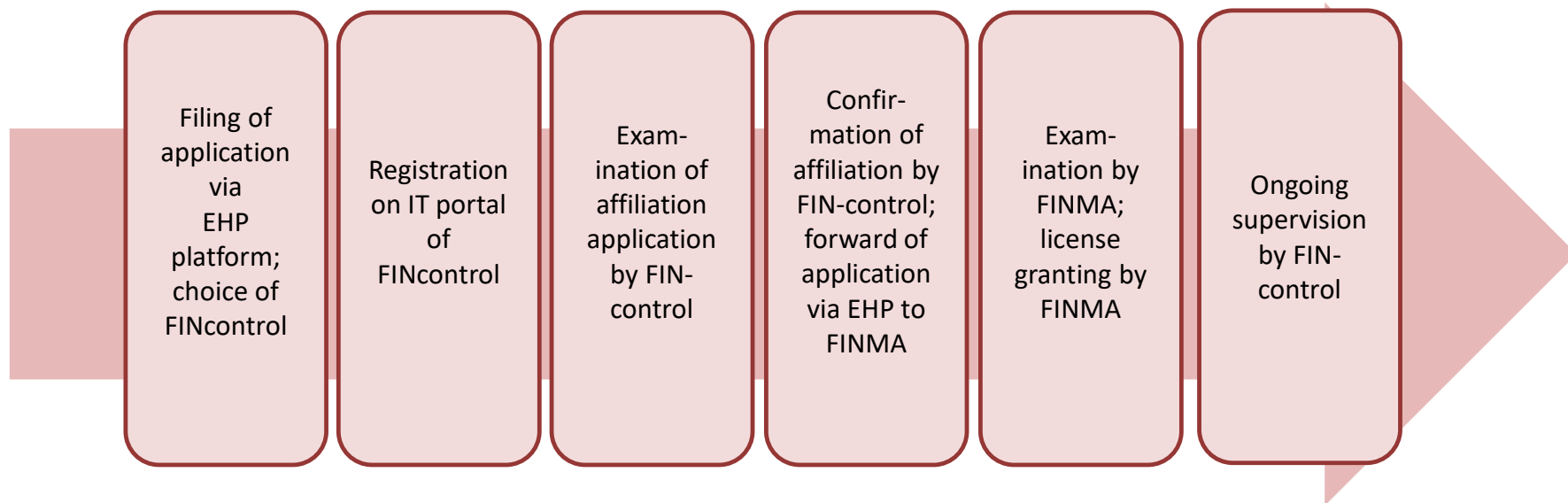
The defined mission statement can be used to derive the structural, organisational and, not least, strategic implementation. Implementation can be derived and relevant risks can be identified.

With the implementation of this guiding principle, you are working on both the from the FinSA as well as from the FinIA



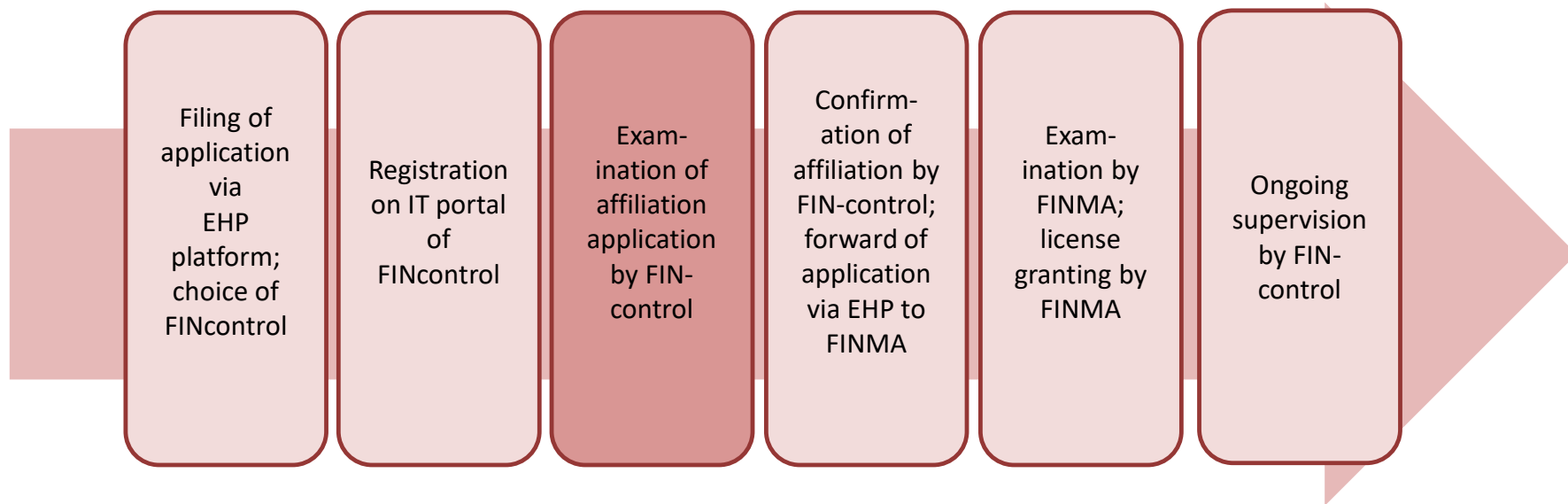
Most important updates from the supervisory world – Hints, tips and recommendations

