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# Knowledge Sharing Event

## The questions you need to ask

29 November 2018

# Agenda

| Agenda Items | Speaker |
|---|---|
| **Introduction** | Brian Forrester |
| **Regulatory Update** | Laura Wadding |
| **IFRS 9** | Ailbhe Flynn |
| **Tax Update** | Seamus Kennedy |
| **Administrator Survey** | Cormac Dinan |
| **Closing Comments** | Darren Griffin |

# Regulatory Update

Laura Wadding

# CBI Priorities

- Supervisory Convergence – setting a standard and consistency in the EU (establishment of a Supervisory Coordination Network)
- CP86 – compliance with guidance as set out and extension of guidance and substance requirements where manco's extend permissions in advance of Brexit (to include individual portfolio management)
- Client Asset / Investor Money Regulations – themed inspections
- Product Governance / MiFID II Implementation
- Culture in Financial Services
- Fintech Strategy
- IT and Cyber Risk
- Other – AML Inspections Ongoing across the sector

# Agenda

## Laura Wadding

1. CBI Priorities
2. Substance Requirements & Delegate Oversight
3. Outsourcing
4. Anti-Money Laundering
5. Beneficial Ownership

# Delegate Oversight & Substance Requirements
## ESMA Opinion

**Objective Reasons** - delegation to non-EU entities could make oversight and supervision of the delegated functions more difficult; consequently, national competent authorities (NCAs) should give special consideration to such arrangements to be satisfied that they are justified by objective reasons.

**Sufficient Resources** - EU mancos should demonstrate that they dedicate sufficient human and technical resources to the selection and ongoing monitoring of delegates, which should include regular on-site visits

**Due Diligence -** firms should carry out due diligence on the delegate, including analysing potential conflicts of interest, and be able to justify why their delegate is the most suitable to perform the functions.

**Consistency -** UCITS rules on delegation should be interpreted as consistent with the AIFMD rules, so that UCITS investors benefit from the same protections as AIF investors.

**Luxembourg -** the CSSF published a Circular in August 2018 detailing its expectations for mancos with a view to strengthening their long term resilience including substance requirements and director time commitments.

**Ireland -** information requirements for new AIFM / UCITS Mancos include the rationale for the geographical distribution of planned activities, the objective justification for delegation arrangements in relation to critical functions and details of the due diligence undertaken during the selection process.  Additional substance is required where an AIFM is proposing to carry out ancilliary MiFID activities e.g. individual portfolio requirements.

# Outsourcing

## CBI Findings and Issues for Discussion Paper – November 2018

**Board Awareness**

**Risk Management**

**Documented Outsourcing Framework / Policy**

**Business Continuity**

# Anti-Money Laundering

- Supervisory Convergence – setting a standard and consistency in the EU (establishment of a Supervisory Coordination Network)
- CP86 – compliance with guidance as set out and extension of guidance and substance requirements where manco's extend permissions in advance of Brexit (to include individual portfolio management)
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# Anti-Money Laundering

The Criminal Justice (Money Laundering and Terrorist Financing) Act 2018 (the 2018 Act) which fully transposes the Fourth Anti-Money Laundering Directive (MLD4) in Ireland was signed into law in early November 2018. It is expected that the commencement date will be before the end of November with CBI Guidelines expected to be issued for public consultation in December (3 month consultation period).

| | |
|---|---|
| Beneficial Ownership – wider scope of definition | **Corporates:** includes any natural person who ultimately owns or controls the relevant body through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity or through control via other means.<br>**Trusts:** settlors, trustees and protectors of a trust may now also be considered beneficial owners.<br>**Partnerships:** Any individual who exercises control could be considered a Beneficial Owner and does not necessarily relate to those in management positions |
| Introduction of Business Risk Assessment | The 2018 Act introduces a statutory requirement for designated persons to conduct a 'business risk assessment'. The designated person should refer to any information in the national risk assessment which is of relevance, as well as guidance from the CBI. |
| Simplified CDD and Enhanced CDD | The automatic entitlement to apply SDD as been removed, firms will now have to conduct a risk assessment on a case by case basis and document their rationale. Firms will be obliged to conduct enhanced due diligence to all customers deemed high risk. |
| Reliance on third parties to carry out CDD | The 2018 Act extends the ability for designated persons to rely on third parties to carry out CDD on their behalf to those located outside the EU, provided that the third party is a branch or a majority-owned subsidiary of an EU designated person. However as was previously the case, the CDD responsibility remains with the outsourcing party. |

