

SWISS ROCK LIMITED, DOMINIC CHAPPELL AND ASSOCIATES

Summary and Recommendations

The attached pages provide evidence and information which formed the basis of my conclusions. A summary is provided here.

Swiss Rock Limited (SRL) was incorporated in January 2014 and filed only one set of accounts at Companies House for the period to 2 April 2015. It entered liquidation on 2 September 2016. The company described its business as “Investment in retail companies” but had no employees and virtually no fixed assets. In essence, its main business was to receive cash for pre-arranged contracts and services and then distribute the proceeds to selected parties, mainly its shareholders/directors and their associates.

The 2014-15 published accounts of Swiss Rock Limited are seriously misleading in that loan(s) of £885,223 to related parties are described as “trade debtors” and “other debtors” (paragraphs 14 and 28-34). The publicly available information shows that £262,223 was lent to “Base Technology Systems Limited” and another £623,000 was lent to “Paul Sutton”, a known business associate of Dominic Chappell. The reasons for the loans are not known. The uncertainty about recoverability of the loans is the major reason for placing SRL in liquidation. Any failure by the liquidator to recover the loans in full will have serious consequences for HMRC, a major creditor of the company. The failure will also mean that the recipients would be able to keep the amounts, probably tax free as loans may not count as taxable income.

SRL was a cash rich company. Throughout its life, it probably received gross cash of £2,190,000 i.e. income of £1,825,000 plus £365,000 VAT charged to third parties (paragraph 27). The VAT has not been passed to HMRC. Based upon its pattern of expenses, I estimate that for the duration of its life SRL probably made pre-tax profit of £1,801,071 which would have given rise to a corporation tax liability of about £368,738 i.e. £197,306 for 2014-15 and £171,432 for 2015-16 (paragraphs 25, 26 and 36). However, no corporation tax has been paid by the company. Neither the 2014-15 published accounts nor the liquidator’s statement of affairs refers to any dispute with HMRC. In the absence of any additional information, it appears that directors of SRL made a deliberate decision not to pay HMRC for VAT and corporation tax liabilities.

The liquidator’s Statement of Affairs, dated 2 September 2016, shows that the company had no cash. So where has cash, equivalent to the profit, of £1.801m gone (paragraph 36)? The company’s resources have been used to make loans of £885,223 to third parties, which may not be irrecoverable. In 2014-15, the company paid a dividend of £363,000 (paragraph 13). In the absence of accounts for 2015-16, details of any other dividends are not known but it is reasonable to assume that the remaining £553,000 has been taken by shareholders, bearing in mind that the at the date of liquidation the cash balance at the company was zero. Shareholder have also benefitted from the non-payment of £365,000 VAT to HMRC which the company had collected from third parties (paragraph 25).

The loss of HMRC is in the region of £733,000 (paragraph 36) and could be higher; especially as the parties making the £2.1m payment to SRL would have claimed relief on the £365,000 VAT paid to SRL. So it could be as much as £1.1 million. The liquidation of SRL enables directors/shareholders to walk away from liabilities which should have been settled.

I recommend that the matter should be referred to the Serious Fraud Office (SFO) with a request to investigate all business dealings of Dominic Chappell and his associates.

The Committee should ask for a list of all of the business interests of Dominic Chappell, including the companies that have been placed into liquidation. Or the SFO may examine such dealings.

The Committee may wish to re-examine Mr. Chappell. If so, his advisers should also be invited to the hearing.

The auditors of SRL have serious questions to answer about the classification of “loans” as “trade and other debtors” in the accounts. They should have used the true and fair override to demand disclosures about material related party transactions, but did not do so. At the very least, the Committee should lodge a complaint with the Recognised Supervisory Body (ACCA) responsible for licensing the auditor.

The episode provides further support to my previous point that the current company and accounting rules add opacity to corporate affairs and encourage dubious practices. For example, the accounting and disclosure exemptions available to small companies (often part of a bigger complex jig-saw and operated by well connected elites) provide cover for dubious practices. The disclosures exemptions provided by accounting standards enable some to conceal valuable information and mislead the public. Such exemptions should be abolished. The Financial Reporting Council (FRC) is too close to business and accountancy interests and should not be permitted to set accountings standards.

