[PRO 01-26]
Department of Financial Protection and Innovation
Attn: Legal Division
651 Bannon Street
Suite 300
Sacramento, CA 95811

By email: regulations@dfpi.ca.gov

Date: 17th July 2026

Dear Commissioner Mohseni,

Re: UK Private Capital Comments on Proposed Rulemaking under the Fair Investment Practices by Venture Capital Companies Law (PRO 01-26)

UK Private Capital welcomes the opportunity to respond to your request for comments on proposed rulemaking under the Fair Investment Practices by Venture Capital Companies law ("**FIPVCC**").

An integral part of UK Private Capital's mission is to promote diversity, equity and inclusion within our industry. UK Private Capital supports your goal of better understanding founder diversity to address imbalances in venture capital and growth investing, and we are an active partner in advancing similar objectives in the UK.

Increasing data transparency to understand better the diversity of founders who receive venture capital funding is a goal UK Private Capital supports and explicitly seeks to operationalise in a UK and wider European context through a variety of activity, most notably through our partnership with the UK government-backed business-led Investing in Women Code. As an industry that invests in people and in businesses, we recognise the importance of diverse workforces and inclusive workplaces where everyone can thrive.

We recognise the need for greater and more meaningful measurement and reporting of data that can measure progress on diversity, equity and inclusion. We are committed to ensuring the UK private capital industry plays a leading role in driving change. We therefore value this opportunity to highlight the role that UK Private Capital is already playing, as well as to offer constructive comments to help ensure maximum success for your efforts in California on aligned goals.

I. About UK Private Capital

UK Private Capital (formerly the BVCA) is the trade association of the UK private capital industry. We represent 600 firms including the wider ecosystem of professional advisers and investors. Private capital consists of private equity and venture capital which make long-term investments to grow British businesses and build a better economy. Direct lending private credit funds and venture debt provide active and engaged debt finance to businesses. UK Private Capital members operate and invest across jurisdictions and include firms that make long-term investments to startup, early-stage, and emerging growth businesses, building a better economy everywhere these businesses are located, including in California. In 2025, global investment led out of the UK (based on advisory team location, regardless of firm HQ) totalled £45.7bn.[1] The same year, UK companies received £25bn in investment, of which £7.3bn came from firms headquartered in the US.[2]

II. Key messages

UK Private Capital supports the intent of the legislation and the Department's goal of better understanding founder diversity to address imbalances in venture capital and growth investing. The concerns highlighted in our response primarily lie with the design and practicalities of implementation in a UK and EU context, which will create conflicting legal obligations, regulatory inconsistency and lead to unnecessary privacy and cybersecurity risks for founders. Faced with these significant challenges, some investors may be unwilling or unable to invest in affected businesses, potentially reducing investment opportunities for U.S investors and creating unintended barriers to capital formation.

Our response below focuses on the questions which concern the way these proposals will interact with existing UK and EU laws, highlighting important contextual considerations that should inform the design and implementation of this reporting regime. In its current form, the requirements of the FIPVCC are incompatible with the existing requirements laid out under the UK General Data Protection Regulation ("UK GDPR") and the EU General Data Protection Regulation ("EU GDPR"), which seek to protect privacy and strictly regulate how organisations collect, use, transfer and store personal data. This will significantly impede the practical application of this legislation within a UK and EU context, diminishing the effectiveness of the proposals.

We primarily recommend that investments where the processing of founding members' personal data is subject to UK GDPR and/or EU GDPR should be excluded from the reporting requirements of FIPVCC. We also propose that a model where data is collected directly by the Department for Financial Protection and Innovation may merit consideration.

III. UK Private Capital's role in Diversity, Equity and Inclusion initiatives

Increasing data transparency to understand better the diversity of founders who receive venture capital funding is a goal UK Private Capital supports and explicitly seeks to operationalise in a UK context through our partnership with the Investing in Women Code, as well as other programs and initiatives as outlined below.

UK Private Capital has an important role to play in promoting diversity, equity and inclusion within our industry. We continue to use our convening power, our profile and our research to champion and actively encourage diversity and inclusion within the investment industry. Increasing the flow of capital to diverse founders is a priority we share with DPFI. We operationalise our commitment to ensuring capital flows to the full breadth of entrepreneurial talent and mobilise our members to achieve this objective in a number of ways.

