

HEAT NETWORKS
INVESTMENT PROJECT

HNIP main scheme clarification

**Using a Special Purpose Vehicle
(SPV)**



Triple Point
HEAT NETWORKS
INVESTMENT MANAGEMENT

Using a Special Purpose Vehicle (SPV)

WHAT IS AN SPV?

The term Special Purpose Vehicle (SPV) denotes a separate legal entity which is created by an organisation; a distinct company with its own assets and liabilities, as well as its own legal status. Oftentimes, SPVs are created for a specific objective (such as to isolate financial risk) and in certain instances they are a requirement for local authorities when operating trading businesses.

Generally, local authorities are required by law to establish an SPV to operate a trading business but this can depend on the powers they choose to use to go into that business. Local authority Applicants will be expected to have considered this when obtaining relevant internal approvals and followed an appropriate path that is within their powers.

There are a number of types of entity that the law recognises as having legal status separate from the person setting them up. However, most people are familiar with companies limited by shares and these are the most commonly used form of SPV for heat projects.

SPVs AND HNIP

Applicants for HNIP funding may wish to operate their proposed heat business through an SPV, using HNIP funds the Applicant receives to fund the SPV, or making the Application in the name of the SPV itself. Both of these approaches are permissible but there are a number of important points that Applicants should be aware of regarding SPVs, as outlined below.

HNIP REQUIREMENTS

For private sector applicants, an SPV is not required. Generally, public sector applicants are free to undertake the project in their own name or set up an SPV, as they choose. However, the Heat Networks Investment Project (HNIP) requires 'local authority controlled' projects, where the project capital expenditure (capex) is greater than £2.4m, to be delivered through a separate vehicle (e.g. a local authority company, Joint Venture or Partnership) as per government specifications to be off the National Accounts.

For the purposes of the HNIP scheme, the use of an SPV will be deemed to have met this requirement, irrespective of whether the HNIP funding is applied for and received by the local authority and then on-lent to its SPV or is borrowed directly by the SPV. The SPV may be owned by the local authority in combination with other public sector or private sector entities. A range of delivery routes could be taken to achieve this and it is up to the decision makers to seek advice from their finance departments to decide on the most suitable route. As such, setting up an SPV may be a condition precedent for any local authority funding.

WHY USE A LIMITED COMPANY?

In principle, using a company limited by shares as a district heating SPV enables a project sponsor or sponsors to limit their liability associated with running that business. Shares can be held by, and in any combination of, private or public sector shareholders. But each shareholder's liability will be limited to the value of its shares in the SPV.

Applicants should be aware that there are also other forms of SPV, such as company limited by guarantee, community interest company, limited liability partnership, etc. Each has its pros and cons and each may be considered differently for tax purposes. Applicants should take appropriate advice as to the most suitable type of entity for them and for their particular project.

DO COSTS HAVE TO BE INCURRED BY THE SPV?

To be considered off the National Accounts, all construction costs should be incurred by the SPV. That does not preclude relevant contracts being entered into by the local authority during commercialisation but, before the construction costs that are to be funded by HNIP are incurred under those contracts, they should have been transferred to the SPV.

WHEN IS THE EARLIEST THAT COSTS CAN BE INCURRED?

Costs incurred by an Applicant prior to HNIP application are not eligible to be funded by HNIP. Costs incurred thereafter may be eligible if they meet the various tests of eligibility in the HNIP scheme rules and are compliant with the restrictions on the exemptions from State aid under Article 46 of the General Block Exemption Regulation. Applicants should always take appropriate advice on compliance.

HNIP REQUIREMENTS FOR ON-FUNDING THE SPV

Where an Applicant for HNIP funding does intend to operate its proposed heat business through an SPV and use the HNIP funds it receives to fund the SPV, the Applicant should make this clear when completing the Application Form.

The Applicant should also be aware that:

- the terms on which they provide the on-funding to the SPV will need to be disclosed to and approved by TP Heat Networks;
- the assessment of the State aid impact of their receipt of HNIP funding is likely to be significantly different from the State aid impact of the on-funding they provide (using HNIP money) to the SPV and they will need to provide an opinion that confirms that their on-funding arrangement is State aid compliant;
- the SPV must be contractually obliged to give information, monitoring, evaluation and audit rights to TP Heat Networks, BEIS and other authorised entities; and
- protective provisions in the funding agreements may be triggered if excessive gains are made on a share sale or refinancing.