Background

1. Swiss Rock Limited (formerly Swiss Rock plc) was incorporated on 31 January 2014. It commenced trading on 30 May 2014 and entered liquidation on 2 September 2016.
2. Its business, as stated in the documents held at Companies House is “Investment in retail companies”.
3. The company had two directors. At the date of incorporation Dominic Joseph Andrew Chappell was listed as a director but this appointment was subsequently terminated on 25th April 2014, and then reinstated on 8 August 2014.

The other director was Joseph Edward Chappell (appointed 31 January 2014) who also acted as company secretary from 30 April 2014; replaced on 8 August 2014 by Jordan secretaries Limited (terminated 28 July 2016)

4. The company had issued share capital of £220,000. No shares were held by Joseph Edward Chappell. 20,000,000 shares of 1p each (£200,000) are held by Dominic Chappell and another 2,000,000 shares of 1p each (£20,000) are held by Olivia Investments Limited, a Gibraltar-based company. In an entry on the LinkedIn¹ page Dominic Chappell refers to himself as “Non Executive Chairman March 2003 – May 2015 (12 years 3 months) Gibraltar”.
5. For all practical purposes Dominic Chappell controlled the company as shareholder and director.

Company Accounts

- 6 The one and only set of accounts filed by Swiss Rock Limited (SRL) at Companies House relates to the period 31 January 2014 to 2 April 2015. The accounts have been audited by KingsBere, a small Dorset-based accountancy firm licensed by the Association of Chartered Certified Accountants (ACCA). The company’s accounts are described as “true and fair” by auditors who issued an unqualified audit report. The fee paid to auditors for audit or any other work is not disclosed as the company has claimed small company disclosure exemptions permitted by the Companies Act 2006.
- 7 Despite meeting the requirements of the Companies Act, the published accounts are a model of opacity. The disclosure is minimalist (hardly anything of substance) as the company has claimed “small company” exemptions available under the Companies Act 2006.

A cashflow statement would have helped to see how the cash has flown out of the company but it is not produced as accounting standard FRS1 issued by the Financial Reporting Council (FRC) exempts small companies.

The company has transactions with Paul Sutton, a known associate of Dominic Chappell (see below for more on this) but no information is provide as accounting standard FRS8 exempts small companies from such disclosures.

However, the Companies Act 2006 contains a true and true and fair override, which means that any material information which is necessary for the appreciation of the accounts, even if not required by accounting standards or law, should be disclosed. Later sections of this report will argue that there was a strong case for such disclosures and neither the company directors nor the auditors exercised that option.

- 8 The company’s stated business objective is “Investment in retail companies” but there is little evidence of that in the accounts. It spent a total of £9,851 on assets which consist of fixture and fittings and computer equipment. There were no “staff costs” presumably because there was no staff.

¹ <https://www.linkedin.com/in/dominic-chappell-14628167>

9 Page 8 of the accounts noted that “Turnover represents net invoiced sales of services, excluding valued added tax”. So the company issues invoices to third parties which gave rise to VAT, which is then payable to HMRC.

10 The company’s 2015 accounts show a turnover of £958,333 (net of VAT) but no further details are provided. However, some information about the source(s) and nature of the turnover can be traced from a letter sent by Dominic Chappell to the BIS Committee on 10th June 2016 (available here <http://www.parliament.uk/documents/commons-committees/work-and-pensions/Correspondence/Dominic-Chappell-to-BIS-and-Work-and-Pensions-Committees-10-June-2016.pdf>) which said:

“I write following my attendance at the Oral Session on Wednesday 8th June. I promised to provide the committee members with details of relevant payments received by me during the period of ownership of BHS by Retail Acquisitions Limited.

I received the following amounts:

(1) Payments received by Swiss Rock plc, a company controlled by me, a total of £1,563,643 split into £1,041,667 paid by Retail Acquisitions and £521,976 paid by BHS on behalf of Retail Acquisitions Limited. These fees relate to the period up to and including the acquisition of BHS.

(2) Additional pre-agreed fees of £414,000 paid by Retail Acquisitions Limited to me. These fees relate to the period post acquisition of BHS

(3) Salary payments, inclusive of benefits and bonuses of approximately £650,000 paid by BHS to me”.

