Business Frameworks Directorate
Transparency and Trust Team
Department for Business, Energy and Industrial Strategy
1st Floor
1 Victoria Street
London SW1P 0ET

By email: transparencyandtrust@beis.gov.uk

5 August 2019

Dear Sirs,

Re. Corporate Transparency and Register Reform consultation

We are writing on behalf of the British Private Equity and Venture Capital Association ("BVCA"), which is the industry body and public policy advocate for the private equity and venture capital industry ("PE/VC") in the UK. With a membership of over 770 firms, the BVCA represents the vast majority of all UK based PE/VC firms, as well as their professional investors and advisers. Over the past five years (2013-2017), BVCA members have invested over £32bn into nearly 2,500 UK companies. Our members currently back around 3,380 companies, employing close to 1.4m people on a full-time equivalent basis ("FTEs") across the world. Of these, around 692,000 FTEs are employed in the UK. Of the UK companies invested in during 2017, around 83% were SMEs. Between 2013 and 2017, BVCA members rescued 91 companies experiencing trading difficulties, helping safeguard over 37,000 jobs.

The private equity approach

As you will be aware, private equity / venture capital firms are long-term investors, typically investing in unquoted companies for around three to seven years. This is a commitment to building lasting and sustainable value in business. As such, stakeholder engagement and transparency are fundamental to our industry – this is evidenced both through our engagement in the recent UK corporate governance reform (including the development of the Wates principles) and our work on Sir David Walker's guidelines for disclosure and transparency in private equity (the "Walker Guidelines"). Since 2008, the Walker Guidelines have provided a framework for the private equity industry to enhance stakeholders' understanding of our activities and address any concerns about a lack of transparency in the industry. These stakeholders include government, regulators, media, employees, customers and the public more widely.

Background to our response

Against the backdrop outlined above, we understand and support measures to tackle the misuse of UK corporate entities. However, we feel strongly that such measures need to be proportionate, justifiable by reference to the perceived risks and balanced with the need to ensure that the UK remains an attractive place to do business for the vast majority of companies that are pursuing legitimate corporate objectives. This is brought into sharper focus in light of Brexit and in the face of strong competition from abroad.

In our industry in particular, there is often a decision to be made by investors as to the jurisdiction of incorporation of the corporate entities through which to make their investments. There are clearly a number of factors, which form part of this assessment – speed and ease of incorporation, ease and clarity of ongoing filing requirements and flexibility and predictability of company law are all important. Certain proposals in the consultation go significantly beyond what is required in "competing" jurisdictions or have the potential to create uncertainty, which is not present in such jurisdictions. As such, we believe that there is a risk that if certain proposals are implemented in the form suggested, investors may favour other jurisdictions if non-company law factors are finely balanced.

We also have reservations about the approach of making information about all directorships, PSC and shareholder relationships available through a single click on an individual's name. We believe there are significant privacy concerns with this approach and it seems to us to invite identity fraud, unsolicited marketing and other potential unsavoury targeting of individuals.

We are delighted to have had the opportunity to attend a stakeholder roundtable and to respond to the consultation. Our response focuses on those questions which we believe have direct relevance to our member firms.

The case for verifying identities

Q1. Do you agree with the general premise that Companies House should have the ability to check the identity of individuals on the register? Please explain your reasons.

We agree, in principle, with the aspiration of verifying the identity of individuals managing companies. In our view though, this should be limited to directors – we are not convinced that verification of PSCs or, in particular, shareholders is valuable. We are also concerned that verifying PSCs and shareholders would place an undue disproportionate burden on companies.

We, however, do foresee a number of complexities in the practical implementation of director verification and, in our view, it is essential to consider the principle and practical implementation together. Please see our responses to questions 10, 11, 14 and 16 in this regard.

Q2. Are you aware of any other pros or cons government will need to consider in introducing identity verification?

Any identity verification system will need to be easily accessible (and available 24 hours a day, seven days a week), instantaneous (including for non-UK passport holders) and discretion-free, to minimise disruption to the incorporation process and to ensure legal certainty. Instantly effective director changes are an essential part of M&A and other corporate activity and any system would need to ensure that this remains possible. The business of our members is the acquisition and growth of businesses and as such any changes to the law which disrupt the ease with which corporate actions such as director appointments can be taken would impact our members significantly.

