Minister of State for Business Innovation and Skills
Department for Business Innovation and Skills
3rd Floor, Orchard 2
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Westminster
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redtapechallenge@cabinet-office.gsi.gov.uk

Response to the "Red Tape Challenge"

Dear Mr Prisk

The British Private Equity and Venture Capital Association (BVCA) is the industry body for the UK private equity and venture capital industry. With a membership of over 500 firms, the BVCA represents the vast majority of all UK-based private equity and venture capital firms and their 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.

The BVCA supports the Government in its aim to leave office having reduced the overall burden of regulation and welcomes the opportunity to participate in the "Red Tape Challenge". We have set out below some areas which are of concern to the smaller growing entrepreneurial companies which our members finance and support. Those companies find that the rules and their method of application can act as a brake to their growth.

A preliminary response from the Venture Capital community has indicated that their main areas of concern revolve around CRC Energy Efficiency Scheme, Employment Legislation, Grant Applications, Business Rate processes, Data Protection Act, as well as OFT and Competition Commission processes designed for large companies applied to smaller scale situations without modification.

CRC Energy Efficiency Scheme (CRC)

Whilst supporting the policy objectives behind the CRC, the BVCA is strongly of the view that the CRC is too complicated in its current form and has created a lot of uncertainty and unnecessary cost for UK businesses. We have already responded to DECC as part of their consultation process, and a copy of our submission is attached. We would like to highlight that the principal cause of the regulatory burden is that the CRC assumes that companies which are funded by private equity or venture capital investors are part of the same "group", However the companies funded by private equity and venture capital remain independent from each other and are not regarded as a group for any other purpose.

The consequence of this is that there is now a complex process which needs to be carried out in order for private equity and venture capital funds and their managers to determine the members of their Group for the purposes of the CRC scheme. This requires individual companies, who would not otherwise be included within the remit of the regulation, to fully comply as well as, in certain circumstances, including the managers of those funds and other funds which they manage.

Another consequence of the Group definition and the temporary nature of the ownership of investments means that even when a fund no longer holds investments in companies which individually or in the aggregate qualify for the CRC Scheme, the fund and its individual investee companies will still have to comply with the cost and administrative burden of the reporting and filing requirements. It also adds complexity, and thereby increased costs, to the acquisition, financing and disposal of Investments which individually were not intended to fall within the remit of the CRC regulations.

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The BVCA would like to recommend that that the CRC definitions are amended so that private equity portfolios do not fall to be "grouped" merely because they happen to share a common investor.

Employment

The BVCA fully supports the intent behind the various employment protection rights and believes that these rights can be protected whilst improving the efficiency and growth prospects of companies.

Flexible working

The procedure for flexible working requests is highly prescriptive with each step having to be taken within a set time period and with specific detail to be set out in writing. It would make the process more efficient if it could be replaced with a more flexible procedure based on broad principles similar to the disciplinary procedure in the Acas Code. Such a procedure would be easier for employers and employees to follow, and would not reduce protection for employees.

TUPE and agency workers

In October 2011, TUPE was amended so that information on agency workers must be supplied to employees on a TUPE transfer, whether or not it is relevant. For example, a company which is selling a division in which there are no agency workers will have to inform the transferring employees about the use of agency workers in other divisions in which the employees have never worked. We think that TUPE should be amended so that the employer need only provide information about agency workers where it is relevant to the business being transferred.

Termination

One of the principal drivers of growth for private equity owned companies is the establishment of a clear and focussed strategy often combined with a change in corporate culture in terms of customer interaction, project delivery and efficiency. Not all employees can accommodate this change process and, in the interests of the company and its ability to grow and expand its workforce, might need to be replaced. The current procedures require proof of non performance which can be a time consuming and expensive process. More importantly it is very demoralising for the individual as well as fellow employees.

A "no fault" termination similar to that applied in the USA where notice is given under the employment contract would create a more efficient process as well as encouraging a more flexible and fluid workforce. It would have a material impact on the company's ability to accelerate operational performance and growth. Protection to longstanding employees could be provided through an extension to the notice period. [Research has demonstrated that change is as beneficial to individuals as well as for organisations.]

Unfair Dismissal and Discrimination Claims

We welcome the Government's initiative on Resolving Workplace Disputes and, in particular, the application of a rapid resolution scheme. In the interest of both the employee and the company it is important that a prompt assessment of the fact pattern is made to determine whether there is a valid claim followed by clear resolution process which removes uncertainty and cost for both parties.
In the interests of reaching a rapid a fair conclusion we would support the introduction of protected conversations with the proviso that they will not extend to protect discriminatory acts during the process.

EMI options

These require a significant amount of paperwork to complete the process. Valuations are required for each issue of options even if they are granted within 12 months of the previous issue. The rules regarding "restricted" and "non-restricted" values are very complex. This whole area would benefit from a simplification of the process.
European Grants

A single application can be audited as much as three times by separate firms. We would ask that the application process be simplified such that a single set of documentation meets all requirements.

OFT and Competition Commission

The review process is lengthy, cumbersome and very time-consuming as these regulations appear to be designed to address the larger corporates rather than SMEs where a number of aspects are not relevant. We would request that a simplified process be established for SMEs in the same way that SMEs have simplified financial reporting requirements.

Please feel free to contact me if you would like to discuss further any of the points raised.

Yours faithfully

Simon Witney
Chairman, Legal and Technical Committee, BVCA