[1] Source: UK Private Capital Report on Investment Activity

[2] Source: UK Private Capital Report on Investment Activity

Investing in Women Code

UK Private Capital is a co-founding signatory of the Investing in Women Code, a government-backed business-led pledge, created to support the advancement of women entrepreneurs in the UK. Since its launch in 2019, the Code has championed transparency through consistent data collection and reporting. Of the now 300 plus signatories, 215 are venture and growth investors who provide data to the British Business Bank – our national economic development bank – who then aggregate, anonymise and publicly report the findings on an annual basis. UK Private Capital now also acts as a data collection partner, supporting the Code with its recent decision to expand data collection to include Limited Partners.

UK Private Capital is also an active member of the Invest in Women Taskforce, supporting this government-backed industry-led group to make the UK the best place in the world to be a female entrepreneur. Several of our members have given their support to the recently launched Women Backing Women Fund of Funds, delivering one of the world's largest funding pools for women-powered businesses.

We are a long-standing signatory of the Women in Finance Charter, a voluntary pledge overseen by His Majesty's Treasury that provides an opportunity for firms to sign up and commit to supporting the progression of women into senior roles in the UK financial services industry. We continue to support our members to engage with the Charter, the Code and the Taskforce, as well as other UK-based initiatives in this space. We further promote the importance of diversity in its broadest sense through our internal governance, engagement with industry and government initiatives, as well as events and networking. We have a long-standing partnership with Level 20, a pan-European organisation comprising 13 chapters across 20 countries and the leading industry body for women in private equity. Their mission is to increase the representation of senior women in private markets, particularly in investment roles. Together we produce a bi-annual research report tracking the representation of women and people of different ethnic backgrounds working in the UK private equity and venture capital industry. Our gender study benefits from a robust and comprehensive data set, with a sample of over 14,000 individuals produced through a combination of survey data collected on a voluntary basis and supplemented by data collected from public sources.[3]

Walker Guidelines

UK Private Capital introduced the Walker Guidelines in 2007, which were implemented to improve accountability and transparency in the UK's private capital industry. The guidelines require enhanced public disclosure by UK-based private-capital backed companies and their owners across a range of areas including financial performance, corporate governance and, more recently, environmental, social and governance (ESG) factors. Whilst voluntary, there is a strong emphasis placed on qualifying firms to disclose in alignment with them.

In 2024, UK Private Capital refreshed the Guidelines and formally incorporated diversity, equity and inclusion (DEI) considerations into the reporting framework, requiring companies to disclose information on whether they have established DEI policies that are aligned with their

[3] Level 20 and UK Private Capital, 2025. *Diversity in UK Private Equity and Venture Capital 2025 Report.* Available at: [Diversity-in-UK-Private-Equity-and-Venture-Capital-2025-Report-1.pdf]

overall business strategy and with recognised DEI initiatives such as the Investing in Women Code or Women in Finance Charter.

UK Private Capital continues to champion transparency and accountability in industry, recognising the need for improving the quality of DEI data collection to uncover barriers and monitor progress. However, we also acknowledge the sensitivity of DEI data collection. We promote and advocate for a scaled approach to collecting this data, as opposed to imposing standardised targets on companies which can create a “box ticking” culture. This approach supports meaningful progress, whilst recognising the commercial and operational realities faced by private capital-backed businesses. We would be happy to provide further information regarding this work if of interest.

UK Private Capital appreciates the state of California’s efforts to support diverse founding team members, and we appreciate your consideration of our comments. We offer our insights above in the spirit of helping the FIPVCC maximise its potential to realise that goal.

Please do not hesitate to get in touch with Harriet Assem or Poppy Bramford if you have any comments or questions to the above and below.

