Department for Business, Energy and Industrial Strategy

By email: climatedisclosure@beis.gov.uk

5 May 2021

Dear Sir, Madam

Re: Consultation on requiring mandatory climate-related financial disclosures by publicly quoted companies, large private companies and Limited Liability Partnerships (LLPs)

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 in the UK. With a membership of over 700 firms, we represent the vast majority of all UK based private equity and venture capital firms, as well as their professional advisers and investors. Between 2015 and 2019, BVCA members invested over £43bn into nearly 3,230 UK businesses, in sectors across the UK economy ranging from heavy infrastructure to emerging technology. Companies backed by private equity and venture capital currently employ 972,000 people in the UK and the majority of the businesses our members invest in are small and medium-sized businesses.

Overview of BVCA recommendations

We support the Government's objective of introducing mandatory climate-related financial disclosures on the basis of the TCFD recommendations. However, as medium to long-term investors with significant influence or control over portfolios of primarily unlisted companies, our private equity and venture capital ("PE/VC") fund manager members have a number of concerns regarding the manner in which the proposals seek to achieve this. We have set these out in detail in response to individual questions below and would summarise our key concerns as follows:

- **Scope – the rules must not artificially aggregate separate companies.** We support the Government's proportionate approach and agree with the proposed thresholds for triggering mandatory climate disclosures by larger companies. However, for the purposes of measuring turnover and number of employees in this context, it is important that separate companies are not considered part of the same corporate group merely by virtue of belonging to the same PE/VC fund's portfolio or different fund portfolios managed by the same manager. We recommend that where consolidated accounts featuring separate portfolio companies are not required, as is the case for a PE/VC fund portfolio, those companies should not be treated as part of the same group for the purposes of assessing whether the proposed disclosure requirements apply to them.

- **Content – consistency with other rules being developed under the Roadmap is essential.** We support the Government's selection of the TCFD recommendations as the basis for climate-related disclosures across the UK economy, because they form a well-established and effective reporting framework that is used by increasing numbers of PE/VC fund managers on a voluntary basis already. However, we are concerned by the inconsistency between the approaches that BEIS and the FCA have taken in integrating the TCFD recommendations into Companies Act reporting requirements and the Listing Rules respectively, which could lead to confusion and may hinder comparability. Accordingly, we recommend that BEIS, the FCA and other relevant government stakeholders jointly adopt a consistent approach to the content of disclosures that will allow climate-related information to flow seamlessly from corporates, through intermediaries to end investors.

BVCA responses to the consultation questions

We have limited our responses to those questions we believe are particularly relevant to our members.

Q1: Do you agree with our proposed scope for companies and LLPs?

We broadly agree with the proposed scope, for many of the same reasons put forward in the consultation paper, and think that the thresholds achieve an appropriate degree of proportionality. Although many venture capital, growth equity and mid-market private equity fund managers are increasingly helping portfolio companies to consider and report on climate and other sustainability issues, we consider that mandating TCFD reporting for smaller companies/SMEs would be disproportionate at this stage because of the level of costs involved in an immature market for climate-related data provision.

However, at the larger end of the PE/VC market, we are concerned by the potential overlap and inconsistency with the Government's ongoing consultation on "Restoring trust in audit and corporate governance" (CGAR). Consideration should be given to the potential change to the Companies Act definition of a public interest entity (PIE), and the consequential effect this may have on the proposed scope. If the definition is to be expanded, as is proposed, it may mandate more private companies to report using the TCFD recommendations via the proposed 'Resilience Statement'.

Clarity needs to be ensured as more corporate reporting becomes mandated for PIEs and large private companies on what TCFD obligations will be imposed on which types of company. This is critical for ensuring coherence and alignment between the different reporting frameworks so as to encourage compliance and regularity of reporting.

Q3: Do you agree with the proposal to require climate related financial disclosures for companies and LLPs at the group level?

We agree with this proposal, but wish to highlight that PE/VC fund structures should not be treated as corporate groups for these purposes. PE/VC funds exist to deploy investors' capital into a diversified range of very different businesses (each, a portfolio company) in order to maximise investors' returns and spread their risk. From a governance perspective, each portfolio company is managed and operated independently of all other portfolio companies (with separate boards and senior management teams).