Item 1 specifically refers to payments through Swiss Rock plc (which subsequently became Swiss Rock Limited). It should be noted that the letter refers to “payments received” or cash received. The subsequent paragraphs of this report explain what happened to this cash.

11 Assuming that 10(1) above was the only transaction, £958,333 of the £1,563,643 is shown in the accounts for the period to 2 April 2015. The remaining £605,310 (£1,563,643 minus £958,333) must have been received after 2 April 2015 and would have formed part of the 2016 accounts. However, the 2016 accounts were not filed because the company entered liquidation on 2 September 2016.

12 The 2015 accounts show a pre-tax profit of £943,909

13 The 2015 accounts show creditors of £605,000 “falling due within one year”. £387,600 of this is owed to HMRC:

Corporation tax	£195,933 (21% of £943,909)
VAT	<u>£191,667</u> (20% of £958,333).
	<u>£387,600</u>

VAT is generally settled quarterly. But the company directors have chosen not to settle with HMRC unless there was a dispute (which is not disclosed in the accounts).

Instead, the company chose to pay an interim dividend of £363,000 to Dominic Chappell and Olivia Investments Limited, his Gibraltar-based company.

Even after paying the dividend the company had a cash balance of £309,989. So it could have settled VAT liability with HMRC but did not (also see below)

- 14 The company's 2015 balance sheet shows that its biggest assets were Debtors of £894,000. A breakdown is provided as follows:

Trade debtors	£650,000
Other debtors	<u>£244,000</u>
	<u>£894,000</u>

The later section of this report will show that the description of "trade debtors" and "other debtors" is grossly misleading.

- 15 It should be noted that directors approved the accounts for the period to 2nd April 2015 on 6th December 2015. Before signing the accounts they are required to consider material post balance sheet events (i.e. events between 2nd April 2015 and 6 December 2015) which might cause them to revise or doubt any of the assumptions relevant to the preparation of the accounts. These could include the recoverability of debtors, threats to the viability of the business or the business remaining a going-concern etc. There is no evidence of any material post balance sheet events and there are no disclosures about any material uncertainties or revisions to account numbers.

- 16 Auditors signed the audit report on 15th December 2015 and must have been satisfied that there are no material post balance sheet events between 2nd April 2015 and 15th December 2015 which affected the view given by the accounts.

The significance of the foregoing discussion is that at 15th December 2015, the directors and auditors considered all debt/debtors to be fully recoverable. This point is being emphasised because the realisability of debtors is a major reason for the company's liquidation. So the problems about realisability of debtors (if that is what they were) must have arisen after 15th December 2015.

- 17 The company was a going concern at 15th December 2015. Dominic Chappell wrote to the BIS Committee on 10th June 2016 and specifically mentioned the use of Swiss Rock in relation to the receipt of BHS related fees. There is no mention of any financial problems at Swiss Rock at that date. So it is reasonable to assume that the company was a going-concern at that date too. Otherwise, he might have argued that the amounts actually received by him were considerably lower.

The company's financial affairs changed rapidly from July 2016 onwards

Liquidation

18 On 14th July 2016, barely a month after Dominic Chappell's letter to the BIS Committee, HMRC filed petition to wind-up Swiss Rock Limited. There must have been extensive correspondence between SRL and HMRC prior to that but there is no mention of this in Dominic Chappell's letter to the BIS Committee. The winding-up petition by HMRC was published in The Gazette on 23rd August 2016:

"Petitions to Wind Up (Companies)
In the High Court of Justice (Chancery Division)
Companies Court No 4007 of 2016
In the Matter of SWISS ROCK LIMITED
(Company Number 08871074)
and in the Matter of the Insolvency Act 1986

A Petition to wind up the above-named Company, Registration Number 08871074, of ,20-22 Bedford Row, London, WC1R 4JS, presented on 14 July 2016 by the COMMISSIONERS FOR HM REVENUE AND CUSTOMS, of South West Wing, Bush House, Strand, London, WC2B 4RD,, claiming to be Creditors of the Company, will be heard at the High Court, Royal Courts of Justice, 7 Rolls Building, Fetter Lane, London, EC4A 1NL on 5 September 2016 at 1030 hours (or as soon thereafter as the Petition can be heard).

Any persons intending to appear on the hearing of the Petition (whether to support or oppose it) must give notice of intention to do so to the Petitioners or to their Solicitor in accordance with Rule 4.16 by 1600 hours on 2 September 2016.