# Beneficial Ownership

**The Regulations apply to a company formed under the Companies Acts, including investment companies and ICAVs. Trusts and Partnerships are currently out of scope.**

- Trusts (including Unit Trusts) will be brought into scope under new Legislation.
- Regulations requiring the submission of beneficial ownership information to a central register (maintained by the CRO for companies), have yet to be transposed (it was expected in Q4 2018)
- The 5th AML Directive proposes additional changes
  - Lowering of the 25% threshold to 10% in certain circumstances (depending on risk)
  - Making the central register available to more public agencies
- European Commission thinking is evolving on this topic, so further regulation could be developed in due course to amend and/or augment requirements.

**There are a number of operational challenges for funds, some of which are outlined below:**

- Beneficial ownership of funds can change daily.
- Onerous notification procedures where a beneficial owner is identified.
- Treatment of intermediaries where there are no beneficial owners is not clear.
- Once notified by the fund, a beneficial owner, who is a natural person, must confirm that they are a beneficial owner of the server of the notice (the fund). In the case of a fund, this person may not know whether they are a beneficial owner or not.

# Key Questions you Should Ask

Have we implemented CP86?

Do we have awareness of what is being outsourced directly and by our delegates

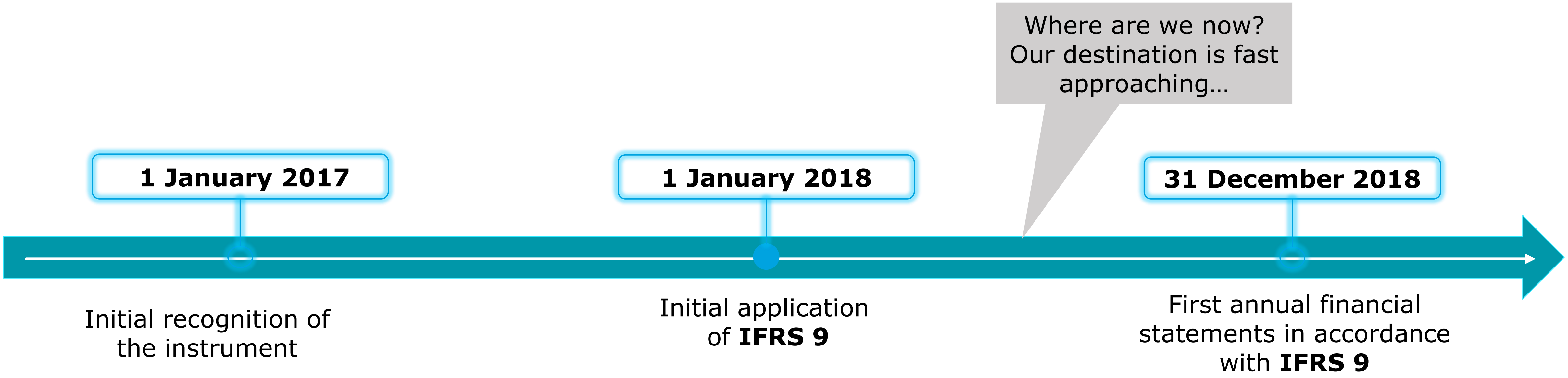
Are we ready for changes in AML and Beneficial Ownership Rules