Accordingly, the accounting treatment is different for PE/VC funds than for corporate groups/conglomerates – funds are typically not required or entitled to prepare consolidated accounts including portfolio companies, unlike corporate groups. For these reasons, separate groups of companies in a PE/VC fund portfolio should not be aggregated like a corporate group or conglomerate (either with each other or with the fund manager) for the purposes of these proposals.

The thresholds for climate reporting should be applied to each portfolio company separately (and where applicable its relevant corporate group). This would avoid imposing unnecessary and onerous requirements on smaller companies that, when considered separately, would be below the threshold and not required to report. The accounting treatment should be followed closely, and this could be reflected in the statutory instrument as well as the Q&A Guidance.

Q4: Do you agree that the Strategic Report is the best place for the disclosure of climate-related financial information by companies?

We agree that the Strategic Report is the most appropriate location in the annual report to include this information. The disclosures included in the four proposed pillars are consistent with existing requirements in the Strategic Report and should fit neatly in this section.

However, the location of disclosures for some companies could also be influenced by the outcome of the CGAR consultation. The proposal for a new 'Resilience Statement', including the possibility of it including TCFD-based disclosures, could affect the content and location of climate-related disclosures. It would be helpful, when publishing guidance, to set out any such potential overlaps or changes driven by CGAR.

Q6: Do you agree that requiring disclosure in line with the four pillars of the TCFD recommendations, rather than at the 11 recommendation level is suitable?

As investors with significant influence or control over portfolio companies, PE/VC funds are typically already able to specify and obtain much of the information they require from those investee companies, either for regulatory reasons or to satisfy the contractual reporting requirements of fund investors. Nevertheless, we agree that this is a suitable proposal, as the requirements are relatively proportionate, will promote comparability and are flexible enough to evolve in line with developing international standards (e.g. via the IFRS Foundation).

However, care must be taken to ensure these new requirements do not duplicate or conflict with other obligations to which companies are or may become subject, such as the EU's recast Non-financial Reporting Directive (the Corporate Sustainability Reporting Directive), which is likely to bring large non-listed EU companies into scope (which may be subsidiaries of UK companies subject to BEIS' proposals), and the FCA's new Listing Rule requirement. The new Listing Rule in particular imports the TCFD recommendations verbatim, rather than taking BEIS' proposed approach of re-drafting the recommendations to render the four pillars more prescriptive whilst excluding the 11 recommended disclosures and the TCFD's own guidance. This duality will leave parallel reference points for companies reporting under both the Listing Rule and the Companies Act that are similar but not identical, and could also cause confusion over whether or not companies reporting under the Companies Act can refer to the TCFD guidance to inform their climate-related reporting.

Whilst we understand BEIS' desire to ensure the TCFD recommendations can be integrated neatly into the UK's existing company law and financial reporting frameworks, we would like to re-iterate from a company/user perspective that as much consistency as possible between the various frameworks is desirable in order to promote comparability whilst avoiding inefficiencies, inconsistencies and disproportionate resource burden on companies. If a company can be sure it has met its Listing Rules, Companies Act and any other TCFD-based requirements (e.g. from international investors that might already require reporting using the TCFD recommendations) by preparing a single set of disclosures in the same format, then unnecessary costs will be reduced, industry buy-in will be fostered and, most importantly, comparability and transparency will be enhanced.

Q7: Do you agree that information provided in line with the obligations set out above would provide investors, regulators and other stakeholders with sufficient information to assess the climate-related risks and opportunities facing a company or financial institution?

We agree that this proposal will provide sufficient information for stakeholders to assess climate-related risks faced by PE/VC funds' large, and therefore most impactful, portfolio companies. Climate change factors are important to BVCA members seeking to minimise risks and create value in the underlying portfolio companies held by the funds they manage, in order to increase returns for investors and create sustainable businesses for the future.

As mentioned in our response to Question 6, this information can often be obtained by PE/VC fund managers without recourse to legal or regulatory requirements, as they typically wield significant influence or control over the companies their funds invest in (as majority owners or otherwise) which allows them to obtain the information needed for investors and regulators on demand (if such information exists or can be obtained by the portfolio company itself). Despite this, we see the value of a consistent reporting framework in ensuring comparability across the UK's corporate landscape and to a wider set of stakeholders than investors alone.

