

TECC online 2022

Outsourcing

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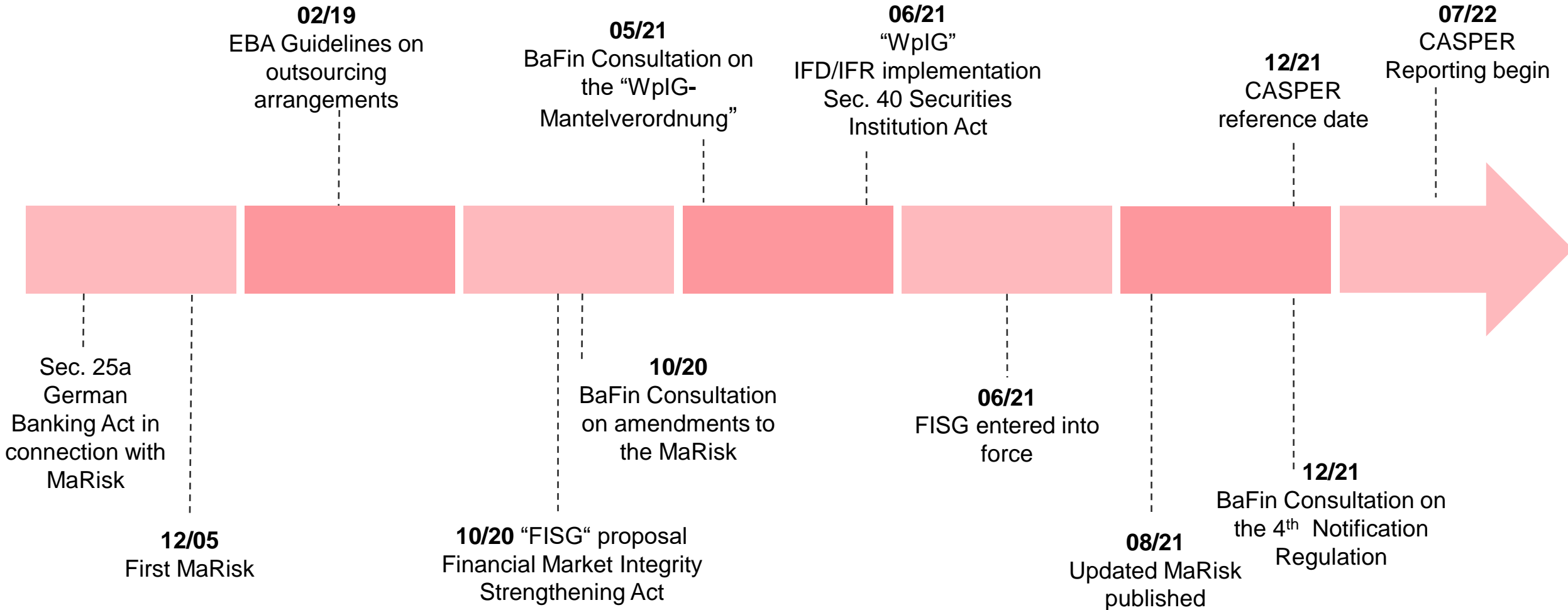
Jochen Kindermann, Simmons + Simmons