We would not be supportive of an approach that either requires the use of an intermediary or the set-up of a UK bank account for new incorporations.

Q3. Are there other options the government should consider to provide greater certainty over who is setting up, managing and controlling corporate entities?

We have no particular views in this regard.

How identity verification might work in practice

Q4. Do you agree that the preferred option should be to verify identities digitally, using a leading technological solution? Please give reasons.

Yes, we agree that this should be the preferred option provided it is compatible with the approach referred to in our response to question 2 above. There will clearly be data security issues to be considered if this approach is implemented.

Q5. Are there any other issues the government should take into account to ensure the verification process can be easily accessed by all potential users?

None that we are aware of (other than the need for 24 hour access, 365 days a year).

Q6. Do you agree that the focus should be on direct incorporations and filings if we can be confident that third party agents are undertaking customer due diligence checks? Please give reasons.

We have no particular views in this regard, save to highlight the points made in our response to question 33 below in respect of customer due diligence (CDD) typically having been conducted on beneficial owners for anti-money laundering purposes rather than PSCs.

Q7. Do you agree that third party agents should provide evidence to Companies House that they have undertaken customer due diligence checks on individuals? Please give reasons.

Please see our response to question 6 above – the CDD checks which have been undertaken may not be capable of verifying the identity of PSCs.

More generally, we believe that there are a number of legal issues that would need to be worked through in this regard, including client confidentiality, privilege and liability of third party agents.

Q8. Do you agree that more information on third party agents filing on behalf of companies should be collected? What should be collected?

We can see the merits of collating contact details of agents (such as email addresses), together with the details of their supervisory body (if applicable). We do not think that further information would be beneficial.

Q9. What information about third party agents should be available on the register?

We do not believe that making such information on the register is required to achieve the stated objectives of enabling Companies House to contact agents about filings and/or share information about agents' activities under the Money Laundering Regulations 2017.

Who identity verification would apply to and when

Q10. Do you agree that government should (i) mandate ID verification for directors and (ii) require that verification takes place before a person can validly be appointed as a director? Please set out your reasons

As outlined in our response to question 1 above, we agree in principle that ID verification for directors would be a helpful mechanism, to the extent it is capable of being implemented without creating legal uncertainty. We do not, however, believe that it needs to be a pre-requisite to being appointed as a director and indeed think this would be a fundamental change to company law, which would make it disproportionately burdensome.

Introducing verification should be relatively straightforward on new incorporations, although we do not agree that the incorporation should be held up if directors are not able to verify their identity – the company should simply be incorporated and the directors indicated on the register as "unverified", with a corresponding obligation to verify their identities within a prescribed period. There should be no risk on a new incorporation of "unappointed" directors.

It is much more difficult to implement in relation to new appointments to existing companies as directors will typically be appointed by the board or shareholders and registration is not currently a pre-requisite to their appointment. In our view, this should remain the case and, as proposed above, "unverified" directors should simply be indicated on the register, with a corresponding obligation to verify their identities within a prescribed period.

We see a number of difficulties with changing the law to provide that a director is only validly appointed once registered and verified (such a change in law in relation to registration would be required if verification was required to take place as a pre-requisite to a valid appointment). The precise timing of appointment / resignation is critical for corporate transactions (and to ensure a proper allocation of responsibility and liability) and we believe that more generally both directors and contracting counterparties want to be certain when they have been validly appointed by the board or shareholders and/or that a resignation has taken immediate effect. Adding another layer of registration or

deregistration does not create the same certainty. If the law was changed in this way, it would be critical that both identity verification and the online registration of appointments / resignations could reliably occur instantaneously (24 hours a day, seven days a week). We are not currently aware of an electronic solution that is completely instantaneous. Significant communications (particularly to the M&A community) would be required to engender confidence in the system and ambitious service targets would need to be set and publicised. Some form of pre-verification would be a very helpful tool to minimise the negative impact of this change in company law.

We are also concerned that changing the law in this way could have the unintended consequence of an increase in the number of de facto directors who rely on common law ostensible authority rather than being registered at Companies House. This would have the opposite effect to that which is intended and actually increase uncertainty for third parties dealing with companies, in addition to cutting across the work BEIS has been doing on ensuring that directors comply with their duties.

