

Husna Khatun
Profession, Approach and AI Policy
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

By email: cp24-11@fca.org.uk

12 August 2024

Dear Ms Khatun

Re: CP24/11 Introducing criminal background checks on owners and controllers at the authorisations gateway

The BVCA 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 over 600 firms, we represent the vast majority of all 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 of London and 90% of the businesses receiving investment are small and medium-sized enterprises (SMEs).

We welcome the opportunity to provide feedback on the FCA's consultation proposal to require criminal background checks on owners and controllers. We support the FCA's stated objective of ensuring criminals and their associates are prevented from owning or controlling financial institutions. However, we are concerned that this proposal will have negative implications for UK competitiveness and cause undue cost, delay and burden for authorisations, acquisitions and change in control processes.

As such, we urge you to re-consider this proposal through the lens of the secondary growth and competitiveness objective.

The time taken to complete regulatory applications and notifications is a key consideration for investment firms when considering where to locate and invest. We believe the impact on business activity will go far beyond what has been identified in the FCA's consultation paper and in the supporting cost benefit analysis.

For these reasons (further detailed below), we strongly disagree with the proposal to require DBS checks (or equivalent outside England and Wales). We recommend that the FCA continues its more proportionate risk-based approach of performing checks where specific concerns about an individual's fitness and propriety arise.

Given the potential impact and additional costs and resources that would result from these changes, we do not think it is appropriate to consult on these proposals in a quarterly consultation paper, which (in the words of the FCA website) are reserved for 'miscellaneous amendments to our Handbook' which 'tend to be minor changes'. For the reasons stated below, we consider that these changes could have a disproportionate effect on industry.

In this note, we have focused on the likely impact of the proposal on change in control applications, but similar points apply in respect of applications for authorisation.

[British Private Equity & Venture Capital Association](#)

+44 (0)20 7492 0400 | bvca@bvca.co.uk | www.bvca.co.uk

Negative impact on UK competitiveness

The change in control process is a key interaction point between senior individuals of international organisations and the UK financial services regulatory regime. Imposing the additional burden of requiring a criminal background check is likely to be perceived negatively by these individuals and could harm the UK's reputation and competitiveness compared to other international financial centres. In our experience, requesting criminal background checks on proposed controllers is generally the exception rather than the norm in other jurisdictions. Key jurisdictions including Ireland, the United States, Hong Kong, and Singapore do not apply criminal background checks for all types of firms on a mandatory basis.

Additionally, where a regulated UK private equity business is involved in a transaction, anti-money laundering checks are already carried out on sellers, buyers and co-investors, as well as on investors in the private equity funds. As these firms are already carrying out checks, the FCA should consider these specific situations as low risk.

Therefore, this proposal does not align with the FCA's secondary competitiveness objective, and we recommend it should be reevaluated through this lens.

To have a proportionate approach between protecting the UK financial sector from criminal activity while maintaining its competitiveness, we suggest that the proposed rules are introduced in relation to change of control situations for high-risk acquisitions only, such as banks, building societies, insurers and consumer credit firms authorised to lend to retail clients.

Undue cost, burden and delay in relation to change in control processes

The proposed controllers are already required to make extensive disclosures as part of the change in control process, with potential criminal liability for non-disclosure. There is no evidence that we are aware of, or that has been presented in the consultation paper to suggest that the current regime is not fit for purpose or that individuals with criminal convictions are taking control of UK licensed firms.

Obtaining criminal background checks in some jurisdictions is extremely burdensome. In places like Hong Kong, these checks are generally provided only for certain visa applications and adoption processes. In other jurisdictions, multiple agencies may need to be contacted separately to obtain a full check. While the FCA suggests a risk-based approach in "rare or unusual circumstances" where checks are difficult to obtain, we anticipate that such circumstances are more common than envisaged. This could lead to significant delays in change in control and authorisation timelines, with applicants needing to explain and justify their position to the FCA. These delays will impose additional costs to the cost of obtaining the checks. Furthermore, the delays can have significant cost implications in terms of financing costs, where the checks extend business timelines by just a few months.

This proposal is also duplicative for proposed controllers who are subject to the Senior Managers Regime. Senior managers are already required to undertake a criminal background check and undergo rigorous vetting and background checks, ensuring their suitability for their roles. Any relevant changes in personal information, such as a change in their fitness and propriety must be notified to the FCA. Requiring new criminal background checks for controllers who are senior managers will not only introduce unnecessary cost and burden but undermines the efficiency of the existing regulatory framework, which already ensures that senior managers meet the highest standards of integrity and competence.

Additionally, we believe that the estimated cost of this proposal in the cost-benefit analysis significantly understates the likely cost to business. It assumes the cost of a UK DBS application is £18 or, for equivalent checks in other jurisdictions, between £1 and £17. However, this does not account for the potential additional costs incurred in obtaining a criminal background check, especially outside the UK. These costs include management time, legal advice, and assistance from local service providers, which

can be extensive. For example, some US criminal background checks require applicants to provide fingerprints, which can have significant logistical implications. We urge the FCA to carry out a more extensive and accurate cost benefit analysis that properly accounts for the additional costs likely to accrue to businesses as a result, especially where criminal background checks are required outside the UK.

We strongly believe that the benefits of this proposal to both the FCA and industry are insufficient to justify the disruption and increased costs, burden and delay in relation to change in control processes.

Maintaining proportionality

The existing regime is proportionate, and risk based. The FCA already has the power to request criminal background checks using a risk-based approach, which is consistent with AML and CTF regimes. This approach is appropriate and avoids unnecessary checks regardless of the individual's risk profile. For instance, requesting criminal background checks for directors of major listed companies and prominent public figures seems disproportionate.

It is our view that it would also be disproportionate to impose checks in relation to the controllers of all regulated entities, given that some types of business may be considered to be at lower risk of criminal activity than others. The FCA has stated that the proposal will align its regime with that of HMRC and the Gambling Commission 'where such checks are performed routinely'. However, the HMRC and the Gambling Commission oversee businesses which, by their nature, are at high risk of criminal exploitation. In contrast, imposing blanket checks of this kind on the UK's financial sector as a whole would be disproportionate compared with the current risk-based approach.

To have a proportionate approach between protecting the UK financial sector from criminal activity while maintaining its competitiveness, we suggest that the proposed rules are introduced in relation to change of control situations for high-risk acquisitions only, such as banks, building societies, insurers and consumer credit firms authorised to lend to retail clients.

In conclusion, the proposed requirement for criminal background checks for all controllers of all regulated firms would present significant challenges for business and could have negative impacts for the UK's reputation and competitiveness, without sufficient justification.

We urge you to reconsider this proposal to help ensure the UK remains an attractive and efficient place to invest, thereby advancing the FCA's secondary objective for UK competitiveness and growth.

Please do not hesitate to get in touch if you have any questions or if you would like to discuss any of the above in more detail (please contact Tom Taylor ttaylor@bvca.co.uk / Nick Chipperfield nchipperfield@bvca.co.uk).

Yours sincerely



Tim Lewis

Chair, BVCA regulatory committee