FINMA recommends submitting the application by the end of June 2022 at the latest - why so "early"?



Most important updates from the supervisory world – Hints, tips and recommendations

FINMA recommends submitting the application by the end of June 2022 at the latest - why so "early"?



Most important updates from the supervisory world – Hints, tips and recommendations

- What should I consider when submitting an application?
 - Clean, congruent directives that reflect the specific set-up (no "blind" adoption of templates), including an appropriate internal control system ICS
 - Coherent presentation on the business activity, namely in terms of budget planning, business scenarios and customer, cost and personnel allocation
 - Clear definition of competences and responsibilities within a company - especially in the case of outsourcing certain services and tasks
 - Clear documentation regarding business continuity, in particular regarding the continuation of business activities in exceptional situations.

Most important updates from the supervisory world – Hints, tips and recommendations

- What should I consider when submitting an application?
 - Focus Internal Control System ICS
 - reasonable, but proportionate
 - The ICS summarizes what has been identified as risk by the financial institution and reflects the currently valid risk weighting
 - Summary of the instruction system - reflects the in-house risk assessment
 - Decisive basis for an appropriate paper trail - both for the regulatory audits and for employees, management bodies and any contractual partners

Most important updates from the supervisory world – Hints, tips and recommendations

- Consequences of an incomplete application
 - Longer processing time
 - Higher costs due to higher individual effort
 - Notices to FINMA by Supervisory Organisation if points remain disputed

Most important updates from the supervisory world – Hints, tips and recommendations

FINMA recommends submitting the application by the end of June 2022 at the latest - why so "early"?

What to do?

- Self-reflection - creating current vs. future corporate mission statement
- Examine options for action (cooperation, outsourcing, application support, etc.)
- Visit www.fincontrol.ch; study information such as fact sheets and information charts
- Networking, exchange with competitors

Regulatory requirements for qualified managing directors

Solo action?

Support?



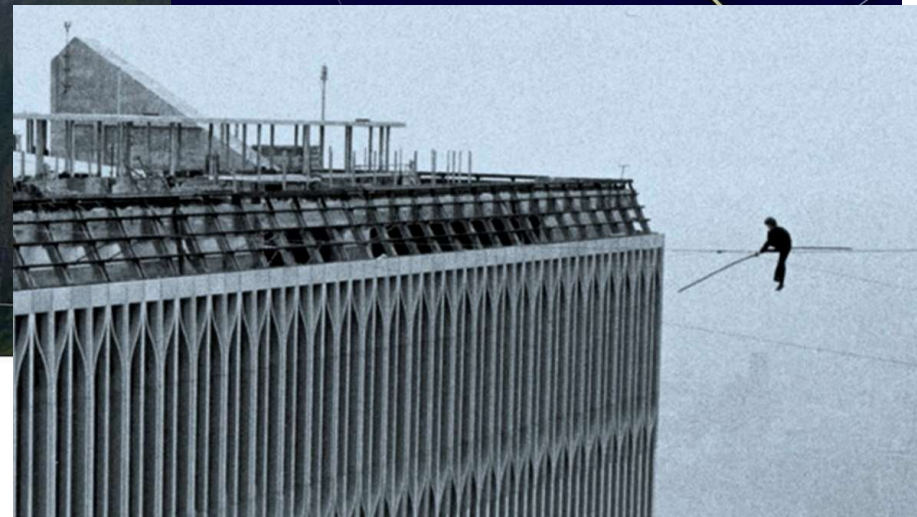
Merger?

Accompaniment?

Outsourcing?