If identity verification was made a pre-requisite to valid appointment, but without the change in law referred to above, there would be a grey area in respect of acts undertaken prior to verification (or indeed if verification was not ultimately successful). Whilst the creation of an offence for the purported appointment of an unverified director may act as a deterrent, this would not deal with the issue of whether or not a company is legally bound by the actions of an unverified director.

As regards existing directors of companies, identity verification could potentially be introduced over a phased transition period (with an indication on the register if a director is "unverified" together with an offence for failure to verify), but a failure to comply must not impact the validity of appointments.

Q11. How can verification of People with Significant Control be best achieved, and what would be the appropriate sanction for non-compliance?

We assume that the proposal is to verify the identity of PSCs, rather than to verify the PSC relationship. The latter can be a complex and time consuming legal analysis and is not one that we believe should fall within the remit of Companies House.

As regards identity verification, it is not clear to us how verifying the identity of PSCs furthers the stated objective of preventing the use of companies for illicit purposes.

In any event, we do not believe that this can take place prior to a PSC becoming a PSC, since this would have far-reaching consequences for M&A and capital markets transactions. Among these would be the introduction of significant uncertainty (as there would need to be conditionality around the acceptable verification of the PSCs) and greater potential for transactions to be leaked into the public domain too soon.

On this basis, identity verification would need to take place after a PSC becomes a PSC. In our view, such verification would need to be the responsibility of the PSC itself rather than the company or the company's directors, as it would be unfair to extend their responsibilities in this regard.

We believe that the most straightforward approach from a practical perspective (for both new and existing PSCs) would be to make verification of PSCs voluntary.

Q12. Do you agree that government should require presenters to undergo identity verification and not accept proposed incorporations or filing updates from non-verified persons? Please explain your reasons.

We have no particular views in this regard other than to reiterate the points made above about ensuring that the process does not become unduly burdensome and that it continues to be straightforward for advisers / intermediaries to incorporate companies and make filings on behalf of their clients.

Q13. Do you agree with the principle that identity checks should be extended to existing directors and People with Significant Control? Please give reasons.

Please see our response to question 10 above in respect of existing directors and question 11 above in respect of PSCs.

Requiring better information about shareholders

Q14. Should companies be required to collect and file more detailed information about shareholders?

We are supportive of additional information (such as address or date of birth) about shareholders being included in the annual confirmation statement provided that personal information is protected on the public register.

However, we are not supportive of the introduction of an obligation to make more regular filings of shareholder information. We believe that this would place a disproportionate burden on companies and would not assist with genuine transparency - since any filing requirement could only apply to legal owners of shares, it seems to us that anyone wishing not to share information about their shareholdings would simply utilise nominee arrangements.

In addition, in our industry, there can be a large number of, and regular changes to, minority shareholders. This is because there will often be employees holding shares in the company and each time they join or leave the company, they typically acquire or sell their shares. This information is not material to third parties, but making it available through a "one click" system to third parties could place these individuals in difficult positions since their personal investments would be easily accessible in a way that they were not previously.

Q15. Do you agree with the proposed information requirements and what, if any, of this information should appear on the register?

Please see our response to question 14 above.

Q16. Do you agree that identity checks should be optional for shareholders, but that the register makes clear whether they have or have not verified their identity? Please give reasons.

We do not believe that identity checks on shareholders, whether or not mandatory, would materially improve transparency for third parties and we would be concerned about negative inferences being unfairly drawn about companies with unverified shareholders. We would not therefore be in favour of introducing even optional identity checks.

Linking identities on the register

Q17. Do you agree that verification of a person's identity is a better way to link appointments than unique identifiers?

Yes, although please see our comments in the introduction regarding our concerns about making information about directorships, PSC and shareholder relationships available through "one click".

Q18. Do you agree that government should extend Companies House's ability to disclose residential address information to outside partners to support core services?

We have no particular views in this regard, provided privacy is carefully protected.

Reform of the powers over information filed on the register

Q19. Do you agree that Companies House should have more discretion to query information before it is placed on the register, and to ask for evidence where appropriate?

