

Submission to the Senate Select Committee on the **Financial and tax practices of for-profit aged care providers.**

From: [REDACTED]

Contact details: [REDACTED]

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About this site:

The website is dedicated to the public interest. Our focus is investigations into big business, particularly multinational tax avoidance, banking and the energy sector.

On 23 May, 2018, michaelwest.com.au published an [investigation](#) into AVEO by Michael West and Jason Ward from the Tax Justice Network. This investigation is herewith submitted to the Senate Select Committee below.

<https://www.michaelwest.com.au/aveos-billions-behind-the-impenetrable-aged-care-empire/>

This submission focuses primarily on the following points in the Terms of Reference

- a) the use of any tax avoidance or aggressive tax minimisation strategies;
- b) the associated impacts on the quality of service delivery, the sustainability of the sector, or value for money for government;
- c) the adequacy of accountability and probity mechanisms for the expenditure of taxpayer money; and
- d) whether current practices meet public expectations.

Aveo's billions: behind the impenetrable aged-care empire

Posted by [Michael West](#) | May 23, 2018 | [Markets](#)

From Hong Kong and Malaysia, from the tax havens of Bermuda and the British Virgin Islands and into China, the largest aged care company on the Australian share market has an eye-watering corporate structure. In investigating Aveo, **Jason Ward and Michael West**, follow the global trail, dig up interest free loans to a Chinese company, other foreign transactions poorly disclosed – if disclosed at all – and find a company which pays virtually no tax despite its rising taxpayer subsidies from government. Can shareholders and regulators be expected to penetrate this labyrinth which is Aveo? And why does the government tolerate this type of structure in aged care, the sector which looks after this country's most vulnerable people?

From his balcony in the chic suburb of Elizabeth Bay, the young Seng Huang Lee used to watch [the super-maxis leave the CYCA](#) every Boxing Day to tackle the southern ocean in Australia's greatest yacht race, the Sydney to Hobart.

Now the 43-year old tycoon, whose family companies own Hayman Island, a suite of five-star hotels and a property portfolio stretching from here to London, is a player. He bought Syd Fischer's super-maxi Ragamuffin, kept skipper David Witt and the crew too, renamed the boat Scallywag, and competes in some of the world's premier ocean racing events.

SH Lee also presides over this country's largest listed retirement living and aged care group, Aveo, which is facing a class action for [gouging elderly residents](#) and misleading and deceptive conduct. It rejects the allegations and has vowed to fight the action in the courts. Aveo is by no means alone in facing the wrath of residents and their families. Aged care is exploding as baby boomers retire and entrepreneurs flock to the sector, a sector replete with lavish government subsidies.

Further to the woes of some of the larger operators in Australia's aged care industry, particularly the "for-profit" kind which generate sizeable returns for private

investors from a largely government-funded business, the Senate announced an inquiry this month into their tax affairs.

The six largest operators in the sector were given over \$2.17 billion in government subsidies in the most recent year, representing 72 per cent of their total revenue of more than \$3 billion.

After the construction giant Lend Lease, Aveo is Australia's largest operator of retirement villages and it appears the company has been keeping shareholders in the dark about related party transactions which may deliver benefits to other companies connected with its chairman and largest shareholder.

Along with Lend Lease and other senior living companies, Aveo is rapidly expanding into government-funded residential aged care industry – nursing homes that is. Over the past two years, the group has picked up close to \$20 million in government grants. The strategy is to lock in payments from retirees until the end of life. Despite the important place which aged care occupies in society however, sector transparency and public accountability is poor.

As is their track record on tax, across the entire “for-profit” sector. Like traditional for-profit aged care providers, Aveo is adept at eliminating its taxable income and therefore its tax bill. Over the three years of available Tax Office transparency data, the group recorded \$1.4 billion in total income and showed zero tax payable. The company only reported taxable income in one of the three years, \$714,286 in 2013-2014. There is no suggestion in this story of illegality, merely sprightly tax management.

Industry leader Lend Lease is no better, notching up \$24.4 billion in total income (this includes construction and non-aged care income too) and paying no tax over the three years of ATO tax transparency data; and this despite \$354 million in taxable income in 2015-2016, and despite the building boom.

