Transparency and Trust
Corporate Governance Team
Business Environment Directorate
Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET

16 September 2013

Dear Sirs,

Re: BVCA response to BIS discussion paper "Transparency & Trust: Enhancing the transparency of UK company ownership and increasing trust in UK business"

The British Private Equity and Venture Capital Association ("BVCA") is the industry body and public policy advocate for the private equity and venture capital industry in the UK. With a membership of over 500 firms, the BVCA represents the vast majority of all UK based private equity and venture capital firms, as well as their professional advisers. This submission has been prepared by the BVCA's Legal & Technical committee, which represents the interests of BVCA members in legal, accounting and technical matters relevant to the private equity and venture capital industry.

Our members have invested £33 billion in over 4,500 UK companies over the last five years. Companies backed by UK-based private equity and venture capital firms employ over half a million people and 90% of UK investments in 2012 were directed at small and medium-sized businesses. As major investors in private companies, and some public companies, our members have an interest in financial reporting matters, the conduct and information presented by such companies, and the burdens placed on the management of such companies.

Background and executive summary

The BVCA is supportive of the need to promote and enhance transparency and trust in UK business. We have taken substantial steps to encourage disclosure and transparency in the private equity industry to demonstrate our commitment to transparency to all stakeholders including investors, employees, suppliers, customers and the public more widely. In February 2007, the BVCA asked Sir David Walker to undertake an independent review of the adequacy of disclosure and transparency in private equity, with a view to recommending a set of guidelines for conformity by the industry on a voluntary basis. This review resulted in the publication of the Guidelines for Disclosure and Transparency in Private Equity (the "Walker Guidelines") in November 2007. The Walker Guidelines require additional disclosure and communication by private equity firms and their portfolio companies when certain criteria are met.

While we recognise the importance of enhancing transparency and trust, we are concerned about the unintended consequences and increased burden placed on our members from some of these proposals. Some of the proposals featured in the discussion paper could affect the competitiveness of the UK and its attractiveness as a location for investment. This is at a time when the Government is promoting the UK's fund management industry (as announced in Budget 2013) recognising its role in stimulating growth and investment in SMEs.

This response sets out our views on the areas covered by the discussion paper which are considered to be most pertinent to BVCA members.

Registry holding information on beneficial owners

The information to be held in the registry

Private companies are likely to face practical difficulties when obtaining the information required where a company structure is not simple (and there is a legitimate business reason for such a structure). Therefore the discussion paper significantly underestimates the time it would take for companies to review and understand the new requirements, obtain information that is not readily available and seek advice to ensure they are fully compliant with their legal obligations. We set out below why this requirement in particular will cause unnecessary compliance costs for private equity backed companies, and not produce the right result with respect to transparency.

The UK limited partnership is the market standard structure for private equity and venture capital funds, as well as many other types of private fund. Investors (limited partners) in funds structured as limited partnerships do not participate in the management of the limited partnership's business. This is the sole responsibility of the general partner who often delegates this responsibility to a regulated investment manager. The limited partnership or fund will hold the investments in underlying companies.

By following the definition of a 'beneficial owner' in the UK anti-money laundering framework, a company owned by a private equity fund, would need to look through that vehicle and identify the ownership interests of individual limited partners/investors. This identification process would continue until a 'natural person' has been identified where ownership is in excess of 25% of the company. This is a time consuming process, and even with the statutory tools proposed, this will create a significant burden for private companies as the information required for the registry would need to be updated regularly. In any event it is fairly rare, in a private equity context, for a portfolio company to have a natural person with an indirect holding of more than 25% and more importantly, this will not provide any additional meaningful information in the context of a private equity fund as the limited partners/investors are purely passive.

It would be more appropriate and helpful from a transparency perspective to disclose the identity of the general partner or the investment manager to which responsibilities have been delegated as this reflects who is in control of the day to day activities of the fund. This distinction has been recognised in the Walker Guidelines which requires the following disclosure in the annual report and financial statements of a private equity owned company:

> *"The report should identify the private equity fund or funds that own the company and the senior executives or advisers of the private equity firm in the UK who have oversight of the company on behalf of the fund or funds."*

The benefit of this approach is that it reflects the commercial arrangements in place without undue costs for private equity backed companies – 90% of which are SMEs. Furthermore, UK managers of private equity and venture capital funds are typically regulated entities and will therefore have followed anti-money laundering procedures with respect to investors in the funds they manage.

It would be helpful for any obligations to prescribe time periods for updating – e.g. annually after publication of the annual report. This would ensure updating does not become unduly burdensome and give companies clarity on their obligations.

Companies within scope of the registry

We note that certain companies will be exempt from the requirement to provide information on beneficial ownership to a registry and this ought to be extended for all regulated entities rather than just public companies listed on a regulated market. This will ensure companies are not subject to multiple layers of disclosure. Managers of private equity funds in the UK are often structured as Limited Liability Partnerships ("LLPs") and there would also be no benefit of extending these proposals to LLPs where those managers are likely to be entities authorised and regulated by the Financial Conduct Authority and, in due course, authorised as Alternative Investment Fund Managers under the Alternative Investment Fund Managers Directive, as significant information and assurance as to their status will be readily available.

Obtaining information on beneficial ownership

Fund terms typically include strong obligations of confidentiality in favour of investors and these obligations are appropriate in ensuring their passive investors do not have their investment strategies publicised. There are legitimate reasons why a fund manager may need to keep the identity of fund investors confidential and for such investors, a requirement to disclose their identities could be a disincentive to invest in the UK. Requiring companies to disclose beneficial ownership would put many fund managers in breach of these confidentiality obligations and do little to satisfy the aim of increasing transparency around the control of companies.

In a private equity and venture capital context, the concerns raised in the discussion paper can be addressed by the proposal above (i.e. to identify the fund and the general partner or the investment manager of such fund). Furthermore, fund managers conduct anti-money laundering checks on their investors.

Making information publicly available

We do not believe there is a case for making the information on the registry publicly available. It would create an uneven playing field and discourage investment into UK companies at a time when investment is much needed to generate growth. There are legitimate business and security reasons why investors may not want their identity in the public domain, for example, high net worth individuals, sovereign wealth entities and family offices. Further, as explained above investors in private equity and venture capital funds have no active influence on the management of the companies those funds invest in.

It would be difficult to create a framework of exemptions for vulnerable individuals that accurately captures all individuals concerned. There may also be challenges in ensuring these exemptions are implemented effectively e.g. a private company could unintentionally disclose the identity of a vulnerable individual without their knowledge.

Nominee directors

The proposals should not interfere with legitimate commercial uses for nominee directors. In a private equity context, their use is an important part of the corporate governance and management of the fund and companies invested in. The discussion paper includes an assumption stating that "individuals acting as the director of over 50 companies are almost certainly acting as nominee directors". It is both common and important for private equity and venture capital fund managers to be able to appoint common officers to the boards of the often large number of investment holding companies and underlying portfolio companies in which their managed funds hold investments. This ensures a consistent and informed approach to governance and the effective protection of those managed funds' interests as investors. Clearly, each director will still be required to act in all respects in accordance with the applicable local laws and principles of good governance, including having regard to any conflicts, ensuring that they devote adequate time and care to their role, etc. Therefore it would be arbitrary to use the number of directorships as a criterion in this context. If this is carried forward in the proposals to identify nominee directors it will adversely affect the governance arrangements private equity managers have established.

The BVCA would of course be willing to discuss further this submission and if you wish you should contact Gurpreet Manku.

Yours faithfully

Simon Witney
Chairman – BVCA Legal and Technical Committee