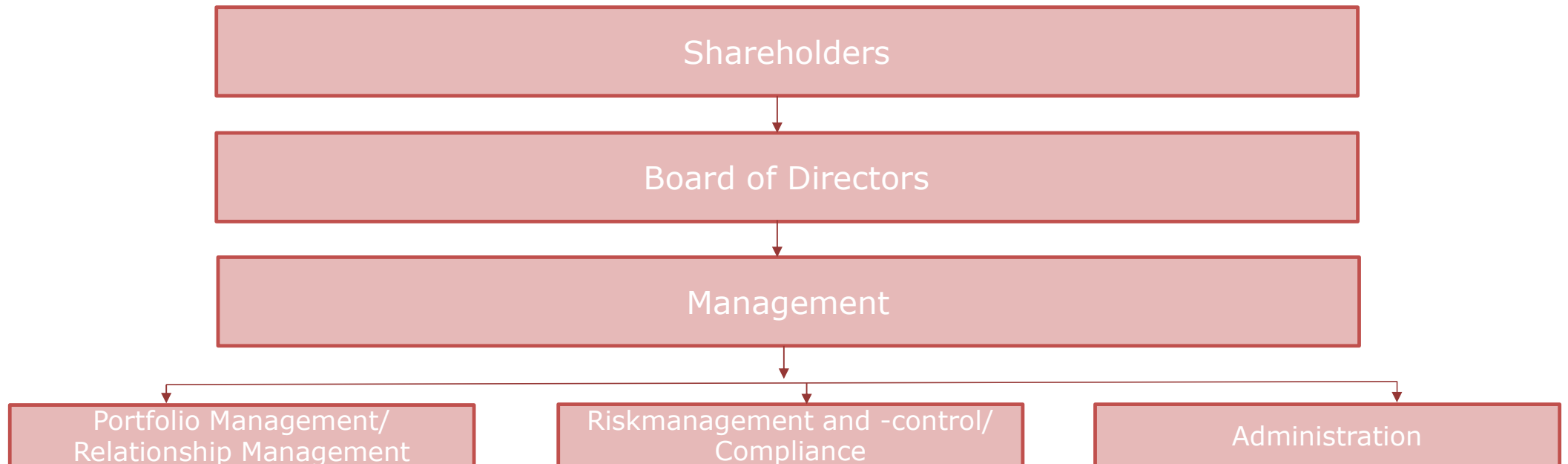
Aids?

Regulatory requirements for qualified managing directors



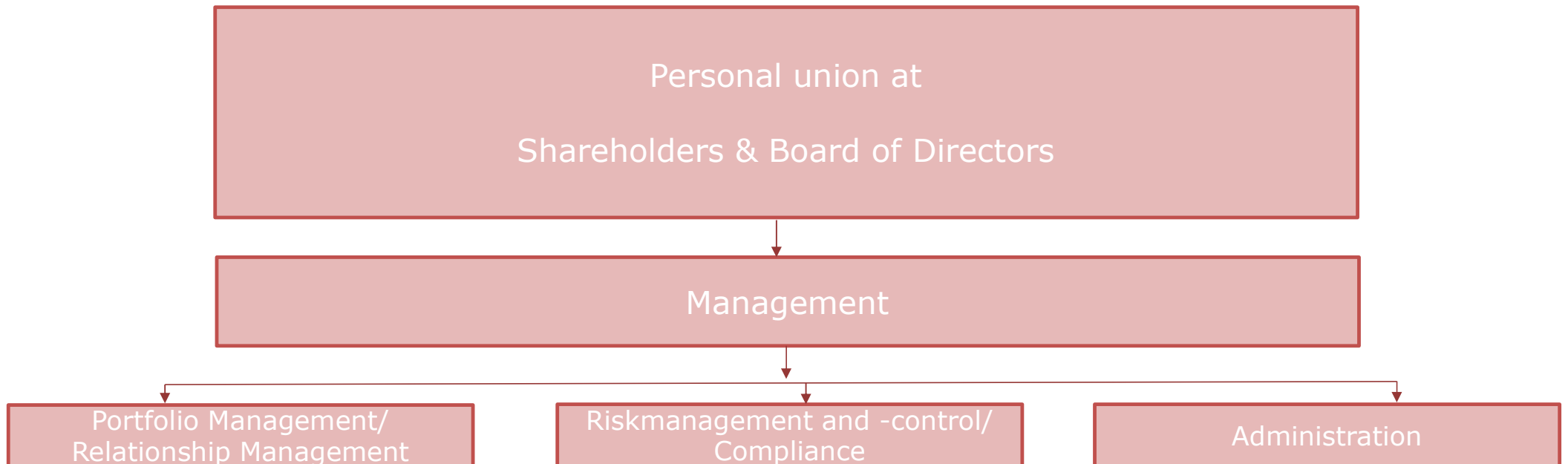
Regulatory requirements for qualified managing directors