How do they do it? A raft of related party transactions and a stapled security structure.

Aveo's cash flow statement for 2017 shows \$315 million in loan repayments to the stapled trust which appear to substantially reduce the taxable income of the operating company. As detailed in the recent Tax Justice Network Australia report commissioned by this country's largest union, the Australian Nurses & Midwifery Association, this practice is widely deployed across the aged care sector. Recent government reforms to stapled securities may have some effect on Aveo, if implemented, but fall short of proposals by the Tax Justice Network.

Aveo's chairman, Seng Huang Lee (SH Lee), is also chairman of Mulpha International Berhad (Mulpha), his family-controlled company listed in Malaysia. With almost 23 per cent of the stock, Mulpha is Aveo's largest shareholder. As of fiscal year 2016, Bloomberg estimated SH Lee's total annual compensation to be \$51.9 million.

In both 2016 and 2017, 98 per cent of Mulpha's revenue was from Australia. Mulpha's net profits after tax were over \$124 million in 2017, \$5.6 million in 2016 and \$55 million in 2015.

Beyond its Aveo holding, Mulpha has myriad property investments in Australia, a handful of which include: the InterContinental Hotel in Sydney, the neighbouring heritage listed Transport House office building, the InterContinental Hotel Sanctuary Cove, Rydges Esplanade Cairns Resort, Hayman Island Resort and Norwest Business Park.

This month, [it was reported](#) that Mulpha was pouncing on the 81 per cent of the Sanctuary Country Club – a private golf club – it did not already own. Four years ago, Aveo had paid Mulpha \$15 million for Sanctuary Cove's Recreation Club and driving range and the group is now reported to be planning a 163-unit retirement village on land next to the Country Club.

The deal is a Mulpha classic, a related party transaction where Aveo's minority shareholders – those who invested via the Australian Securities Exchange – appear to be funding a large property transaction whose proceeds partially flow to the Lee

family's Mulpha group. Mulpha, in turn, has majority shareholders in one of the Caribbean's most secretive tax havens, the British Virgin Islands.

The corporate raider

SH Lee is the youngest son of 1980s share market entrepreneur Lee Ming Tee. He and his brother and sister inherited the businesses from the Malaysian born tycoon and built on them. Lee Ming Tee had been dubbed "the shark-like corporate raider with the 'gleaming teeth'".

In 2004, when Lee Ming Tee was sentenced to a year in jail, the family had an estimated wealth of \$5 billion. The jail sentence, meted out by a Hong Kong court in the early 1990s, was for using offshore firms to evade disclosure laws, an apparent effort to hide information from minority shareholders.

At the time of the conviction, the Straits Times wrote, "Lee's stint behind bars comes after a quarter-century of spectacular corporate raids, equally eye-catching police raids, fast-growing wealth and attention from corporate regulators in two continents".

Lee Ming Tee attracted the attention of Australian regulators several times for share market raids and impossibly complex corporate structures.

While the father has not been publicly involved in the family's business empire, the byzantine complexity of the Lee family corporate structures persists today.