Yours sincerely,
Sarah Adams and Isobel Clarke, Directors of Policy, UK Private Capital

Responses to questions:

<u>Question 12.a – Should investments in businesses outside the United States be included in the report?</u>

UK Private Capital respectfully recommends that investments in relation to which the processing of founding members' personal data is subject to UK GDPR and/or EU GDPR should be excluded from the reporting requirements of FIPVCC.[4] (We refer below to "GDPR" to mean the UK GDPR or EU GDPR as applicable because the same concerns will apply across both the UK and EU data protection regimes and the respective legislative references, in this case, mirror each other.) Private capital firms based in the UK or EU are subject to GDPR, which means our members have detailed obligations around personal data processing. Compelling these private capital firms to survey company founders on sensitive data categories such as race and ethnicity, sexual orientation, disability status, and related sensitive characteristics creates a risk of legal challenge and regulatory non-compliance for firms operating across multiple jurisdictions. Faced with conflicting legal obligations, some investors may be unwilling or unable to invest in affected businesses, potentially reducing investment opportunities for U.S investors and creating unintended barriers to capital formation.

Article 9(1) of GDPR categorically <u>prohibits</u> the processing of personal data revealing racial or ethnic origin, data concerning health, and data concerning a natural person's sex life or sexual orientation – precisely the categories that the FIPVCC questionnaire contemplates – absent one of ten exceptions specifically enumerated in Article 9(2). However, each of those ten exceptions under Art. 9(2) would be unavailing in this context, either because: (1) the exception is simply not relevant, *or* (2) the exception only applies where a *domestic UK* (or in the case of EU GDPR, EU) legal requirement compels the data processing and supersedes GDPR, *or* (3) the exception only applies where the express consent of the data subject is "freely given". More specifically:

a. exceptions under Art. 9(2)(c), (d), (e), and (f) are unavailable because the sensitive data collected in the FIPVCC questionnaire, respectively: (c) is not necessary to protect vital interests (i.e., to protect someone's life), (d) is not undertaken by a not-for-profit body, (e) is not made publicly available to the public at large by the respondents, and (f) is not necessary to respond to legal claims or judicial acts, such as court orders;

b. exceptions under Art. 9(2)(b), (g), (h), (i), and (j) are only available where the sensitive data processing is necessary under UK law, so a *California* legal requirement like the FIPVCC cannot supersede GDPR's prohibition on sensitive data processing; and

[4] The scope of our input on this point is limited to the United Kingdom and the UK GDPR because that is where UK Private Capital and our members are located. However, we would encourage the Commissioner to consider our recommendation on a global basis, as we are aware that similar restrictions and prohibitions may exist under other data protection laws, such as the EU GDPR across the **European Economic Area**, the *Lei Geral de Proteção de Dados Pessoais* or "LGPD" in **Brazil**, the Protection of Personal Information Act or "POPIA" in **South Africa**, the Personal Information Protection Act or "PIPA" in **South Korea**, the Act on the Protection of Personal Information or "APPI" in **Japan**, and the Privacy Act 1988 and Australian Privacy Principles or "APPs" in **Australia**, among others. We are aware that Canada, India, and China have restrictive data processing frameworks of their own, as well.

c. the exception under Art. 9(2)(a) for explicit consent is only available where the data subject (i.e., the founder) has freely given his/her consent. The European Data Protection Board ("**EDPB**"), the body responsible for ensuring consistent application of the GDPR across Europe, has issued authoritative guidance making clear that consent cannot be regarded as freely given where a material power imbalance exists between the controller and the data subject. The EDPB has confirmed that if the data subject has no real choice, feels compelled to consent, or will endure negative consequences if they do not consent, then consent will not be valid. Whilst the proposals assert founder disclosure is voluntary, it is worth noting that a founder who has already received investment capital from a fund, and who may depend on that same fund for a subsequent financing round or for ongoing business advisory support, faces a form of dependency, a sense of pressure, and potential for detrimental consequences that the EDPB guidance identifies as incompatible with the free giving of consent.

Moreover, the transfer of personal data to the US by entities subject to the UK GDPR would be a "restricted transfer" for the purpose of Article 44 of the UK GDPR. The UK Extension to the EU-US Data Privacy Framework (the UK's adequacy regulation in respect of the US businesses certified to the DPF) would not apply in respect of disclosure of information to the Department for Financial Protection and Innovation (as it excludes US government agencies and departments), there are no available appropriate safeguards, and the only relevant derogation to Article 44 would be explicit consent, which is problematic in this context for the reasons explained above.