«classic» organisational structure (assumption: financial institution in the form of a stock corporation)



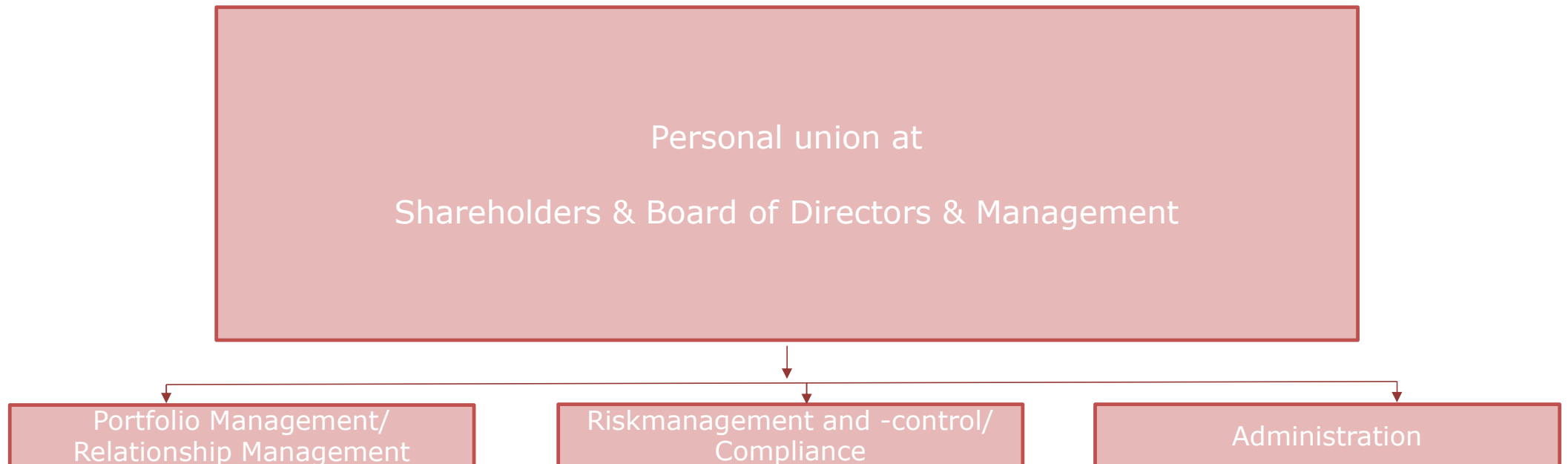
Regulatory requirements for qualified managing directors

«classic» organisational structure (assumption: financial institution in the form of a stock corporation)



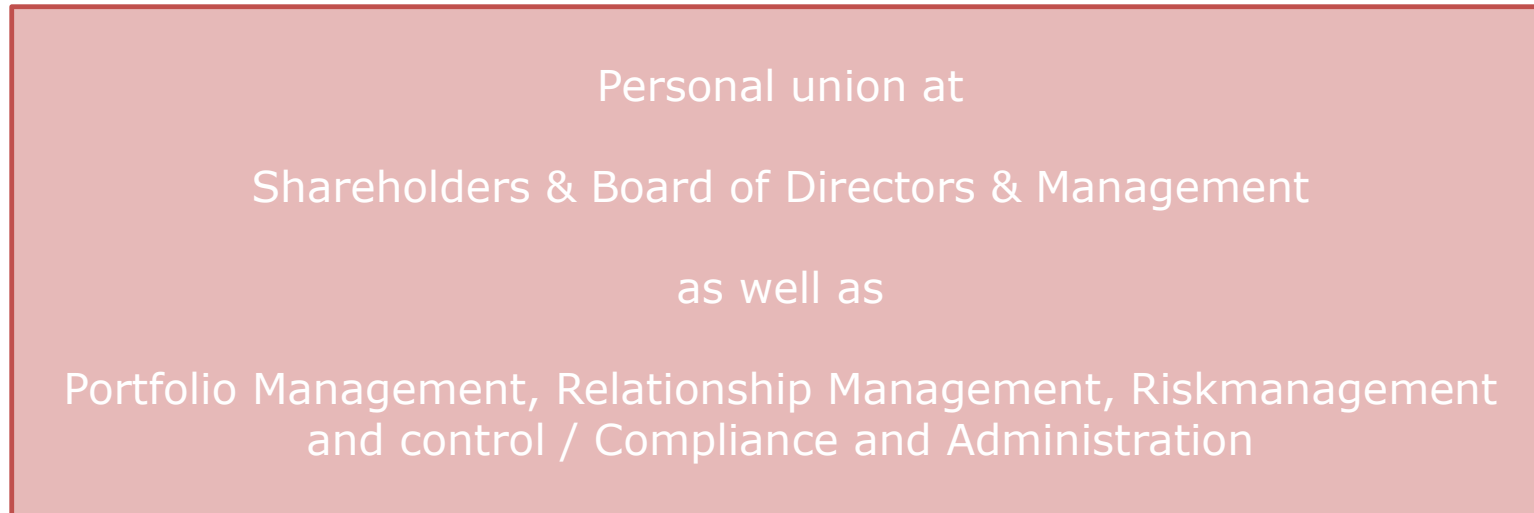
Regulatory requirements for qualified managing directors