# IFRS 9

Ailbhe Flynn

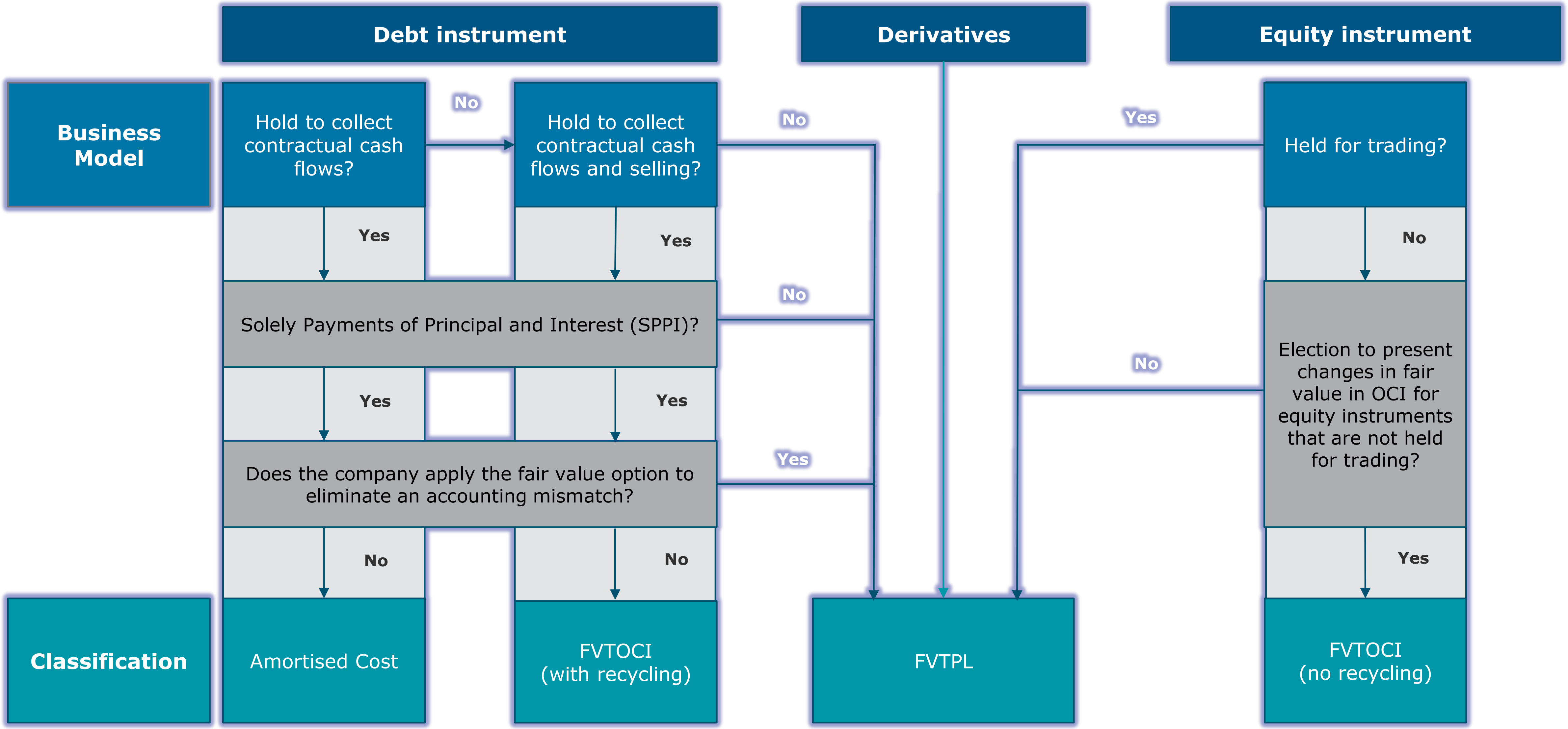
# Transition and Effective Date

## IFS 9 shall be applied for annual periods beginning on or after 1 January 2018 (early application permitted)



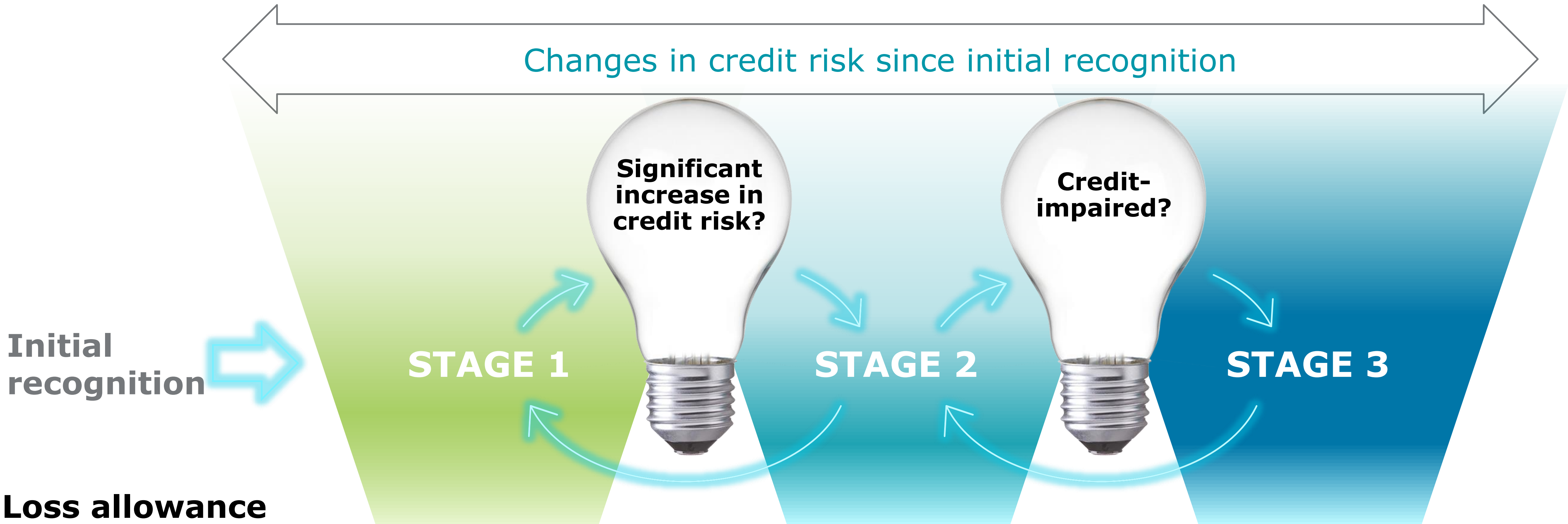

**Generally retrospective, subject to multiple exceptions and exemptions, some of which require elections to be made in advance of adoption.**

# Classification & Measurement



# Expected Credit Loss Model

## Overview of impairment requirements




| | STAGE 1 | STAGE 2 | STAGE 3 |
|---|---|---|---|
| **Loss allowance** | **12-month ECL** | **Lifetime ECL** | **Lifetime ECL** |
| Apply effective interest rate to … | Gross carrying amount | Gross carrying amount | Net carrying amount |

# IFRS 9: Measurement of expected credit losses

**Time value of money**

Discounted to the reporting date using the effective interest rate at initial recognition or an approximation thereof

**Expected value**

The estimate shall always reflect:
- the possibility that a credit loss occurs
- the possibility that no credit loss occurs

**Cash shortfalls**

Shortfalls of principal and interest as well as late payment without compensation

**Information**

All reasonable and supportable information which is available without undue cost or effort including information about past events, current conditions and forecasts of future economic conditions

**Level**

Measurement on individual instrument or on portfolio level

**Period**

Maximum contractual period under consideration of extension options

# IFRS 9: Disclosures

## 1

### Credit risk management practices and their relation to the recognition and measurement of ECLs

Disclosure of accounting policies chosen and judgement applied

- Transfer out of stage 1 & 2
- Definition of default
- Forward-looking information
- Assumptions, inputs, etc.
- Changes in estimation techniques
- Modifications
- Grouping of assets

## 2

### Evaluation of the amounts in the financial statements arising from expected credit losses

- Reconciliation of the loss allowance
- Reconciliation in gross carrying amount
- Write-off
- Modifications
- Collaterals (and other credit enhancements)

## 3

### An entity’s credit risk profile including significant credit risk concentrations

Disclosure by credit risk rating grade:

- Gross carrying amount of financial assets
- Exposure to credit risk on LCs and FGCs

Significant concentration of credit risk, e.g. loan-to-value groupings, geographical concentrations, industry concentrations, etc.