The Petitioners` Solicitor is the Solicitor to, HM Revenue and Customs, Solicitor's Office & Legal Services, South West Wing, Bush House, Strand, London, WC2B 4RD, telephone 03000 530979 . (Ref SLR1850308/A.)

23 August 2016"

19 Please note that the HMRC petition was submitted to the High Court on 14 July 2016 and a hearing was schedule for 5 September 2016. But rather than being forced into compulsory liquidation the company took steps to enter voluntary liquidation.

On 18th August, 2016, the company called a Creditors' Meeting (published in The Gazette on 24th August 2016) to consider the appointment of a liquidator. This meeting was schedule for 2nd September, just three days before the court hearing on the HMRC petition.

20 A subsequent announcement in The Gazette noted that the company was placed into a voluntary liquidation

Resolutions for Winding-up
SWISS ROCK LIMITED
(Company Number 08871074)
Previous Name of Company: Swiss Rock plc

Registered office: 26-28 Bedford Row, London WC1R 4HE
Principal trading address: 20-22 Bedford Row, London WC1R 4JS
At a General Meeting of the Members of the above-named Company, duly convened and held at 26-28 Bedford Row, London WC1R 4HE on 02 September 2016 the following Special Resolution and Ordinary Resolution were duly passed:
“That the Company be wound up voluntarily and that Paul Cooper and Paul Appleton, both of David Rubin & Partners, 26-28 Bedford Row, London WC1R 4HE, (IP Nos. 15452 and 8883) be and they are hereby appointed Joint Liquidators for the purposes of such winding-up.”
Further details contact: Paul Cooper or alternatively Glyn Middleton, Tel: 020 7400 7900.
Dominic Chappell, Chairman

- 21 Subsequently, Paul Cooper (IP No. 15452) and Paul Appleton (IP No. 8883) both of David Rubin & Partners, 26-28 Bedford Row, London WC1R 4HE were appointed Joint Liquidators of the above-named Company on 2 September 2016 by a resolution of the members and this appointment was ratified shortly afterward by the creditors.
- 22 The liquidator appointment form filed at Companies House notes that “The appointment was by the Company and Creditors”
- 23 The most notable feature of the Liquidator’s “Statement of Affairs” dated 2 September 2016 is that the company has no cash at that date.

It would be recalled that at 2nd April 2015 the company had Cash at Bank of £309,989. Presumably, that has been taken-out by shareholders in some form and was not used to settle corporation tax or VAT liabilities.

Dominic Chappell’s letter to the BIS Committee also suggests (see paragraphs 10 and 11 above) that at least £605,310 (probably more; see below) came into the company after 2nd April 2015. Where did that go? As the liquidator’s statement shows no cash at banks, it is reasonable to assume that the bulk of it has been taken by directors/shareholders.

The company did not publish any accounts for the period after 2nd April 2015, but the later parts of this report will estimate some of its revenue for the period from 3rd April 2015 to 2nd September 2016 to ascertain leakage of cash.

- 24 The same “statement of Affairs” shows unsecured creditors of £633,306 though there is a dispute with Cornhill Capital for unspecified amounts. However, matters are not so straight forward.
- 25 The “Statement of Affairs” dated 2 September 2016 shows that the biggest creditor was HMRC. The amounts owed to it increased from £387,600 to £562,306.

	At 2 Apr 2015	At 2 September 2016
Corporation tax	£195,933	£197,306
VAT	<u>£191,667</u>	<u>£365,000</u>
	<u>£387,600</u>	<u>£562,306</u>

26 Whether the original corporation tax of £195,933 had been settled and replaced by a new liability of £197,306 is not known. However, that appears to be unlikely because companies with taxable profits of up to £1.5 million have generally up to 9 months after the end of the accounting period to pay tax. The company's next accounting period would have been 2 April 2016. HMRC would not have filed a petition in July 2016 for the 2016 taxes. So the outstanding corporation tax liability of £197,306 (with minor adjustments) is most likely to relate to 2014-2015. In view of the 2015-16 trading and profits, this may well be revised upwards (see below)

The liability for VAT has increased from £191,667 to £365,000, an increase of £173,333. The increase in VAT liability indicates that the company received additional income/cash between 3rd April 2015 and 2nd September 2016. The accounts for this period were not filed at Companies House.

