



May 2020

Revised Central Bank Guidance FVC to SPV

OVERVIEW

A number of weeks ago the Central Bank of Ireland (the **CBI**) published a [revised guidance note](#) (the **Revised Guidance Note**) which clarifies registration requirements for financial vehicle corporations (**FVCs**) and special purpose vehicles (**SPVs**). Due to this revision, and an altered interpretation of what constitutes an FVC, numerous FVCs will now be required to re-designate as SPVs for quarterly reporting purposes.

As re-designation will apply retrospectively (meaning that relevant vehicles affected by the changes will have to refile quarterly CBI returns back to 2014), in recent weeks we have been asked by a number of Corporate Service Providers to consider the impact of the Revised Guidance Note on current registrations. We have also seen requests for clarity on Day 1 registration requirements for both FVCs and SPVs.

In this note, we set out the changes arising from the Revised Guidance Note and consider how those tasked with registration should approach their FVC/SPV decision making in light of such guidance.

FVC OR SPV

Under [Regulation ECB/2013/40](#), an FVC is defined as an entity whose principal activity meets both of the following criteria:

“it carries out securitisation transactions and its structure is intended to isolate the payment obligations of the undertaking from those of the originator, or the insurance or reinsurance undertaking (in the case of insurance-linked securitisations); and

For further information on any of the issues discussed in this article please contact:



Conor Keaveny

DD: +353 (0)1 673 1741

Conor.keaveny@dilloneustace.ie



Conor Kiernan

DD: +353 (0)1 673 1716

Conor.kiernan@dilloneustace.ie

it issues debt securities, other debt instruments, securitisation fund units, and/or financial derivatives and/or legally or economically owns assets underlying the issue of these financing instruments that are offered for sale to the public or sold on the basis of private placements”.

All companies availing of [Section 110](#) tax status are required to submit the SPV return (i.e. reporting form) to the CBI on a quarterly basis, subject to the following exceptions:

- Companies already reporting to the CBI as FVCs are not required to submit the SPV return;
- Non-Irish domiciled companies are not required to report (i.e. Entities incorporated in another jurisdiction, but fulfil the tax residency test in Ireland, do not form part of the reporting population);
- Companies that have already been liquidated (N.B. If an entity is currently reporting data and enters liquidation proceedings, a final return should be submitted showing the assets on winding down); and
- Companies that have disposed of all assets (save for cash holdings of less than €500,000) are not required to report the SPV return, so long as there are no plans to acquire assets or undertake transactions above €500,000 in total.

REVISED GUIDANCE

The Revised Guidance Note provides for new exemptions to the definition of an FVC. A vehicle that is solely sponsor-funded, or funded by a related party of its sponsor, no longer meets the requirements of the definition and should therefore not be considered an FVC. Furthermore, vehicles that are solely funded by a combination of sponsor or related party funding and loans, will not be considered FVCs. The exceptions to this are limited to the following three cases:

“Firstly, if the entity in question is in a warehousing stage and intends to issue debt securities to entities who are not the sponsor and are unrelated to the sponsor, then it qualifies as an FVC.

Secondly, where the entity forms part of a multivehicle structure where at least one entity is issuing debt securities to entities who are not the sponsor and are unrelated to the sponsor, then it qualifies as an FVC.

Thirdly, if the entity is engaged in retained securitisation i.e. a bank has set up an FVC to securitise a portfolio of their loans, and receives debt securities in return.”