In our view, it is essential to balance, on the one hand, giving Companies House the tools it needs to seek, so far as possible, to ensure the accuracy of information on the register, with, on the other hand, the need for companies to have certainty as to what is required for particular filings. This is of particular relevance in respect of filings, which either have legal or reputational consequences for failure to file on time (e.g. accounts) or which are effective upon registration (e.g. reductions of capital). A general discretion to query information (beyond the discretion Companies House has today to reject an incomplete filing) seems to us to go too far and to create material uncertainty for companies. It would also require significant and skilled resource at Companies House.

One way of achieving this balance would be for Companies House to have the right to request further information only in limited, specific areas (e.g. exemption from filing full accounts) in which prescribed, conclusive, easily accessible and well-advertised forms of evidence would be acceptable. This approach would have the benefit of making the decision to accept / reject a filing binary and should be capable of a very significant degree of automation at Companies House.

In terms of the other examples provided in the consultation, our view is that these go too far and are already adequately covered by Companies Act 2006 requirements. In particular, material increases in share capital are a very usual event for our members (and for many other companies) as they occur every time a newly incorporated company is funded at the time of closing of an acquisition. Equally, reductions of capital are extremely common and are often a pre-cursor to another time critical step, such as a distribution. In the latter case, such filings being queried or delayed could have material consequences and could expose companies to legal and commercial risk (e.g. a failure to be able to implement an essential reorganisation, which is for the benefit or shareholders or creditors). In our view, these are not matters in respect of which it would be easy to determine in advance what queries Companies House might raise, nor to prescribe acceptable forms of evidence to provide certainty. The law currently prescribes clear procedures and requirements, but those procedures and requirements are not suitable for cursory checking and therefore any challenges by Companies House would necessarily require highly trained resource and cause delays and uncertainty.

Q20. Do you agree that companies must evidence any objection to an application from a third party to remove information from its filings?

No, we do not agree with this proposal for two key reasons.

First, we believe that a process which requires companies to evidence, if challenged, that their filings are correct is open to abuse by unscrupulous third parties making vexatious claims and could place a burden on companies which is disproportionate to the mischief which the requirement would be attempting to address. It could also lead to legal uncertainty over, for example, the validity of director appointments or the effectiveness of service of process at a registered address if documents are removed from the register. This would have serious legal consequences, the disadvantage of which would seriously outweigh the potential benefit.

Second, if a process of this nature were to be implemented, it seems to us that there would need to be very clear guidance on what type of evidence should be provided. It would be difficult for such guidance to cover every possible instance of a filing being challenged so it would inevitably require Companies House to make subjective judgments about the evidence provided. We do not believe that it is appropriate for Companies House in its current form to make such judgments and it seems to us that it would require significant additional skilled resource to do this effectively.

Reform of company accounts

Q21. Do you agree that Companies House should explore the introduction of minimum tagging standards?

We have no particular views in this regard but would reiterate the points made above that any minimum tagging standards should not place an additional burden on companies.

Q22. Do you agree that there should be a limit to the number of times a company can shorten its accounting reference period? If so, what should the limit be?

We strongly disagree with the introduction of such a limit. In our view, other ways of addressing the concerns expressed in relation to companies using the ability to shorten their accounting reference periods to delay filing accounts should be explored. Companies often change their accounting reference dates for legitimate corporate reasons (for example, on closing of M&A transactions or to enable a final dividend to be declared) and putting an arbitrary limit on the number of such changes seems to us to disproportionately prejudice genuine corporate actions.

Q23. How can the financial information available on the register be improved? What would be the benefit?

We have no particular views in this regard.

Clarifying People with Significant Control exemptions

Q24. Should some additional basic information be required about companies that are exempt from People with Significant Control requirements, and companies owned and controlled by a relevant legal entity that is exempt?

We are supportive of some basic information, such as the name of the relevant legal entity and the stock exchange on which its shares are listed, being shown on the register.

Dissolved company records

Q25. Do you agree that company records should be kept on the register for 20 years from the company's dissolution? If not, what period would be appropriate and why?

We do not have strong views on this point but believe that there would be merit in aligning the period to the 10 year period provided for in the Fifth Anti-Money Laundering Directive ("5MLD"). We would query the usefulness of information about entities which were dissolved more than 10 years ago.

Public and non-public information

Q26. Are the controls on access to further information collected by Companies House under these proposals appropriate? If not, please give reasons and suggest alternative controls?

Yes, we believe that the proposed controls are appropriate.

