Dear Mr. McFall,

Financial Regulation of Public Limited Companies

Further to the Select Committee’s announcement of an inquiry into the financial regulation of public limited companies, I am enclosing some evidence which may be of interest.

1. A large number of major British companies operate through offshore financial centres that have poor financial regulation. As a result, people dealing with them have little opportunity to identify the parties they are dealing with, or the financial status of the companies. Corporate regulation also makes demands upon taxpayers. But many companies are avoiding/evading taxes by locating in offshore financial centres. Some details of the issues are included in the attached monograph, "No Accounting for Tax Havens".

The hope is that one learns from major financial scandals. The frauds at the Bank of Credit and Commerce International (BCCI) represented the biggest financial scandal of the twentieth century. The bank was closed in 1991. However, to this day there has been no independent investigation of all aspects relating to it. In particular, the government has shielded the auditing firms from scrutiny. For his inquiry, Lord Justice Bingham stated that his terms of reference did not invite him to “evaluate the professional quality of audits of BCCI’s accounts conducted over the years in London or the Caymans or elsewhere, or to form judgement whether irregularities in its business should have been discovered by the auditors earlier”.

In common with Polly Peck, Levitt, Resort Hotels and many other cases, the DTI did not appoint inspectors to investigate the auditing or other aspects. It has passed the matters to the Institute of Chartered Accountants in England & Wales (ICAEW), which has no independence from the auditing industry. Indeed, it is part of the problems.
In the US, a report by Senators Kerry and Brown said that auditors Price Waterhouse were engaged in a cover-up and that their independence was compromised. The report noted that "BCCI provided loans and financial benefits to some of its auditors, whose acceptance of these benefits creates an appearance of impropriety, based on the possibility that such benefits could in theory affect the independent judgment of the auditors involved. These benefits included loans to two Price Waterhouse partnerships in the Caribbean. In addition, there are serious questions concerning the acceptance of payments and possibly housing from BCCI or its affiliates by Price Waterhouse partners in the Grand Caymans, and possible sexual favors provided by BCCI officials to certain persons affiliated with the firm".

In addition, the report also noted that Price Waterhouse were key players in enabling BCCI to shift its Treasury functions from the UK to Abu Dhabi, something which made is very difficult (almost impossible) to investigators to obtain documentation and prove BCCI's criminality.

Any questions about financial regulation have to have regard for the contents of auditor's files. What do they know? Such matters are crucial for investigators. However, the BCCI case showed that auditors Price Waterhouse did not co-operate. In common with other Big-Five firms, their ultimate ownership structure leads to offshore financial centres, places which have been reluctant to share information with other jurisdictions. The New York district Attorney told the Congressional hearings that "The main audit of BCCI was done by Price Waterhouse UK. They are not permitted, under English law, to disclose, at least they say that, to disclose the results of that audit, without authorization from the Bank of England. The Bank of England, so far -- and we’ve met with them here and over there -- have not given that permission. The audit of BCCI, financial statement, profit and loss balance sheet that was filed in the State of New York was certified by Price Waterhouse Luxembourg. When we asked Price Waterhouse US for the records to support that, they said, oh, we don’t have those, that’s Price Waterhouse UK We said, can you get them for us? They said, oh, no that’s a separate entity owned by Price Waterhouse Worldwide, based in Bermuda".

Somewhat mistakenly, people have been led to believe that major corporations are audited by global auditing firms. However, this is not the case. Firms win business by parading their 'global' credentials. However, such credential dissolve in the face of questions about responsibility and accountability. To avoid questions, Price Waterhouse told the Senate inquiry that "The 26 Price Waterhouse firms practice, directly or through affiliated Price Waterhouse firms, in more than 90 countries throughout the world. Price Waterhouse firms are separate and independent legal entities whose activities are subject to the laws and professional obligations of the country in which they practice ... No partner of PW-US is a partner of the Price Waterhouse firm in the United Kingdom; each firm elects its own senior partners; neither firm controls the other; each firm separately determines to hire and terminate its own professional and administrative staff.... each firm has its own clients; the firms do not share in each other’s revenues or assets; and each separately maintains possession, custody and control over its own books and records, including work papers. The same independent and autonomous relationship exists between PW-US and the Price Waterhouse firms with practices in Luxembourg and Grand Cayman"
The enclosed monograph, "The BCCI Cover-up" draws attention to the above and other aspects of the case and its implications for financial regulation of companies.