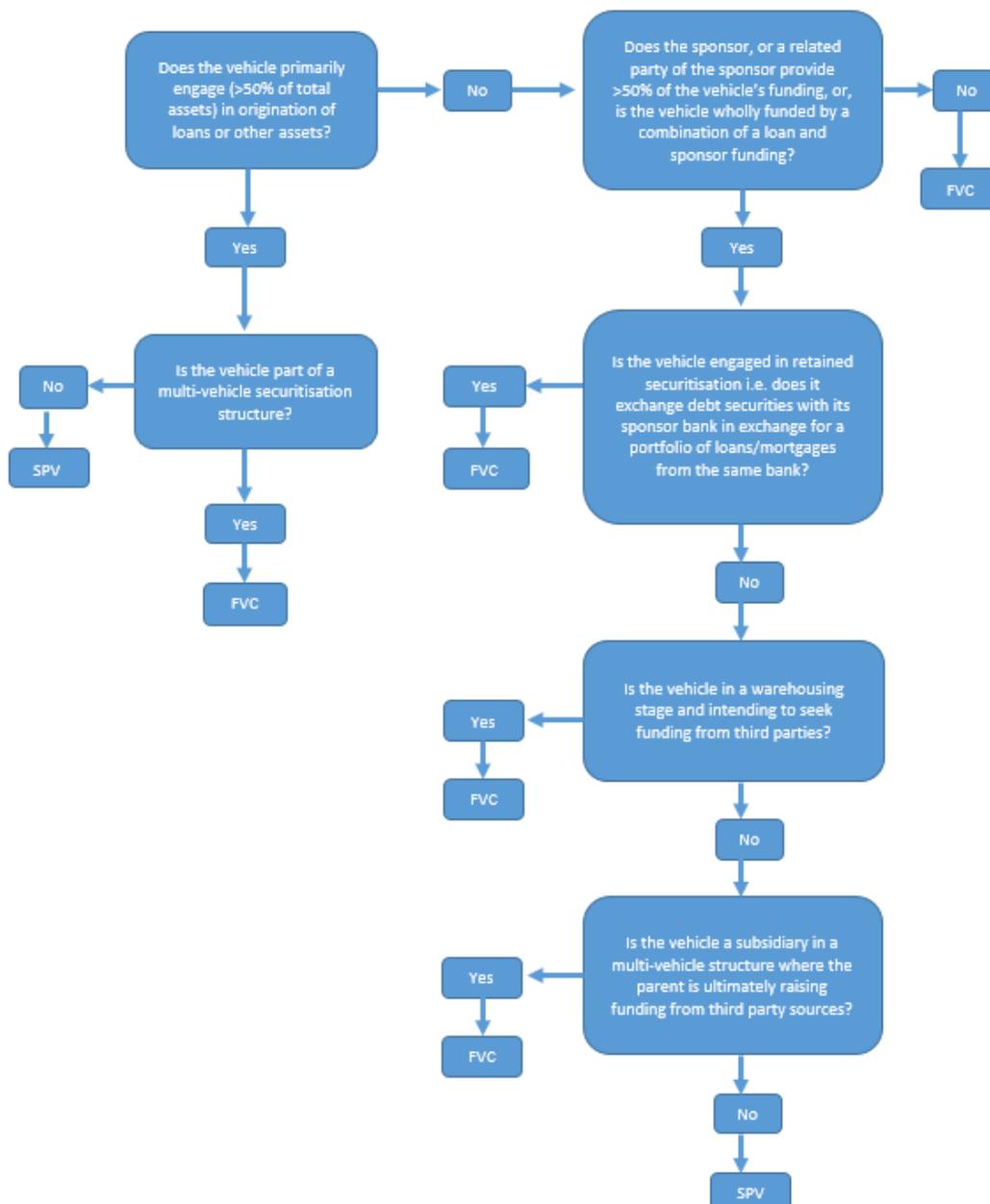
Corporate Service Providers should bear the above amendments in mind, especially where acting for FVCs that have issued securities to entities that are either directly or indirectly managed by the sponsoring entity, as many FVCs affected by the changes will be required to re-designate as an SPV with the CBI. In the unlikely event Corporate Service Providers believe an entity no longer requires FVC or SPV registration following the recent amendments, the CBI should be contacted to discuss future filing obligations.

Where SPV re-designation applies, the CBI will be required to note the change from an FVC to a SPV on its systems and the newly acknowledged SPV will need to back-report for each quarter that the

FVC was active. This will no doubt create an administrative burden for Corporate Service Providers who will have to input the information from original FVC quarterly forms into the SPV versions before submitting these returns on the CBI Online Reporting System. Once back reporting is complete, the SPV (former FVC) will report via the SPV platform on an ongoing, quarterly basis.

DECISION TREE

Corporate Service Providers tasked with considering new registrations or re-designations due to the Revised Guidance Note should consider the [CBI's FAQs in respect of special purpose registration](#). Within the FAQs, the CBI have set out the following helpful decision tree which should assist Corporate Service Providers with their decision making process:



SUMMARY

The Revised Guidance Note appears to be an attempt by the CBI to limit the scope of FVC registration to only those entities that are engaged in the public or private issuance of securities to external investors.

Corporate Service Providers who are in doubt as to the registration status of a particular entity should contact the writer or your usual contact at Dillon Eustace.

Dillon Eustace
May 2020

DILLON  EUSTACE

Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022
Fax: +1 345 945 0042.

New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:

© 2020 Dillon Eustace. All rights reserved.