20-22 September 2022

Outsourcing regime

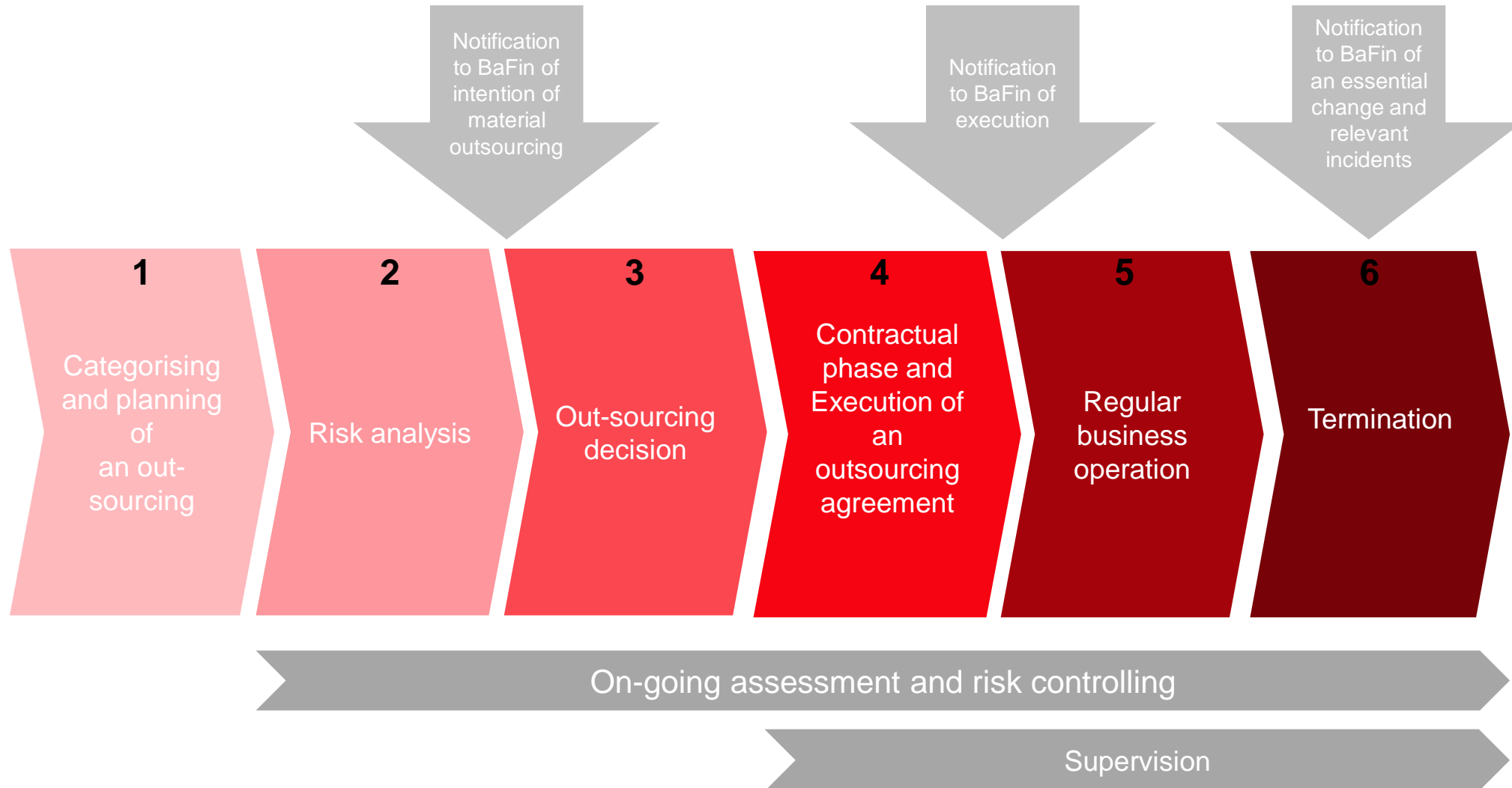


Development of the regulatory landscape



Outsourcing process

FISG requirements



➤ U.S. Department of Justice - Criminal Division - Evaluation of Corporate Compliance Programs

➤ Update 2020

1. Is the company's compliance program well designed?
2. Is the company's compliance program applied both seriously and with good intentions?
3. Is the compliance program practical?
 - Managing Third Party Risks early on
 - Guideline is intended to ensure that compliance departments can monitor processes effectively
 - **What is new here is the fact that if misconduct is not prevented or not immediately detected by the company, the DoJ will conclude that the compliance program was not effective enough at the time of the misconduct and therefore the misconduct could be committed. Thus, an existing misconduct implies a noncompliant compliance program in the future.**

