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

By email: transparencyandtrust@bis.gsi.gov.uk

17 July 2015

Dear Sirs,

Re: BVCA response to the discussion paper on the register of people with significant control

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.

Our members have invested £30 billion in over 3,900 UK-based companies over the last five years. Companies backed by private equity and venture capital in the UK employ around 790,000 people and almost 90% of UK investments in 2013 were directed at small and medium-sized businesses. As major investors in private companies, and some public companies, our members have an interest in reporting matters, the conduct and information presented by such companies, and the burdens placed on the management of such companies.

We have submitted a number of representations and held meetings with the Department of Business, Innovation and Skills ("BIS") over the last year to discuss the Small Business, Enterprise and Employment Act (the "Act") and remain grateful for the continued dialogue.

Q1: Do you have any comments on the impact assessments covering the protection regime and the costs of making registers publicly available?

It is difficult to quantify the impact of the proposals on our industry given the potential complexity involved in analysing company and fund structures to ascertain the individuals who should be disclosed on the register of people with significant control ("the PSC register").

We believe that compliance would be facilitated and improved by the provision by Companies House of a standard form of PSC register, and other standard forms such as standard information requests and response forms, warning notices and restrictions notices.

The preferred option of charging a flat fee of £12 per request appears reasonable to us in relation to the provision of a company's whole or a readily extractable entry in the PSC register. However, please also see our responses to questions 9, 10 and 11.

Q2: Do you agree with the proposed exemptions?

We agree with the proposed exemptions.

Q3: Should other companies be exempted, and why?

We are not aware of any other companies that should be exempted from the requirements (other than as set out below).

Q4: Should an exemption be applied to issuers on any of the regulated markets outside the EEA? If so, which markets and why?

The FCA considers the laws governing major shareholder legislation in USA, Japan, Israel and Switzerland to be equivalent to DTR 5 and this should therefore be included in the list of exemptions. For example, the exemption could be applied to companies which are subject to s13(d) of the US Securities Exchange Act of 1934 which requires reporting by beneficial owners of more than 5% of an outstanding class of equity securities.

It would be beneficial to exempt companies traded on markets where UK companies may have a primary listing, such as Nasdaq. This would reduce the disincentive for such companies to incorporate in the UK.

Q5: Are there other entities not included in this list which you believe to be subject to very similar disclosure and transparency rules as DTR5 issuers? If so, please explain with reference to relevant legislation.

We are not aware of any other entities that should be included on the list.

Q6: Do you agree with the proposed dual approach for recording the relationship between the PSC and the company, showing which condition or conditions are met and to what extent? If not, what alternative would you propose?

We do not agree that a PSC should confirm *all* conditions that have been satisfied. We consider it to be sufficient to confirm any *one* condition that has been satisfied as requiring a company and a PSC to review each of the conditions could be unduly burdensome, particularly in complicated structures. There is little additional benefit to the user in disclosure of multiple conditions being satisfied.

In particular, if a PSC has stated that holds a certain level of shares or voting rights, it would add unnecessary complexity if it then had to take legal advice as to whether it met the fifth specified condition.

As the intention behind the legislation is to identify PSCs, it should not be necessary to undertake what may be a complex analysis in respect of each separate test.

Q7: Are the proposed 25% bands for share ownership and voting rights too narrow, too broad or and at the right level? Is there merit in a separate category for 100% control?

We agree the proposed bandings are at the right level and that there is merit in having a separate category for 100% control.

Q8: Would it be simpler to require companies to state the exact proportion of shares or voting rights controlled? If so, do you have any views on how the impact might be mitigated for the small percentage of companies whose register would be subject to frequent updating?

It would be more onerous for companies to state exact proportions of shares or voting rights controlled and the bandings proposed are helpful for understanding changes in individual holdings. Disclosing more than this would not provide any meaningful information to the user of the PSC register as the bandings are relevant in the context of different types of resolutions that may be passed by members of the board of the company.

