

Transparency and Trust
Corporate Law Reform Team
Department for Business, Innovation and Skills
Spur 1, 3rd Floor
1 Victoria Street
London SW1H 0ET

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

9 December 2014

Dear Sirs,

Re: BVCA response to the PSC register discussion paper

1. 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.
2. 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.
3. We have submitted a number of representations and held meetings with the Department of Business, Innovation and Skills over the last year to discuss the Small Business, Enterprise and Employment Bill (the "Bill") and are monitoring the passage of the Bill through Parliament.

Chapter 1: Understanding the new requirements

Q1: We welcome your views on the structure, format and content of the statutory guidance on significant influence and control.
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4. We believe that the statutory guidance should be principles-based, user-friendly and provide clarity on the meaning of 'significant influence or control' under Schedule 1A. We agree this should cover individuals falling within the fourth condition, however as this concept is also used in the fifth condition, there is a need to consider separate guidance on how it applies in relation to the fifth condition.
5. Condition five provides that if the members of a firm without legal personality would satisfy one of the other conditions in relation to company Y if it were an individual, and X (an individual) has significant influence or control over that firm, then X is a "person with significant control" over company Y. Where the members of the firm satisfy one of the conditions in relation to company

Y, the meaning of 'significant influence or control over that firm' is important in identifying X. To ensure parity of treatment with interposed entities with a legal personality, we would assume this should just mean X having a majority interest in the firm. For example, for funds set up as limited partnerships without a legal personality (such as an English Limited Partnership), the limited partnership is the interposed/intermediary entity (or one of many intermediary entities) between X and company Y, and X would need to have a majority interest in the limited partnership in addition to the members of the firm meeting the other specified conditions in relation to company Y.

6. Further guidance on the meaning of a majority interest in a firm should also be considered. In the context of limited partnerships, clarity could be provided on whether majority interest means the capital contributed to the partnership, the limited partner's entitlement to profits and losses, or both.
7. Statutory guidance on the fourth condition should broadly set out which scenarios the Government expects to be covered by the meaning of significant influence or control in relation to a company (or LLP). Illustrative examples are helpful, however the more detailed and complex scenarios are best reserved for the non-statutory guidance. Scenarios that could be considered for the guidance include those relating to:
 - a. Situations that give an individual significant influence or control other than through voting rights and contractual arrangements e.g. the relative voting power an individual may have compared to other shareholders.
 - b. Potential voting rights arising from share options, preferred shares and other convertible financial instruments. i.e. more guidance on what the 'right to exercise' means.
 - c. How substantive voting rights are and the impact of protective rights.
 - d. The agency-principal relationship, which is important in the context of the asset management industry.

Q2: Do you agree that a Working Group would be useful?

8. We agree that it would be useful to set up a Working Group for the statutory guidance and confirm that we would like to join this. We realise that developing statutory guidance on the meaning of 'significant influence or control' will present a real challenge and representative bodies should support this.

Q3: What are the key areas we should cover in non-statutory guidance?

9. We welcome more general (non-statutory) guidance, the aim of which is to help small business interpret the legislation in the context of 'common scenarios' without needing (extensive) legal advice.
10. We believe there is a need to consider the interplay between the specified conditions and accounting standards that also define "significant influence" and the principle of "control" as, that would be the starting point companies use to determine how to record the nature of control on the PSC Register. Where there are differences between the two, if any, then this should be clearly identified.

11. The application of the specified conditions to interests in a Companies Act 2006 (“CA”) company held through a limited partnership fund structure is a considerably complex and fact-specific area based on the structuring of the fund and the way it holds title to the underlying shares in the CA company. The non-statutory guidance could include illustrative examples of holdings through common fund structures to assist individuals and companies when inputting information on the PSC Register. This could include:
 - a. How to determine if you have a majority interest in a limited partnership in the context of the fifth condition (i.e. capital contributed to the partnership, the limited partner’s entitlement to profits and losses, or both).
 - b. How individuals holding an interest in a CA company through general partners and through limited partners in an interposed limited partnership would fall within the conditions, particularly the fifth condition. This should include situations where the management of the partnership is delegated to an investment manager.
 - c. Expanding 11. b. to cover different types of limited partnerships including English and Scottish limited partnerships and those overseas, both with and without a legal personality.
12. Illustrative examples clearly setting out how an entity becomes a relevant legal entity and whether it is registrable or non-registrable in relation to the underlying company (or LLP) would be helpful in the non-statutory guidance.
13. We would also be interested in joining the working group formed to prepare and review the non-statutory guidance.

Q4: How best should it be communicated to companies and others?

14. We do not have any comments at this stage.

Q5: Who should lead on or be involved in its protection?

15. We do not have any comments at this stage

Chapter 2: Recording nature of control on the PSC register

Q6: We welcome your views on whether these objectives are appropriate and whether there are any other factors that should be taken into account?

16. We agree these objectives are appropriate.

Q7: Do you agree with the approach of simplifying and standardising what is recorded under nature of control?

17. The approach should be to keep the disclosures on the PSC Register simple and we agree with the need for a digital solution. We prefer the approach of using a drop down menu/tick box form as proposed in Examples 1 and 2, with an (optional) ‘free text’ box. A PSC should not have to explain

the nature of their control beyond this, although they could choose to include further detail in the 'free text' box if they wish to. Determining the nature of control can be a complex analysis and requiring individuals to disclose more information to show how they satisfy one (or more) of the specified conditions could lead to the disclosure of confidential information, and would likely be meaningless to the general public. Given an individual's identity has already been disclosed and it is clear which condition(s) has/have been met, disclosure of any additional information would seem to go beyond the policy intention. It would be disproportionate to require a PSC to drill down into further detail and disclose this.

Q8: Should there be a different approach for more complex arrangements? Does this need to provide a full explanation of the nature of control?

18. A more detailed approach, as outlined in Example 3, is not necessary for the purpose of recording the nature of control in line with the requirements of the Bill. This could be more confusing for the user of the PSC register (as well as the preparer) and provide less useful information. We do not believe the general public would benefit from knowing, for example, whether voting rights are held directly or indirectly and how these are held through different entities. This may also lead to the disclosure of confidential arrangements which we understand is not your intention. A PSC could opt to include further detail in a separate section of the register if they wished.
19. To ensure comparability and consistency of information on the PSC Register, there should be only one approach for recording the nature of control, rather than having an additional one for complex arrangements.

Q9: If you prefer a less prescriptive system, what safeguards should exist to ensure that entries in the register are comparable and easy to understand?

20. We do not have any comments to make at this stage.

Chapter 3: Protection regime
Chapter 4: Costs and access
Chapter 5: Impact of proposals

21. We do not have any comments to make on these chapters at this stage.

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

Yours faithfully

A handwritten signature in black ink, appearing to read 'S. Witney', with a stylized flourish at the end.

Simon Witney
Chairman – BVCA Legal and Technical Committee