«classic» organisational structure (assumption: financial institution in the form of a stock corporation)



Regulatory requirements for qualified managing directors

«classic» organisational structure (assumption: financial institution in the form of a stock corporation)



Regulatory requirements for qualified managing directors

Legal basis:

-  **Art. 20 Qualified managers**

- Art. 20 FinIA

1 The management body of a portfolio manager or trustee entity must consist of at least two qualified persons.

2 The management body may consist of only one qualified person subject to proof that continuation of business operations on a going concern basis is guaranteed.

3 A person is deemed qualified to manage business operations if they have received appropriate training in the activities of a portfolio manager or trustee and at the time of assuming management duties has had sufficient professional experience in portfolio management for third parties or within the framework of trusts. The Federal Council shall regulate the details.

Regulatory requirements for qualified managing directors

Legal basis:

-  **Art. 25 Qualified managers**

(Art. 20 FinIA)

- Art. 25 FinIO

¹ A qualified manager is deemed to satisfy the requirements for training and professional experience at the time of assuming management duties if she or he can furnish evidence of the following:

- a. five years of professional experience:
 1. in the case of portfolio managers, in portfolio management for third parties,
 2. in the case of trustees, within the framework of trusts; and
- b. training of at least 40 hours:
 1. in the case of portfolio managers, in portfolio management for third parties,
 2. in the case of trustees, within the framework of trusts.

² Where there are legitimate grounds for so doing, FINMA may grant exemptions from these requirements.

³ Portfolio managers and trustees shall engage in regular continuing professional development to maintain the skills acquired.

⁴ They shall take the necessary precautions to ensure the continuation of business operations in the event that the qualified manager is prevented from acting or dies. If third parties from outside the company are appointed, the clients must be informed accordingly. In all other respects, Article 14 FinIA shall apply.

Regulatory requirements for qualified managing directors

Legal basis:

- Art. 23 FinIO

-  **Art. 23 Organisation**

(Art. 9 FinIA)

¹ Two authorised signatories must sign jointly. Article 20 paragraph 2 FinIA remains reserved.

² Portfolio managers and trustees must be able to be represented by a person who has their place of residence in Switzerland. This person must be a member of the body responsible for management or of the body responsible for governance, supervision and control in accordance with paragraph 3. Article 20 paragraph 2 FinIA remains reserved.

³ With reservation as to Article 20 paragraph 2 FinIA, FINMA may require the portfolio manager or trustee to appoint a body responsible for governance, supervision and control the majority of whose members are not members of the body responsible for management if:

- a. it has ten or more full-time positions or annual gross earnings of more than CHF 5 million; and
- b. the nature and scope of its activities so demand.

Regulatory requirements for qualified managing directors

Which qualities are required and are verified:

- Professional experience of at least 5 years
 - in each case with reference to the activity performed or envisaged
 - in a professional and geographical sense
 - in relation to the tasks assigned to the respective person with the applicant



Regulatory requirements for qualified managing directors

Excursus: Requirements for compliance officers?

- Basically: training that provides a basis for compliance activities
- Several years of experience in the compliance area (consulting, mandate management, in-house in the compliance activities of a financial company, in exceptional cases also with another industrial company)
- Specific proof of training or further education in the area of AMLA, compliance or the like

Regulatory requirements for qualified managing directors

Separation of risk management from profit-oriented activities

No independent risk management and internal control necessary for:

- Less than five full-time equivalent (FTE) or
- Gross income of less than CHF 2 million



According to current FINMA practice, independence is already required if one of the two factors is present

and

- No business activity with increased risk

Regulatory requirements for qualified managing directors

Business activities with increased risk (not final):