Q9: Do you agree with the proposed approach for requiring companies to note other information on their register? If not, please explain why.

The requirement to note other information on the register goes beyond what is required by the act and presents a significant additional compliance burden. The proposed language of regulation 8 also seems unduly complex which is unlikely to promote uniform compliance.

We recommend that simplification of regulation 8, and standard form disclosures would reduce the compliance burden and improve the quality of compliance.

Q10: Which fee structure, Option 1 or Option 2, do you prefer and why? Q11: Do you think the level of the fees in the options is correct? If not, please explain why.

Our preference is for the fixed fee in option 2 as this will be easier to implement in practice. However, this is on the assumption that there is a 'proper purpose' to the request and this should be clear in the guidance published on how this is to be implemented. Also, this fee appears reasonable only in relation to the provision of a company's whole or a readily extractable entry in the PSC register. It should be assumed and clarified in the guidance that where the whole register has been provided then this should be sufficient to satisfy the request (and will also provide the full picture on PSCs).

Q12: Do you think the definition of 'an entry' in the draft regulations is correct? If not, please explain why.

Please refer to our answer to questions 10 and 11.

Q13: Is the process for protecting residential addresses from credit reference agencies appropriate and complete?

While we acknowledge this process reflects the Companies Act process in respect of directors' addresses, we do not consider it necessary for PSCs' addresses to be available to credit reference agencies.

However, if this process remains it may be appropriate for the grounds for an application set out in regulation 17(2) to include:

a.) the activities of companies of which a person is a member (as opposed to a director or registrable person); and
b.) other types of entities with which a person is involved (for example charities or limited partnerships) where that person's details may be publicly available as a result.

Q14: Is the process set out in regulations 25-36 appropriate and complete?

This appears to be appropriate.

Q15: Are the grounds for making an application clearly defined? If not, please explain.

This appears to be appropriate.

Q16: Are the transitional arrangements appropriate?

The transitional arrangements are too short as they only leave a three month window to apply for protection. A longer transitional period would be appropriate in view of the short implementation timeframe for the PSC register more generally and the possibility that PSCs may not be aware of their obligations.

Q17: Is the 28 day limit for an individual to cease to be a PSC appropriate? If not, please explain why not.

This is also a short timeframe as it may not give an individual sufficient time to make alternative arrangements if they wish. A more appropriate timeframe would be three to six months.

Q18: Is the mandated content of the warning and restrictions notices useful? Are the notices too detailed or are there elements that can be omitted?

The content seems appropriate however it would be helpful to also include the steps an individual needs to take to address the situation that gave rise to the warning and restrictions notices in the first place.

It would also be helpful for the regulations to clarify that a warning notice must include an explanation of the possible consequences of non-compliance. Where relevant, it would be helpful for the notice to include a statement that privileged information is not required to be disclosed (see s790D(12)).

Q19: Do you agree that capacity to respond should be the only factor a company must take into account in considering reasons for non-compliance? If not, please indicate what other factors a company should take into consideration and in what circumstances this would be appropriate.

We do not agree that capacity to respond should be the only factor to consider as there are likely to be cases of innocent breaches where an individual was simply not aware of the requirements e.g. if they were in the process of moving home. This could be avoided by ensuring notices are sent by recorded delivery. There should be some form of leniency where individuals are committed to rectifying issues.

A separate point in relation to restriction orders is that the regime is inflexible with regard to the relaxation of restrictions. This could put both companies and their members in a difficult position where a restrictions notice has been served and there is subsequent compliance, but rights arising in the intervening period would still not be exercisable as a result of regulation 13. This may also have the potential for abuse of the regime in the context of shareholder disputes. It would be preferable for the company, or the courts, to have power to reinstate rights which would not be exercisable as a result of regulation 13.

Please feel free to contact Gurpreet Manku at the BVCA if you have any queries on this response.

Yours faithfully

Simon Witney
Chairman, BVCA Legal & Technical Committee