Q8: Do you agree with our proposal that scenario analysis will not be required within a company or LLP's annual report and accounts?

We agree with this proposal. It would appear from the proposed wording of the obligations under 'Strategy' and 'Risk Management' that some degree of forward-looking analysis will be required, but that this would fall short of full scenario analyses for a range of temperature increases and any such modelling would not need to be published in annual reports (although government confirmation would be welcome). We consider this approach to be proportionate. If scenario analysis disclosures became mandatory in future, it would be important to ensure clear guidance and the appropriate timeframe are given for companies to adapt, as these analyses can be costly and time consuming, particularly given the challenging economic environment expected over (at least) the short to medium term.

Q9: Would alignment of the scope for climate-related financial disclosures and SECR requirements, such that large unquoted companies and LLPs would be subject to the same reporting requirements under SECR as quoted companies, aid reporting of climate related financial disclosures and simplify reporting procedures? Do you have any views on the continuation of voluntary Scope 3 emissions reporting under SECR requirements?

Yes, our view is that it would aid reporting. However, the new disclosure requirements should remain proportionate and be introduced across an appropriate timeframe. If companies are required to measure and report all direct emissions under TCFD-based rules, it would seem sensible that the same metric should be reported under SECR. Our view is that reporting of Scope 3 emissions should remain voluntary. However, we understand that this reporting may be required in future due to the increasing risks presented by climate change. If it were to become mandatory, then sufficient lead-in time would be essential.

Q10: Do you have comments on the proposal to permit non-disclosure if the information is not material and the reasons why climate change is not material are properly explained?

We agree with this proposal. Climate-related disclosures should only be required insofar as they are material.

In addition, it is important that the rules do not force disclosure of commercially sensitive information or create conflicts with any confidentiality obligations that may apply. In general, companies should not be required to disclose commercially sensitive information (even if material).

It would be helpful to include examples in the Q&A / guidance of the language or supporting information that a company might need to include to demonstrate that it does not deem climate change material, as auditors will review this narrative.

Q11: Do you have comments on the proposed timing for these regulations coming in to force?

We believe that the proposed application date provides a reasonable timeframe for in-scope companies to adapt and start gathering the required information (where they are not doing so already). However, we strongly suggest that any clarificatory guidance / Q&A be published as soon as possible and in any event prior to the application date of the rules, to ensure companies have a clear enough understanding of the incoming rules to enable them to prepare effectively.

Q12: Do you have any comments regarding the existing enforcement provisions for companies and the BEIS proposal not to impose further provisions?

We agree with the proposal not to introduce new monitoring or enforcement provisions, as general enforcement provisions are set out clearly in the Companies Act and provide a robust regime.

In addition, further information and clarification would be welcome on how the CGAR consultation recommendations to create the new Audit, Reporting and Governance Authority and provide it with enforcement responsibilities might change existing enforcement powers in future. If the new regulator were to introduce further enforcement powers, we would be concerned by how this might affect the monitoring and enforcement of the new rules on climate-related disclosures.

Q14: Do you have any comments on the responsibilities of auditors in relation to climate-related financial disclosures?

We agree with the proposed responsibilities. Some companies may even consider the proposals beneficial, as an auditor will review the disclosures in conjunction with the financial information in the annual report, adding authority to the company's reporting on climate issues.

Q15: Do you have any comments regarding the proposed enforcement of our disclosure requirements?

Please see our response to Question 12. As there will be two regulators (FCA and FRC) enforcing two regimes, it is important that their remits are clear and that they work in tandem with one another to provide effective enforcement that is timely and proportionate.

Q17: Do you have any further comments about our proposals?

Industry may benefit from ongoing updates to the Government's TCFD Roadmap, covering how it will be complemented by or overlap with other frameworks (CGAR, for example). For example, flagging that the requirement for scenario analyses has not been ruled out in future and updating the Roadmap as policy on this develops. This is also true for CGAR and how it might affect the regime (e.g. how the potential change to the definition of a PIE might alter which companies report under which regime, and in what format i.e. the Resilience Statement proposal).

The BVCA would of course be willing to discuss this submission with you further - please contact Ciaran Harris (charris@bvca.co.uk) at the BVCA.

Yours faithfully,

Amy Mahon

Chair, BVCA Legal & Accounting Committee