- De-Minimis management of assets of pension schemes or funds
- Work with foreign custodian banks
- Certain «heterogeneous» foreign customer structure or customer structure with focus on a certain foreign region
- Use of investment instruments with potential conflicts of interest
- Unlimited powers of attorney
- Too high/too low allocation of AuM to number of employees or FTEs
- High volume of assets under management: AuM > CHF 1 billion

Regulatory requirements for qualified managing directors

Business activities with increased risk (not final):

- Work with foreign custodian banks
 - Danger of increased AMLA risks (e.g. due to tax offences)
 - Risk of no equivalent supervision or no equivalent AMLA standards
 - Risk of working with «shell banks»
 - Risk that monitoring and instruction cannot be carried out correctly and efficiently



Strategic orientation must make involvement of foreign banks necessary
Documentation must address risk (instructions)

Regulatory requirements for qualified managing directors

Business activities with increased risk (not final):

- Certain «heterogeneous» foreign customer structure or customer structure with focus on a certain foreign region
 - How is access to the respective markets regulated and guaranteed? (How are legal and liability risks addressed?)
 - Danger that with a large number of clients from different jurisdictions, clean monitoring per client/jurisdiction is no longer possible
 - Risk if target markets show increased AML risks



Experience, human resources, education and training must be adequate
Documentation must address risk (instruction system)

Regulatory requirements for qualified managing directors

Business activities with increased risk (not final):

- Use of investment instruments with potential conflicts of interest
 - All conflicts of interest shall be fully disclosed
 - Complete transparency required with regard to fee structure (especially in the case of multiple fee settlements, double dips, etc.)
 - Increased risk of fraud



Possible (percentage) limitation of own investment instruments, must be in line with investment strategy. Documentation must address risk (instructions)

Regulatory requirements for qualified managing directors

Note Homepage of FINMA:

<https://www.finma.ch/de/bewilligung/vermoegensverwalter-und-trustees/bewilligungsprozess/>

In addition: Dossier on asset managers and trustees:

<https://www.finma.ch/de/dokumentation/dossier/dossier-vermoegensverwalter-und-trustees/>



The screenshot shows a webpage with a navigation menu on the left and main content on the right. The navigation menu includes: Alles zur Bewilligung, Bewilligungsformen, Banken und Wertpapierhäuser, Versicherungen, Asset Management, Vermögensverwalter und Trustees (highlighted), Vermögensverwalter, Trustees, Bewilligungsprozess, Aufsichtsorganisationen, Vertretungen ausländischer Finanzinstitute gemäss FINIG, Versicherungsvermittler, SRO, Direkt unterstellte Finanzintermediäre, Finanzmarktinfrastrukturen und ausländische Teilnehmer, Ratingagenturen, Registrierungsstelle, Prüfstelle für Prospekte, Fintech, and FDLEG und FINIG. The main content area is titled 'Bewilligungsprozess für Vermögensverwalter und Trustees' and contains the following text: 'Der Prozess zur Bewilligung von Vermögensverwaltern oder Trustees durch die FINMA gliedert sich in folgende Schritte: Selbstregistrierung, Erstellung des Gesuchs, Übermittlung des Gesuchs an eine Aufsichtsorganisation und Übermittlung des Gesuchs zusammen mit der Bestätigung der Aufsichtsorganisation an die FINMA.' It also states: 'Der Bewilligungsprozess für Vermögensverwalterinnen, Vermögensverwalter und Trustees wird ausschliesslich elektronisch über die Erhebungs- und Gesuchplattform EHP abgewickelt. Dort stehen sämtliche Formulare und Informationen für die Gesuchseingabe zur Verfügung.' 'Der Bewilligungsprozess gliedert sich in folgende Schritte: Schritt 1: Selbstregistrierung auf der EHP. Um Zugang zur EHP zu erhalten, müssen Vermögensverwalterinnen, Vermögensverwalter und Trustees auf der Website der FINMA die sogenannte Selbstregistrierung vornehmen. Nach der Selbstregistrierung und der Prüfung durch die FINMA ist der Zugang zur EHP mit Zwei-Faktoren-Authentisierung über das FINMA-Portal möglich. Details zur Selbstregistrierung finden sich im Erklärvideo "Selbstregistrierung". Hinweis: Meldungen müssen nicht mehr eingereicht werden, da die entsprechenden Fristen abgelaufen sind.' 'Erklärvideo Selbstregistrierung (Mit den Pfeiltasten können Sie vor- oder zurückschalten.)' The FINMA logo is visible in the bottom right corner.