While we recognise that the aim is for reported data to be anonymised "to the extent possible", such that it is not attributable to any individual founding team member, it is worth noting that anonymisation is a high standard under GDPR. We anticipate that effective anonymisation would be difficult to achieve for this dataset (for the reasons set out in response to question 32 below). The data would therefore be personal data at the point of collection and is likely to remain personal data and in scope for GDPR at the point of transfer.

Beyond potential conflicts with data protection requirements, the regime risks duplicating existing UK-led DEI initiatives and imposing reporting obligations on firms that have no substantive commercial presence or activity in California. In particular, firms may be required to prepare and submit reports solely because they marketed to Californian investors, irrespective of whether any such investors ultimately invested in the fund. The combination of the regulation's extraterritorial scope and the relatively limited nexus required to bring funds within scope gives rise to significant concerns.

Finally, the current definition of growth-stage investors appears sufficiently broad to encompass private equity firms as well as venture capital investors. For mature portfolio companies, the original founders will often have ceased to have any involvement with the business, and general partners may not retain their contact details or relevant records. As a result, firms may be unable to obtain complete or accurate founder data, potentially undermining the quality and consistency of the information collected.

For the foregoing reasons, UK Private Capital respectfully urges the DFPI **to include in the final regulations an express exemption** for where the collection (via the questionnaires) and further processing of personal data from founders is subject to the UK GDPR and/or the EU GDPR. Failure to provide such an exemption would not merely create regulatory inconsistency; it would place law-abiding UK private capital firms in direct conflict with binding obligations under the privacy laws of a territory with primary jurisdiction over them, and would risk discriminating against the very founders that the FIPVCC law is designed to protect by exposing them to unlawful data collection under GDPR.

Question 32 – Additional Comments (privacy and cybersecurity concerns might depress voluntary self-reporting by founding team members)

We note a potential risk from placing the data collection and data safekeeping responsibility on private capital businesses, which will create unnecessary privacy and cybersecurity risks for founding team members and may result in substantially lower response rates. We would therefore recommend that survey responses go directly to the DFPI, rather than being distributed and collected via the investment firms.

Some founding team members prefer to keep their sensitive personal details private from investors. This is particularly the case for sexual orientation and disability status. Founding team members who feel this way may simply not respond to the voluntary questionnaire, at least not so long as their completed questionnaire goes back to their investors. This potential reluctance to share sensitive data with their investors will likely reduce data completeness, thereby hampering the effectiveness of the FIPVCC. On the other hand, if founding team members knew that their sensitive data would never be seen by their investors – and instead, only by regulators at the DFPI – they may be more likely to feel comfortable self-reporting sensitive survey responses. As a result, the DFPI could benefit from a much higher response rate and higher quality data.

Related to the above privacy concerns is the reality that the FIPVCC statute, as passed, would require private capital firms to collect and process large volumes of sensitive personal data. While our member firms take great care to implement and maintain appropriate data security safeguards to protect data, no IT system or network is impenetrable. Our member firms face an ever-present risk of data breach, and the magnitude of a data breach or similar security event would increase substantially if private capital firms are processing the sensitive personal data of founding team members. Not to mention, in the event of such an incident, the sensitive personal details of founding team members could be exposed to malicious threat actors. Survey responses may be safer if protected in one dedicated repository behind the DFPI's cyber defences, rather than scattered across many individual private firms' servers.

A further benefit of having the DFPI receive the survey responses directly, rather than via private capital firms, would be the amelioration of concerns raised by the Commissioner in **Questions 17.a-17.d** of the invitation for comments. If data is received and aggregated centrally by the DFPI, rather than by individual investment firms, concerns arising from small datasets and the ability to re-identify founding team members would go away. The larger a dataset, the harder it is to re-identify an individual. If data is pooled by the DFPI, it will be far more challenging to re-identify any single founding team member contained in the dataset; but if data is aggregated by each private capital firm individually, those respective datasets will be far smaller and, consequently, it will be far less challenging for someone to re-identify a founding team member.

For these reasons, the more privacy-protective approach to implementing the FIPVCC, the best way to boost the participation rate of founding team members, and the most effective way to help this important law succeed, would be for the DFPI to act as the centralised data collector.