Quote from current literature: "... Personal liability of an executive in the U.S. is considered the second largest risk factor.For German companies, the U.S. guidelines can become doubly relevant: First, even a German company that comes under the scrutiny of the U.S. authorities must be able to prove that it has complied with the requirements set forth therein. Second, the U.S. is often a trendsetter for other jurisdictions when it comes to legal and compliance issues: "There are many examples of best practices from the U.S. being adopted in German or European law with a certain time lag," says Lauterwein. He therefore assumes that the U.S. guidelines will also serve as a guide when assessing compliance systems in Germany." Finance-Magazin 9.8.21(<https://www.finance-magazin.de/deals/ma-deals/neue-us-leitlinien-treiben-compliance-due-diligence-39617/>)

ISO International Organization for Standardization

- ISO 37500 (2014)
 - Confirmed 2021
 - Outsourcing
- ISO 37500 Outsourcing has as its predecessors DIN SPEC 1041 "Outsourcing of technology-oriented knowledge-intensive services" and DIN SPEC 91289 for the benchmarking of outsourcing services and service providers
 - ISO 37500 now covers the entire outsourcing lifecycle. It defines the necessary terms and provides proven concepts and procedures. It provides guidance for the outsourcing lifecycle processes.

Outsourcing vs Third Party

- ✓ Processes and services are partly bundled within the Group in so-called service hubs
- ✓ Precise service provider management of service hubs enables effective and efficient compliance risk management

- Group internal Outsourcing vs. external Third Party Management
- Group internal outsourced processes
- Outsourcing from Legal Entity to Legal Entity
- Outsourcing from Branch to Head-Office
- Outsourcing from Head-Office to Branch
- Outsourcing from Branch to Branch

*Compliance owned first line
„Monitoring processes“*

- ✓ Clearly defined "monitoring processes" reduce the emergence or proliferation of compliance risks
- ✓ Timely detection of compliance risks enables early countermeasures and risk mitigation

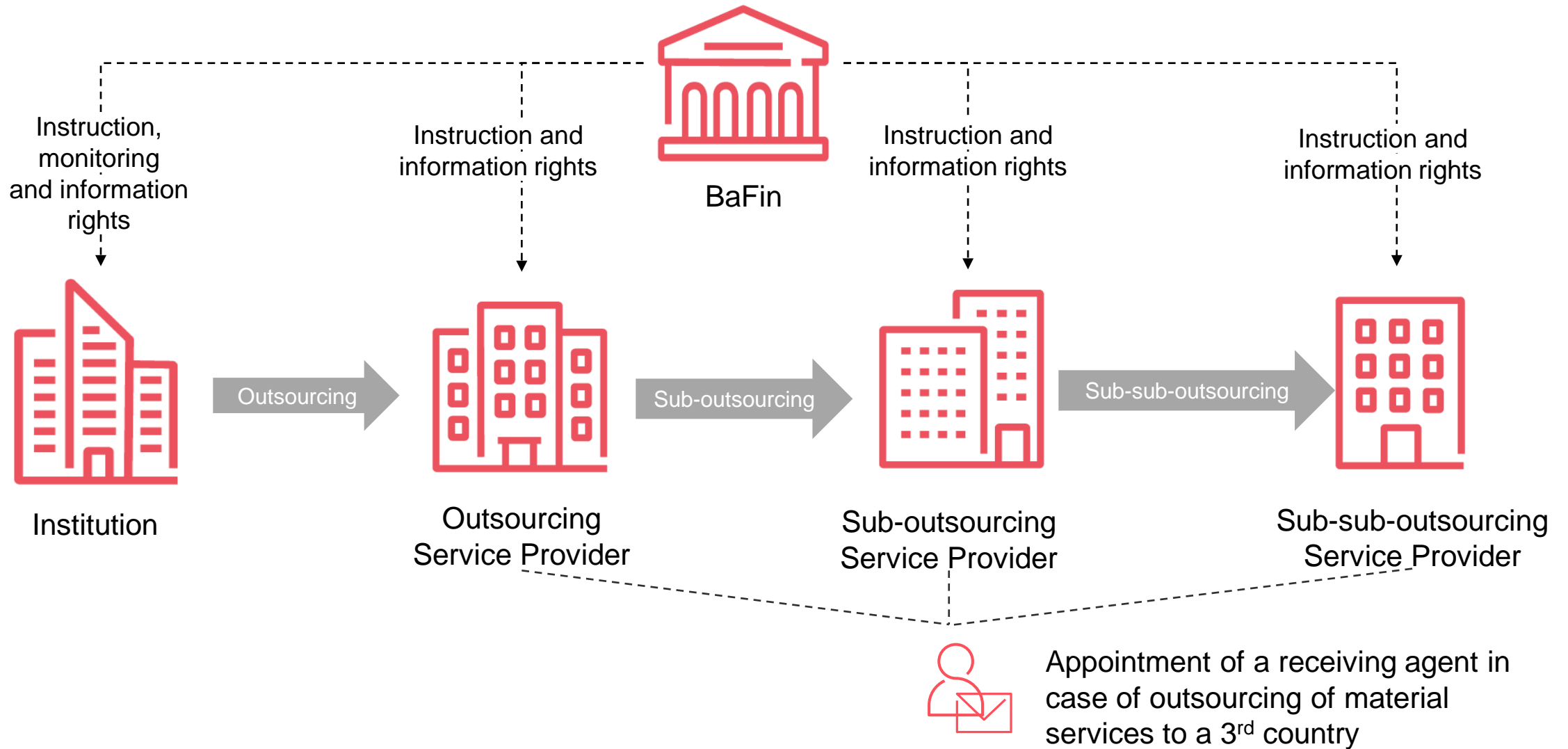
- Monitoring
- **Testing / Assurance**
- Surveillance
- Pre-clearing
- Personal Account Dealings
- Risk focused / risk based approach