Regulatory requirements for qualified managing directors

Solutions for one-man management teams

Problems:

- Does not meet requirement for 2 qualified directors
- Does not meet requirement for collective signatory right
- If indicated, does not meet requirement for independence risk management and risk control

Regulatory requirements for qualified managing directors

Solutions for one-man management teams

Proof of proper continuation in accordance with Art. 20 para. 2 FinIA:

„The management may consist of only one qualified person if it is demonstrated that the proper continuation of the business operations is guaranteed". Roughly formulated, this is possible with the following options

- Cooperation
- Liquidation and dissolution

Regulatory requirements for qualified managing directors

Solutions for one-man management teams

Proper continuation by means of cooperation :

- The cooperation partner must be a financial institution that is supervised and authorised on at least equivalent level



Not natural persons, but rather another authorized financial institution are to be used as cooperation partners (usually a legal entity)

- Cooperation relationship must be contractually regulated
- Content/design of the cooperation agreement may vary in individual cases

Regulatory requirements for qualified managing directors

Solutions for one-man management teams

Proper continuation by means of cooperation - minimum content of cooperation agreement (not exhaustive):

- Proof of equivalent authorisation
- Basic obligation to take over the mandates by cooperation partners



Possible by taking over the contracts with each clients or onboard the clients directly

- Regulation in which cases the cooperation partner must fulfil its obligation

Regulatory requirements for qualified managing directors

Solutions for one-man management teams

Proper continuation by means of cooperation - minimum content of cooperation agreement (not exhaustive):

- Regular exchange between the licence holder and the cooperation partner
- Information to clients about cooperation

Certain information about clients must be provided to cooperation partners. However, particular attention must be paid to data protection requirements and contractual or contract law aspects.

Regulatory requirements for qualified managing directors

Solutions for one-man management teams

Dissolution / liquidation in case of impossibility of continuation by licensee

- Cooperation partner must have appropriate qualifications for coordination and support of the liquidation



Not necessarily an authorized financial institution; a lawyer or law firm or an escrow trust can also be used for liquidation, for example.

- Mandate for dissolution/liquidation must be contractually regulated
- Content/design of the mandate may vary in individual cases

Regulatory requirements for qualified managing directors

Solutions for one-man management teams

Dissolution / liquidation in case of impossibility of continuation by licensee – minimum content of mandate agreement (not final):

- Basic obligation to accept the mandate by contracting partners
- Regulation in which cases the contracting party must fulfil its obligation
- Regular exchange between the license holder and the contracting partner not mandatory; however, it is recommended that the cooperation partner is one of the financial institution's "emergency contacts".

Regulatory requirements for qualified managing directors

Solutions for one-man management teams

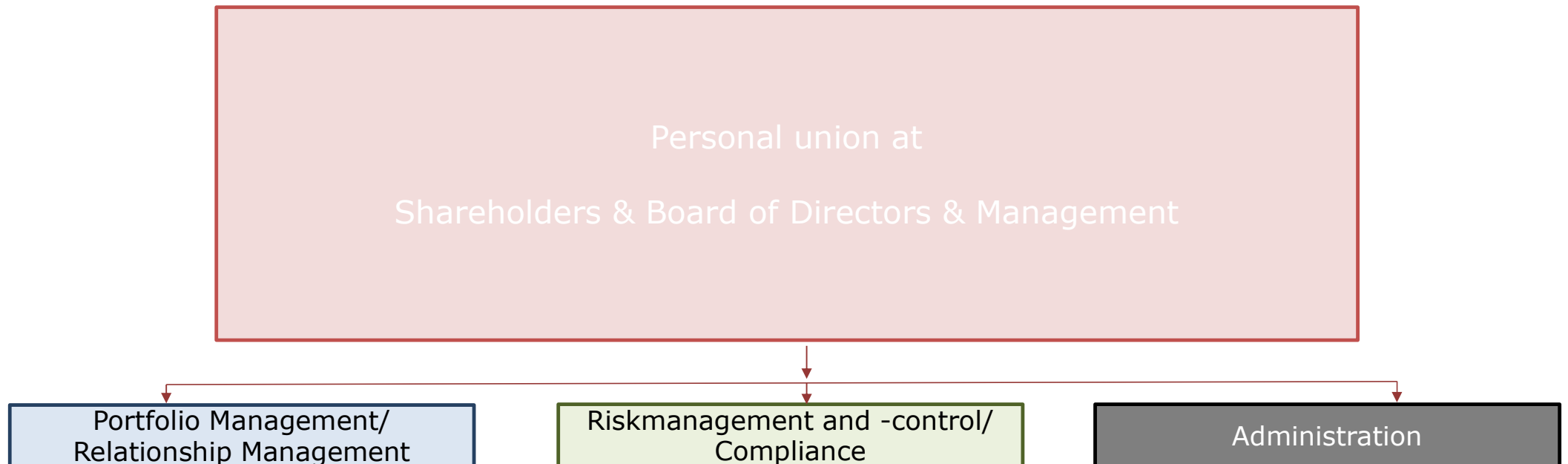
Dissolution / liquidation in case of impossibility of continuation by licensee – minimum content of mandate agreement (not final):