Information on directors

Q27. Is there a value in having information on the register about a director's occupation? If so, what is this information used for?

We do not believe that there is value in having such information on the register. There are other ways to check an individual's professional qualifications (if applicable).

Q28. Should directors be able to apply to Companies House to have the "day" element of their date of birth suppressed on the register where this information was filed before October 2015?

Yes, we believe that this is appropriate.

Q29. Should a person who has changed their name following a change in gender be able to apply to have their previous name hidden on the public register and replaced with their new name?

Yes, we believe that this is appropriate.

Q30. Should people be able to apply to have information about a historic registered office address suppressed where this is their residential address? If not, what use is this information to third parties?

Yes, we believe that this is appropriate.

Q31. Should people be able to apply to have their signatures suppressed on the register? If not, what use is this information to third parties?

Yes, we believe that this is appropriate.

Compliance, intelligence and data sharing

Q32. Do you agree that there is value in Companies House comparing its data against other data sets held by public and private sector bodies? If so, which data sets are appropriate?

We have no particular views in this regard.

Q33. Do you agree that AML regulated entities should be required to report anomalies to Companies House? How should this work and what information should it cover?

Whilst we recognise that HM Treasury is required under 5MLD to create a requirement for obliged firms to report discrepancies between CDD information they hold and beneficial ownership information on the public register, we have significant concerns about this proposal. Private equity is a global industry, and private equity structures often include overseas entities, limited partnership structures and other vehicles. The voting and share rights in some of these vehicles are determined by their constitutional documents, and may vary significantly between entities that are ostensibly similar. It is not at all straightforward for an external party to assess whether the information contained in the PSC register for a UK company with such a holding structure is correct, even if they are in possession of full CDD information. Indeed, it is likely to have taken the private equity firm itself a significant amount of time, with advice from external counsel, to determine its registration position.

It is also important to note that, whilst there are many similarities between a beneficial owner and a PSC, they are different legal regimes with different tests and a person who is a beneficial owner for 5MLD purposes may not always be a PSC, and vice versa. For this reason, there may often be "anomalies" but the fact that they are not the same does not mean that the PSC record is incorrect.

As explained in our response to the HMT Consultation on the Transposition of the Fifth Money Laundering Directive[1], it is essential that this new requirement does not effectively require a counterparty to rerun its customer's beneficial ownership analysis, or to monitor for changes on an ongoing basis. The requirement should be narrowly drawn, so that only fundamental discrepancies that are self-evident from the CDD information provided are reportable. It could perhaps be framed in terms that an obliged entity is required to report discrepancies if it has reasonable grounds to suspect that the information recorded on the register in relation to the customer is false and that it has been registered with an intention to mislead. It is also important that the requirement is relatively narrowly drawn and includes a materiality threshold so that the quality and volume of information received is such that Companies House can readily identify those situations requiring investigation. If the reporting requirement is too broad, we consider there to be a material risk of over-reporting, resulting in a high volume of poor quality information being received.

We do not consider that a broader requirement to report other anomalies identified on the register to Companies House is appropriate as this would impose a significant additional burden and cost on obliged firms.

Q34 Do you agree that information collected by Companies House should be proactively made available to law enforcement agencies, when certain conditions are met?

We have no particular views in this regard.

[1] BVCA response to HMT consultation on the transposition of the Fifth Money Laundering Directive (10 June 2019)

Q35. Should companies be required to file details of their bank account(s) with Companies House? If so, is there any information about the account which should be publicly available?

We do not believe that there is any benefit in companies being required to file details of their bank account(s), other than potentially to assist with money laundering investigations (although it seems to us that those engaged in criminal activity may simply not comply with the filing requirement). Many legitimate companies have multiple bank accounts, and indeed others have no bank accounts (as they rely on accounts of other group entities) and, in our view, no inferences can be drawn from either approach.

In any event, we see no grounds for such information to be publicly available in any form.

Other measures to deter abuse of corporate entities

Q36. Are there examples which may be evidence of suspicious or fraudulent activity, not set out in this consultation, and where action is warranted?

We have no particular views in this regard.

Q37. Do you agree that the courts should be able to order a limited partnership to no longer carry on its business activities if it is in the public interest to do so?