27 Assuming that the VAT was levied at 20%, the company would have received additional revenue/turnover of £866,667 ($£173,333 \times 100/20$). Or put another way, during its life the company had a turnover of £1,825,000 ($£365,000 \times 100/20$). This amount of net of VAT.

The actual total cash received by the company would have been £2,190,000 ($£1,825,000 \times 120/100$). Of this £365,000 would have been payable to HMRC as output VAT and this is confirmed by the liquidator's "Statement of Affairs".

28 The Liquidator's "Statement of Affairs" dated 2 September 2016 shows that potentially, the company has assets or "Assets not specifically pledged" of £885,223, but the whole amount is considered to be "uncertain" i.e. there are doubts about the realisability of the assets. This uncertainty appears to have arisen sometime after 15th December 2015.

29 £885,223 is part of what the company's 2015 audited accounts show as debtors of £894,000, which are split into trade debtors at £650,000, and other debtors at £244,000.

These descriptions were inserted by company directors and supposedly independently corroborated by auditors. They are grossly misleading and seem to be deliberate. The liquidator's "Statement of Affairs" does not refer to them as "trade debtors" or "other debtors". Instead they are identified as "Loan Account", being the loans made by the company to third parties. There is a qualitative difference between "debtors" and "loan", especially to a business associate. Auditors seem to have simply gone along with whatever management told them. An examination of board minutes and independent circularisation of major debtors would have helped auditors to see the nature of the transaction. Whether they did so is not known.

30 The "Loan Account" or the loans are to "Base Technology Systems Limited" for £262,223 and "Paul Sutton" for £623,000. These add up to £885,223 and are very close to the £894,000 shown in the 2015 accounts.

These loans existed at 2 April 2015 and at 10th June 2016 when Dominic Chappell wrote to the BIS Committee. There is no mention of any amounts being lent or passed to Paul Sutton or any other parties in the accounts or any evidence to the Committee.

31 Companies House records do not show the existence of a company with the name of "Base Technology Systems Limited". A search on the internet could not trace the company. It may well be an offshore entity. Its relationship with Dominic Chappell is not known.

32 The Liquidator's statement shows "Paul Sutton" to be the recipient of a loan of £623,000. He is a known associate of Dominic Chappell and can be considered to be a related party. The amounts are material and the transaction(s) should have been explained in the accounts. There was no disclosure. On the contrary, the amounts are deliberately camouflaged as "debtors".

33 Some aspects of the relationship between Dominic Chappell and Paul Sutton and covered by the First Report on BHS² (House of Commons Work and Pensions and Business, Innovation and Skills Committees, BHS, London: House of Commons, 25 July 2016). Sunday Times (Just what was Philip Green thinking? 1 May 2016, p. 5) explained his relationship with Dominic Chappell and BHS as follows:

By late 2013, Chappell had fallen in with Paul Sutton, a convicted fraudster ... Chappell worked as Sutton's lackey, driving him around London and answering his emails.

Madeleine Legwinski, a mother of two who claims to have lost £550,000 through Sutton's company, B52 Investments, remembered walking out of Sutton's rented house in Mayfair and seeing Chappell "coming from the Tube with his bag". "He looked scruffy," she said. "For him, going to see Paul, the businessman, was a big thing. He needed money."

Sutton had been making money by selling share certificates in Snoozebox, an AIM-listed pop-up hotel operator. Its share price crash in spring 2013 set him casting around for new ideas. In January 2014, Chappell briefly joined the board of Containasuite, an offshoot of B52 intended to mimic Snoozebox. The two men also looked at buying Paul Simon, a furniture retailer that had gone into administration.

Sutton, however, had a bigger plan on the burner. The fraudster said that he and Green "knew each other from Monaco". At some point in 2013, Sutton said, "Philip just rang me ... He wasn't really looking to

² <http://www.publications.parliament.uk/pa/cm201617/cmselect/cmworpen/54/54.pdf>

sell [BHS] to me, per se, he just said, 'Are you interested in looking at it?' I said, 'Yeah.' " The talks developed. In January 2014, Sutton met Paul Budge, Green's finance director. By March that year they were discussing how Arcadia and BHS's separated balance sheets might look, according to an agenda seen by The Sunday Times. By May, Sutton was in Arcadia's headquarters, off London's Oxford Street, meeting Green himself.