Comprehensive disclosures

# Key Questions you Should Ask

Has there been an accounting paper prepared for the Board which outlines the considerations of IFRS 9?

If anything falls into the amortised cost classification do the managers and service providers have the capabilities to appropriately model the credit risk?

# Tax Update

Seamus Kennedy

# The Changing International Tax Landscape

**Domestic Tax Update**
- Recent Revenue guidance
- Local implementation of international changes – ATAD Consultations

**International Developments**
- Brexit
- BEPS Multilateral Instrument
- EU ATAD
- EU MDR

**Transfer Pricing & Financing Structures**
- TP Reform
- CbC Reporting

**What's next?**
- Pace of change
- Complexity
- Increased transparency (MDR)

**Tax Controversy Landscape**
- Increased transparency and scrutiny
- Impact of technology
- Revenue's Focus on S110 and IREFs

# Employment Taxes

**Payroll taxes must be deducted from payments of directors' fees to both Irish and non-Irish resident directors, except for in certain limited circumstances (e.g. paid to a partner in a legal firm with a "PAYE exclusion order" in place)**

- PAYE Modernisation takes effect from 1 January 2019 – need to ensure all directors as at 31 December 2018 are registered with Revenue by the relevant company and that tax credit allocations are up to date

- Revenue eBrief 40/18 – no PAYE/USC/PRSI deduction on reimbursed expenses (e.g. travel) to an Irish resident director where the individual is away from his/her normal place of work in the performance of his/her duties as a director and the expenses are necessarily incurred in the performance of those duties.

- Revenue had previously published guidance in 2016 confirming an equivalent exemption in respect of non-Irish resident directors

# VAT

**Not all Irish funds and management companies are within the charge to Irish VAT. It is crucial to identify when the registration obligation is triggered, when returns must be filed (and who is filing them), when tax must be paid (and who is paying it), and to be aware of the fund's entitlement to VAT reclaims**

**Key Questions**

- Is the entity registered for VAT?
- Has it filed its 2/4/6 VAT returns for the relevant year?
- Has the annual Return of Trading Details has been filed?
- Has the annual review of the VAT recovery rate had been carried out?
- Have all VAT refunds claimed been repaid by Revenue?
- Have all VAT payments been made to Revenue?
- Who acts as the VAT return ROS filing agent?

# Investor taxes

**Tax withholding and reporting obligations in respect of fund investors (Irish and non-Irish) have seen several changes in recent years e.g. IREF regime, German tax reporting, CRS etc. With increased information sharing and technology tools available to tax authorities, strong controls around the fund's tax obligations in respect of investors are vital.**

**Key Questions**

- Is the tax language in the fund's prospectus up to date for current tax law - IUT, IREF, FATCA/CRS, foreign tax reporting?
- Is the appropriate information being requested in the fund's subscription documents to comply with the various investor tax regimes? Are appropriate validation steps in place?
- Is the fund an IREF? Have all relevant IREF declarations been collected from investors?
- Have IUT/IREF returns been filed and whose responsibility is it?

# Key Questions you Should Ask

Have you made your voice heard in public consultations?

Have you tracked changes in tax law and guidance?

Do you know who is doing what ?

Tax risk is more than the tax bill - it’s a reputational risk

# Asset Servicing Survey

## Cormac Dinan

*Look out for our Asset Servicing White Paper which will be released in the new year. For further details contact cdinan@deloitte.ie*

# Key Questions you Should Ask

What is you core technology strategy and how so you intend to utilise new technologies to improve client service delivery?

What approaches do you have to retaining and further growing business with your existing clients?

What is your product development strategy?

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