As explained in our response to questions 9 and 11 of the BEIS Consultation Paper on Limited Partnerships: Reform of Limited Partnership Law in July 2018[2] and in our ongoing dialogue with BEIS, whilst we can see some merit in aligning the position as regards limited partnerships to that which applies to companies, there are significant differences between companies and limited partnerships. Any strike-off procedure or procedure through which a limited partnership could be ordered to cease to carry on business would need to recognise and appropriately take account of these differences (in particular, to ensure that any striking-off or similar would not result in the creation of a general partnership and/or the loss of limited liability for the limited partners).

Q38. If so, what should be the grounds for an application to the court and who should be able to apply to court?

Subject to our response to question 37 above, we believe there would be merit in aligning the grounds and bodies capable of applying to the court with those applicable to companies.

[2] BVCA response to the BEIS consultation paper - Limited Partnerships: Reform of Limited Partnership Law (23 July 2018)

Q39. Do you agree that companies should provide evidence that they are entitled to use an address as their registered office?

We support measures to prevent the misuse of residential addresses as company registered offices. However, we would suggest that any new evidence requirements be limited to companies using residential addresses as their registered offices if that is where the mischief giving rise to the concern lies. We note that such evidence is not generally required in other jurisdictions through which our members invest.

We do not believe that it would be practical to require companies using commercial addresses to provide such evidence. For example, it would likely be difficult to ask companies to show (i) a tenancy agreement in the name of each group company (since a tenancy agreement would typically be entered into by one parent company of the group) or (ii) a letter from the landlord specifically granting the right for the relevant company to use that address as its registered office, as these things would take time and cost to obtain and could materially delay incorporations.

More generally, we would reiterate the concerns expressed above about ensuring that the UK remains an attractive jurisdiction in which to register companies. For the private equity and venture capital industry, the ability to register companies quickly as part of acquisition structures (often at less than one day's notice) is critical and can be a differentiator in choosing how and where to structure investments.

Any new evidence requirements should not: (i) make it materially more burdensome to register a company in the UK in terms of evidence required; (ii) delay incorporations as a result of Companies House personnel being overwhelmed by due diligence requirements prior to incorporation; or (iii) create material uncertainty for businesses as a result of Companies House being given unfettered discretion to reject addresses.

Q40. Is it sufficient to identify and report the number of directorships held by an individual, or should a cap be introduced? If you support the introduction of a cap, what should the maximum be?

We believe that it is sufficient to identify and report the number of directorships held by an individual. We strongly disagree with the introduction of a cap as we do not believe that there is a specific number of directorships at which it is possible to say that a director is no longer able to perform his/her duties adequately. What is an appropriate number for a particular individual will be very much fact specific. As such, any cap imposed would be arbitrary.

In the private equity and venture capital industry, it would be perfectly possible for an individual to have multiple directorships at any one time, as a director on a number of investee company boards and private equity / venture capital house related entities. Acting as a director is effectively such an individual's principal occupation. Furthermore, many corporate structures, including those in the private equity industry, have numerous vehicles but being a director of multiple entities in the same group imposes limited additional time commitment. Our industry takes corporate governance seriously and individual directors will generally have received extensive training in the nature of their duties and best practice in

discharging them. The introduction of a cap could lead to less experienced individuals being required to take on directorships, which in the context of the drive towards high quality corporate governance, would be an unfortunate outcome.

We would note that other jurisdictions which compete with the UK as jurisdictions through which our members often invest do not generally impose caps (other than, in some circumstances, on regulated or public company appointments).

Q41. Should exemptions be available, based on company activity or other criteria?

Please see our response to question 40.

Q42. Should Companies House have more discretion to query and possibly reject applications to use a company name, rather than relying on its post-registration powers?

We would reiterate the concerns expressed in our response to question 39 above about ensuring that the UK remains an attractive jurisdiction in which to register companies.

Q43. What would be the impact if Companies House changed the way it certifies information available on the register?

We are not aware of any impact.

Q44. Do you have any evidence of inappropriate use of Good Standing statements?

We are not aware of any inappropriate use of Good Standing statements.

We would be happy to discuss the contents of this response with you; please contact Sundip Jadeja (sjadeja@bvca.co.uk).

Yours faithfully,

Amy Mahon
Chair, BVCA Legal and Accounting Committee