- Information to clients about cooperation

Information about clients must be disclosed to the contracting partner, at the latest at the time when he has to take action. In particular, however, data protection requirements and contractual or contract law aspects must be taken into account.

Regulatory requirements for qualified managing directors

Outsourcing of relevant activities



Regulatory requirements for qualified managing directors

Solutions for outsourcing

Important: in the case of outsourcing, the licence holder remains responsible for the careful selection, instruction and supervision of the outsourcing partner.

If an outsourcing solution is chosen, this must be regulated in the internal documents and corresponding reporting lines or a corresponding paper trail must be defined.

As part of the regulatory audit, evidence must be provided of how the controls are carried out and documented.

Regulatory requirements for qualified managing directors

Case study 1

A, owner of A AG, sole BoD and managing director, has been active as an portfolio manager with A AG for 10 years.

A AG serves 50 clients based in Switzerland, Germany and Austria.

In total, A AG manages CHF 65 million and generates gross income of CHF 400,000 per year.

A has outsourced all accounting services to C Treuhand GmbH.

How must A proceed in order to comply with the new regulatory requirements?

Regulatory requirements for qualified managing directors

Case study 1 – Approaches (selection)

Aspect of securing the business activity

Option A: Cooperation with B AG (friendly company, also run by one person and equally licensed)

- Cooperation agreement
- Coordination with B, information on client base, target countries, amount of assets under management
- Service agreement with C Fiduciary GmbH
- Adaptation of the directives to the FinSA and FinIA
- Asset management contract must contain requirements in accordance with FinSA and FinIA
 - In particular: Customer segmentation, information on cooperation with B AG, appropriateness and suitability test

Regulatory requirements for qualified managing directors

Case study 1 – Approaches (selection)

Aspect of securing the business activity

Option B: Agreement with C Fiduciary GmbH for the purpose of dissolution/liquidation of A AG if A is no longer capable of acting.

- Service agreement with C Fiduciary GmbH with explicit mandate for dissolution/liquidation
- Adaptation of the directive to the FinSA and FinIA
- Asset management contract must contain requirements in accordance with FinSA and FinIA
 - In particular: Client segmentation, information on dissolution/liquidation by C Fiduciary GmbH, appropriateness and suitability test

Regulatory requirements for qualified managing directors

Case study 2

A, owner of A AG, sole BoD and managing director, has been active as an portfolio manager with A AG for 10 years.

A AG serves 30 clients domiciled in Switzerland, Germany and Austria and is mandated to manage a collective investment scheme with CHF 40 million in assets.

In total, A AG manages CHF 35 million in individual assets plus CHF 40 million in collective assets and generates gross income of CHF 500,000 per year.

A has outsourced all accounting services to C Treuhand GmbH.

How must A proceed in order to comply with the new regulatory requirements?

Regulatory requirements for qualified managing directors

Case study 2 – Approaches (selection)

Due to the activity as a manager of collective assets below the de minimis threshold - generally considered as an activity with increased risk. In principle, continuation as a one-person company is possible, but: independent risk management and risk control are required!

- Outsourcing contract with compliance officer
- Service agreement with C Fiduciary GmbH
- Adaptation of the directive to the FinSA and FinIA
- Reference in organisational document to outsourcing
- Asset management agreement must contain requirements in accordance with FinSA and FinIA
 - In particular: Customer segmentation, appropriateness and suitability testing
 - Information: for data protection reasons, information on outsourcing is recommended.

Single-member companies under FinIA: what requirements must be met, what exemptions are possible?

Q&A

Questions about own resources:

- When must a deputy be appointed? What qualifications does the proxy need to have? To what extent must a proxy know the investment strategy and the individual investments?
- Can capital that must be paid in in cash be invested in shares, provided that in the event of price losses the minimum capitalisation is offset by capital increases?
- Delimitation of current set-up vs. possible planned future activities

Single-member companies under FinIA: what requirements must be met, what exemptions are possible?

If you have any questions please do not hesitate to contact us.

info@fincontrol.ch