The Rt Hon Tom Tugendhat MBE VR MP
Minister for Security
Home Office
2 Marsham St
London SW1P 4DF

The Rt Hon Kevin Hollinrake MP
Minister for Enterprise, Markets and Small Businesses
Department of Business and Trade
Old Admiralty Building
Admiralty Place
London SW1A 2DY

Cc: Lord Sharpe of Epsom
Parliamentary Under-Secretary
Home Office
2 Marsham St
London SW1P 4DF

23 August 2023

Dear Ministers,

Economic Crime and Corporate Transparency Bill: BVCA concerns on House of Lords Clause 206

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 ("private capital") industry in the UK. With a membership of around 650 firms, we represent the vast majority of UK-based private capital firms, as well as their professional advisers and investors. In 2022, £27.5bn was invested by private capital into UK businesses in sectors across the UK economy, ranging from consumer products to emerging technology. There are over 12,000 UK companies backed by private capital which currently employ over 2.2 million people in the UK. Over 55% of the businesses backed are outside London and 90% of the businesses receiving investment are small and medium-sized businesses.

The BVCA welcomes many of the proposals under the Economic Crime and Corporate Transparency Bill (the "Bill") and has engaged with the Government on these throughout the various stages of policy formation. However, on 23 June 2023, during the House of Lords Report Stage, an amendment to add a new offence of failure to prevent fraud and money laundering (the "Amendment") was passed. The BVCA has considerable concerns about the Amendment's potential impact on UK-based PE/VC firms.

As you will be aware, the Amendment, tabled by Lord Garnier and included in the latest version of the Bill as Clause 206, looks to introduce a new offence of "failure to prevent fraud and money laundering". It seeks to make corporate bodies and partnerships liable for prosecution if an "associate" commits a fraud or money laundering offence intending to benefit the organisation

British Private Equity & Venture Capital Association
3rd Floor, 48 Chancery Lane, London WC2A 1JF
+44 (0)20 7492 0400 | bvca@bvca.co.uk | www.bvca.co.uk

or where those who receive services on behalf of the organisation did not have reasonable fraud or money laundering preventative procedures in place at the time the offence was committed.

Our concerns about the Amendment are set out in detail in the appendix, but in summary, we believe there to be issues with:

- Duplication and burdensome requirements
- Definitional uncertainty
- Territoriality and enforcement

Individually and collectively the effect would be to impact seriously on the competitiveness of the UK as a base for private capital and therefore reduce its attractiveness to the investment managers and others who help to make the UK a significant international centre for private equity and venture capital.

The BVCA's recently published Report on Investment Activity demonstrates that the UK is a global hub for driving private capital investment across Europe and beyond. As proposed, we believe the Amendment could have a considerable adverse impact on the UK PE/VC industry, on top of the already weakening UK investment landscape[1]. In our view, if this new offence is made law, the private capital industry will be faced with additional burdensome and duplicative work practices, increased uncertainty due to the lack of clarity in the drafting of the Amendment and, as a result, increased costs at a time when our members and their portfolio companies are grappling with inflation and other cost pressures.

Ultimately, we believe that this Amendment undermines the Government's growth strategy and regulatory ambitions and could lead to the UK becoming a less attractive place to do business. We have set out our concerns in more detail below in Annex 1 and would request that the Government vote against this Amendment when the Bill returns to the House of Commons in September. The full text of the Clause is set out in Annex 2.

We trust that the information provided in this letter is useful and would like to note the constructive call we had with officials earlier this month. The BVCA would of course be willing to discuss the issues we have identified further, and provide further information about the impact of this legislation overall as well as the more detailed issues described by way of an annex to this letter - please contact Tom Taylor (ttaylor@bvca.co.uk) and Ciaran Harris (charris@bvca.co.uk) at the BVCA.

Yours faithfully,

Michael Moore
Chief Executive, BVCA

[1] Private Capital - Rising to the challenges of turbulent times 2023.pdf (bvca.co.uk) – Year on year comparison of investment amounts (2021 vs 2022) – page 6

ANNEX 1 – BVCA CONCERNS ABOUT THE AMENDMENT

In the BVCA's view this Amendment could have a significantly negative impact on the industry and its service providers. This is because the amendment is not necessary, it is burdensome, and the impacts on the private capital industry have not been considered. Additionally, the intricacies of the private capital industry have not been explained or indeed reflected upon in the Amendment, potentially leading to unintended consequences for the industry and its service providers. Given the potential impact of the Amendment set out below, we would urge the Government to reject it.

Duplicative and burdensome

We believe that the Amendment is potentially duplicative of existing anti-money laundering legislation. The lack of predicate offences, referenced in the Amendment as being listed in a yet unpopulated schedule, means that it is hard for the BVCA to definitively comment as to the precise overlap of the Amendment and the existing anti-money laundering regime. More generally, however, we note that UK firms regulated by the Financial Conduct Authority (the "FCA") are already subject to an extensive anti-money laundering regime and are required to have anti money laundering procedures in place. Such firms are subject to specific, additional anti-money laundering-related rules and offences set out in the Proceeds of Crime Act 2002 (e.g., s. 330 "failure to disclose: regulated sector", and s.333A "tipping off: regulated sector"). The Amendment clearly intends to create a new money laundering related offence and it is unclear whether FCA regulated firms' existing prevention policies and procedures would be a sufficient defence to the commission of an offence under the Amendment. As drafted, the Amendment is, in our view, unhelpfully vague and could duplicate existing legislation in an area where firms are already subject to extensive requirements.