Global Booking Model

Global banks meet the needs of their customers wherever the customers have their presence, enabling fast 24/7 trading for customers in global markets

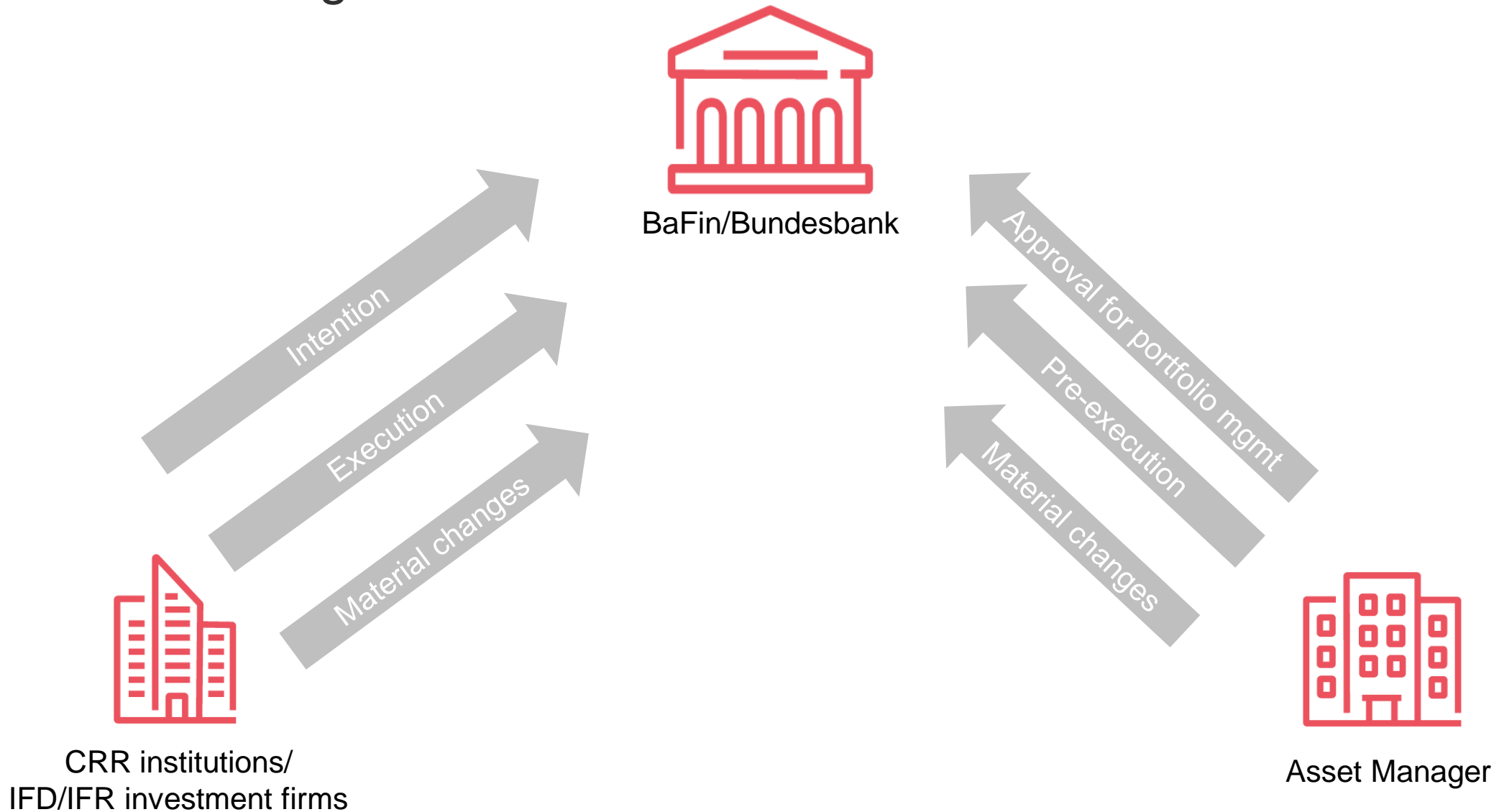
- „Remote Booking“
- Outsourcing?
- Does German law apply abroad?
- Global Management of „remote booker“