2. Another worrying aspect of financial regulation is the insolvency practices. The whole industry consists of some 1,800 practitioners and is dominated by the Big-Five accountants firms. The industry has eight separate regulators, but there is little effective control and the practitioners can continue to spin out insolvencies to earn lucrative fees. There is no independent complaint investigation procedure or an ombudsman to adjudicate on disputes.

For example, in March 1982, Stone-Platt Industries, a major engineering company, which once employed more than 30,000 people in the North of England, went into bankruptcy. Most of the assets were sold-off, piecemeal, by the liquidators from a Big-Five firm, within a very short period. However, nearly eighteen year later (November 2000), the liquidation has still not been finalized. The liquidators have drawn fees of £235,375. Amidst revelations of fraud, Barlow Clowes, an investment company, collapsed in May 1988 and in July 1988 it was placed into liquidation. By November 2000, the liquidation had still not been finalized. The liquidators have collected fees (excluding Value Added Tax and administrative disbursements) of some £2,044,331. The Manchester based J.S Bass Group was placed into receivership in 1988 and the receivers/liquidators have collected more than £3 million in fees. It shows no sign of ending. Atlantic Computers was placed into administration in April 1990 and subsequently into liquidation. By November 2000, the liquidation was still in process. The liquidators had collected fees (excluding Value Added Tax and administrative disbursements) of some £18,641,698. The Coloroll Group and its fifty-four subsidiaries were placed into receivership in June 1990. By November 2000, the liquidation was still in progress and the liquidators had collected fees (excluding Value Added Tax and administrative disbursements) of £7,496,625. There are many other examples.

The insolvency industry is full of unprofessional and anti-social practices. Its practices have resulted in the loss of jobs, savings, investments, pensions and homes. Yet the DTI has shown little inclination to call it to account. Seemingly, its main concern is to appease major firms. It rarely provides any worthwhile information as evidenced by the following question and answer in parliament.

Mr. Mitchell: To ask the Secretary of State for Trade and Industry if he will list the receiverships and liquidations begun more than 20 years ago and still not finalised.

Dr. Howells: This information could be provided only at disproportionate cost.

Mr. Mitchell: To ask the Secretary of State for Trade and Industry what inquiries his Department has made into (a) receiverships and (b) liquidations started more than 10 years ago but still not finalised; and how many liquidators come into this category.

Dr. Howells: This information could be provided only at disproportionate cost. (Hansard, House of Commons Debates, 20 June 2000, col. 139).
The enclosed monograph titled, "Insolvent Abuse: Regulating the Insolvency Industry" draws attention to some of the institutionalised abuses.

3. Any inquiry into financial regulation should also look at the DTI's responsibility for presiding over the system of financial reporting, auditing and insolvency. The DTI's relationship with the whole accountancy industry is very cosy. The failures of financial reporting, auditing and insolvency continue to make headlines. Yet the DTI's main concern appears to be the appeasement of major firms. It has ended up creating nearly 30 regulators to deal with the matters. This is an absolute mess. The system is financed and dominated by major firms and businesses. It rarely looks at the issues from the perspective of the public that is affected by regulations. All regulators meet behind closed-doors and do not owe a 'duty of care' to anyone.

I very much hope that the above information and the enclosures would be of interest to you. Should you require any further information please do not hesitate to contact me. I am also very willing, if asked, to provide oral evidence to the Committee.

Yours sincerely

Prem Sikka