The concept of an "associate" as set out in the Amendment could conceivably capture a wide range of private capital fund's service providers such as fund depositaries, custodians and administrators. Many of these entities are FCA authorised and so are subject to existing anti-money laundering requirements. The addition of another layer of requirements in circumstances where it is unclear whether existing prevention policies and procedures provide a defence to the commission of an offence under the Amendment compounds the duplicative nature of the Amendment and would result in a significant amount of additional burdensome work.

Definitional uncertainty

As currently proposed, the Amendment would apply to a "relevant body". The concept of a "relevant body" is defined to mean (i) any UK incorporated corporate body, including companies and certain partnerships, and (ii) any other corporate body wheresoever incorporated, including companies and certain partnerships, which carry on business in any part of the United Kingdom. As drafted, the definition would therefore apply to all UK and non-UK corporate bodies carrying out business in the United Kingdom irrespective of size. This would potentially not only impose a disproportionate burden on smaller firms (including firms which are currently classified as "small" companies or "micro-entities" for the purposes of the Companies Act 2006) but also radically expand the scope of anti-money laundering regulation in the United Kingdom beyond its current scope under the Money Laundering Regulations 2017.

Territoriality and enforcement

We consider that the definition of "relevant body" also raises practical questions regarding territoriality and enforcement. Absent any further guidance, as drafted the Amendment appears to apply to non-UK corporate bodies carrying out "business" in the United Kingdom with no threshold requirement to establish sufficient nexus, such as the establishment of a branch. If this is the Amendment's intention, we believe that this raises questions around enforcement and monitoring.

British Private Equity & Venture Capital Association
3rd Floor, 48 Chancery Lane, London WC2A 1JF
+44 (0)20 7492 0400 | bvca@bvca.co.uk | www.bvca.co.uk

ANNEX 2 – TEXT OF THE AMENDMENT

125A Insert the following new Clause 206—

"Failure to prevent fraud and money laundering

(1) A relevant body is guilty of an offence if a person who is associated with the body ("the associate") commits a fraud or money laundering offence

intending to benefit (whether directly or indirectly)—

(a) the relevant body, or

(b) any person to whom, or to whose subsidiary, the associate provides services on behalf of the relevant body.

(2) The relevant body is not guilty of an offence under subsection (1)(a) where the conduct underlying the offence was intended to cause harm to the body.

(3) It is a defence for the relevant body to prove that, at the time the relevant offence was committed—

(a) the body had in place such prevention procedures as it was reasonable in all the circumstances to expect the body to have in place, or

(b) it was not reasonable in all the circumstances to expect the body to have any prevention procedures in place.

(4) In subsection (3) "prevention procedures" means procedures designed to prevent persons associated with the body from committing fraud or money laundering offences as mentioned in subsection (1).

(5) A "fraud or money laundering offence" is an act which constitutes—

(a) an offence listed in Schedule (*Failure to prevent fraud: fraud offences*) (a "listed offence"), or

(b) aiding, abetting, counselling or procuring the commission of a listed offence.

(6) For the purposes of this section a person is associated with a relevant body if—

(a) the person is an employee, agent or subsidiary of the relevant body, or

(b) the person otherwise performs services for or on behalf of the body.

(7) Whether or not a particular person performs services for or on behalf of a relevant body is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between that person and the body.

(8) Where a relevant body is liable to be proceeded against for an offence under subsection (1) in a particular part of the United Kingdom, proceedings against the body for the offence may be taken in any place in the United Kingdom.

British Private Equity & Venture Capital Association
3rd Floor, 48 Chancery Lane, London WC2A 1JF
+44 (0)20 7492 0400 | bvca@bvca.co.uk | www.bvca.co.uk

(9) Where by virtue of subsection (8) proceedings against a relevant body for an offence are to be taken in Scotland—

(a) the body may be prosecuted, tried and punished in a sheriff court district determined by the Lord Advocate, as if the offence had been

committed in that district, and

(b) the offence is, for all purposes incidental to or consequential on the trial or punishment, deemed to have been committed in that district.

(10) A relevant body guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction in England and Wales, to a fine;

(c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

(11) In this section—

"relevant body" means—

(a) a body which is incorporated under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere),

(b) any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom,

(c) a partnership which is formed under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere), or

(d) any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom, and, for the purposes of this section, a trade or profession is a business; "sheriff court district" is to be read in accordance with the Criminal Procedure (Scotland) Act 1995 (see section 307(1) of that Act).

(12) It is immaterial for the purposes of subsection (1) whether—

(a) any relevant conduct of a relevant body, or

(b) any conduct which constitutes part of a relevant fraud or money laundering offence, takes place in the United Kingdom or elsewhere."