In August, however, the deal blew up. A whistleblower delivered a dossier on Sutton's past to Green's home in Monaco and the Arcadia boss called it off.

Enter Chappell. In his own words, Sutton's former bag-carrier "formed the Retail Acquisitions team and ran in". One of the members was Eddie Parladorio, a celebrity lawyer who once dated Ulrika Jonsson, and who had worked with Sutton.

A surprising roster of blue-chip advisers was involved, including Grant Thornton, Olswang and the Goldman Sachs investment banker Anthony Gutman.

When The Sunday Times revealed Chappell's links to Sutton in April last year, Green said that he had first met Chappell only five weeks before the £1 deal closed and had no idea the two men knew each other. That seems implausible given that a month before Retail Acquisitions bought BHS, Arcadia demanded a signed declaration from Sutton promising that he would have no further involvement.

Chappell tried to distance himself from Sutton. "In my view he's a grade-A scumbag," he said. A month after that statement he joined a company set up by Sutton in Panama. Sutton said Clarberry Investments had been founded to pursue a "pipe dream" of buying Charles Vögele, an ailing Swiss fashion business, and merging it with BHS. A source said they also wanted to buy other parts of Arcadia from Green and float the creation on the stock market.

- 34 Through SRL Dominic Chappell provided loan(s) of £623,000 to Paul Sutton. The loan may not be recovered and has been described by the liquidator as "uncertain". The same uncertainty also applies to the £262,223 loan to "Base Technology Systems Limited. The reasons for these loans or the uncertainties attached to them are neither evident from the company accounts nor the Liquidator's "Statement of Affairs".
- 35 The uncertainty about the recoverability of the loans is probably the major reason for putting the company into liquidation. The liquidation may not realise the assets/loans at their book values, or anything at all. The biggest loser from this will be HMRC as shareholders and directors will be shielded by limited liability.
- 36 Due to the lack of any publicly available accounts for the period from 3rd April 2015 to 2nd September 2016, the full state of the company's affairs and the loss

to HMRC is not known. An informed estimate of the likely corporation tax liability can be made as follows:

Income Statement	*31 Jan 2014 to 2 Apr 2015	**3 Apr 2015 to 2 Sep 2016	Total
	£	£	£
Turnover	958,333	866,667	1,825,000
Administration expenses	<u>(51,934)</u>	<u>(47,013)</u>	<u>98,947</u>
Operating Profit	906,399	819,654	1,726,053
Income from investment	37,484	37,484	74,968
Interest receivable etc	<u>26</u>	<u>26</u>	<u>52</u>
Profit before Tax	943,909	857,162	1,801,071
Tax	<u>(195,933)</u>	<u>(171,432)</u>	<u>(367,365)</u>
Net Profit	<u>747,976</u>	<u>685,730</u>	<u>1,433,706</u>

Basis of Calculation

*2014/15 data is as per the audited accounts of the company for the period 31 January 2014 to 2 April 2015.

**The turnover for 2015/16 and the total turnover is estimated (see paragraph 27 above).

The 2014/15 operating profit is 94.58% of turnover, which means administration expenses account for 5.42% of turnover. The same ratio is assumed for 2015/16.

The nature of the income from investment and interest receivable is not known. Therefore, it is assumed to be the same.

In 2016, corporation tax rate was 20% compared to 21% for the previous period.

SRL has not paid any corporation tax on its profits or VAT on its turnover. This is a deliberate decision by directors. The potential loss to HMRC can be summarised as follows:

Corporation Tax

31 January 2014 to 2 April 2016 (see para 25)	£197,306	
3 April 2015 to 2 Sept 2016 (see para 36)	<u>£171,432</u>	£368,738
VAT (para 25)		<u>£365,000</u>
Total		<u>£733,738</u>

The loss to HMRC will actually be bigger than £733,738. It is worth bearing in mind that the third parties who have been charged VAT of £365,000 would have been able to offset that (known as VAT input) against their VAT output. In a nutshell, they would have claimed relief for £365,000. So if SRL does not meet its VAT liability, the loss to HMRC is doubled.

Prem Sikka
22 September 2016