The FISG and its implications



The FISG and its implications

Disclosure obligations



Outsourcing

Latest developments



Outsourcing notifications

- BaFin clarified its expectations on outsourcing notifications
- Amended notification regulation is still being consulted
- Currently notifications can not yet be filed

ECB Notification tool

- Separate outsourcing reporting tool (CASPER)
- Since July 2022 notifications have to be made

Outsourcing templates

Content of the notification



BaFin MVP portal	EBA CASPER
<ul style="list-style-type: none">• General information	<ul style="list-style-type: none">• Entity signing the contract
<ul style="list-style-type: none">• Contact person / outsourcing officer	<ul style="list-style-type: none">• Supervised entity that makes use of the outsourcing
<ul style="list-style-type: none">• Information on outsourcing<ul style="list-style-type: none">• Category of the outsourced function• Outsourced function• Outsourced data	<ul style="list-style-type: none">• Outsourced function details<ul style="list-style-type: none">• Start date of the contract, date of next contract renewal & end date of the contract• Notice period for the institution; Notice period for service provider• Description of the outsourced function• Storage or processing of confidential data by the service provider• Physical location(s) of stored and/or processed data• Country/countries of provision of services• Critical or Important & Reasons for criticality or importance• Last date of assessment of criticality or importance• Specific nature of the data to be held
<ul style="list-style-type: none">• Risk assessment	<ul style="list-style-type: none">• Due diligence, Risk assessment
<ul style="list-style-type: none">• Outsourcing company	<ul style="list-style-type: none">• Service provider details
<ul style="list-style-type: none">• Contract details	
<ul style="list-style-type: none">• Cloud-outsourcing	<ul style="list-style-type: none">• Cloud service model(s); Cloud deployment model(s)
<ul style="list-style-type: none">• Sub-outsourcing	

Challenges

- Differences in the definition of outsourcing
- Differences in reporting format and frequency

Proposal

- Harmonisation of outsourcing obligations along the lines of the EBA Guidelines across the EU – no national goldplating
- Consolidated set of data following one IT standard – EU outsourcing database

Contact details

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