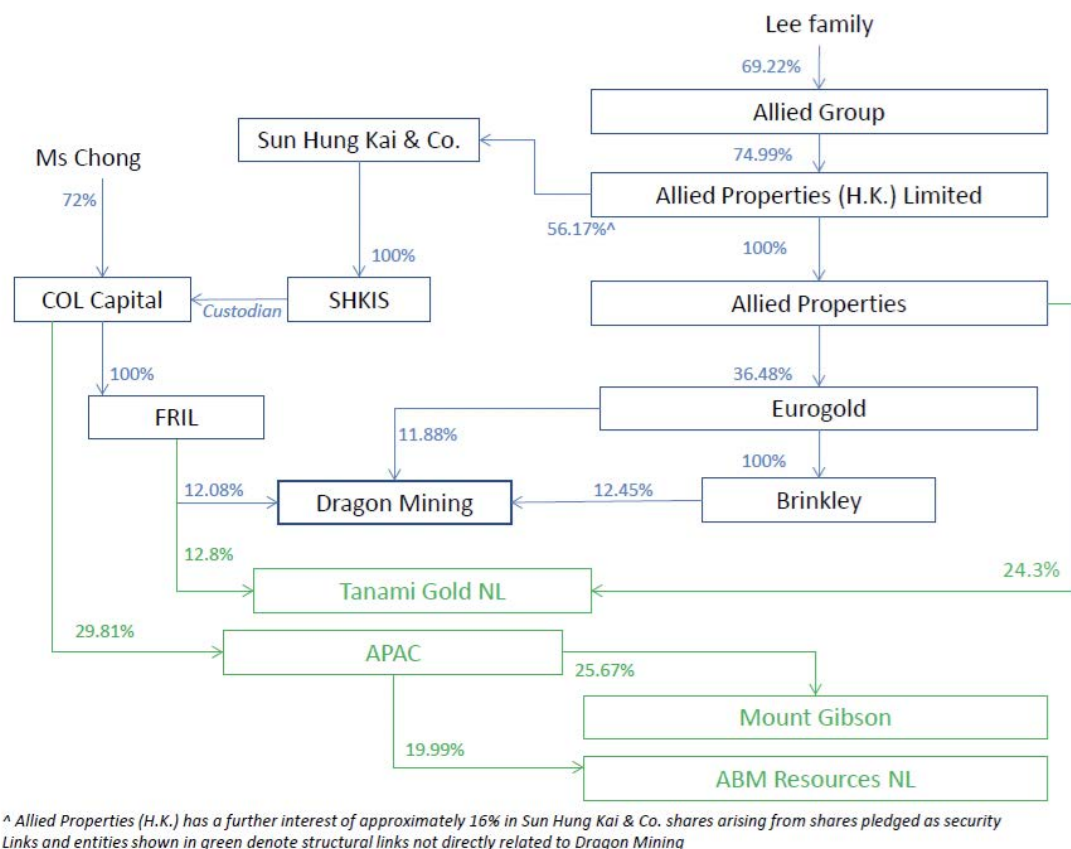
Hong Kong Reach

Other Lee family interests in Australia – including resources stocks Mt Gibson Iron, Dragon Mining, Tanami Gold – are held through the Lee family's 74 per cent stake in the Allied Group in Hong Kong, which has a broad suite of international investments as well.

Aveo chairman SH Lee is also the chairman and executive director of Sun Hung Kai & Co Limited, a listed financial firm in Hong Kong. The Allied Group indirectly controls a

majority interest in Sun Hung Kai & Co Limited. Other large shareholders have included CVC (16 per cent), the private equity firm which bought and re-floated the Nine Network, and His Highness Mohammed bin Rashid Al Maktoun, the Prime Ministers of the United Arab Emirates and the ruler of Dubai (8 per cent).

Chief executive of the Allied Group is SH Lee's older brother and their sister Lee Su Hwei is also a director. Arthur George Dew, a former barrister, director of a number of Lee-family stocks, is Allied chairman.



The Allied branch of the Lee family global empire. Source Australian Takeovers Panel.

Lee and Lee Trust

The Allied Group's 2016 annual report says SH Lee's brother and sister indirectly held a 74 per cent interest in the company through the Lee and Lee Trust in Hong Kong. The three siblings are the trustees of Lee and Lee Trust which owned interests in the Allied Group through Minty Hongkong Limited (42.89 per cent) in Hong Kong and

Cashplus Management Limited (31.59 per cent), a subsidiary of Zealous Developments Limited, both incorporated in the British Virgin Islands.

According to Mulpha's 2017 annual report, the two largest shareholders were Nautical Investments Limited (23.64 per cent) and Magic Unicorn Limited (15.66 per cent), both incorporated in the British Virgin Islands. Nautical Investments Limited was owned by Mountbatten Corporation in the Cayman Islands and Magic Unicorn Limited was owned by Mount Glory Investments Limited, also incorporated in the British Virgin Islands – all entities controlled by the Lee family.

Aveo in China

Are there significant related party transactions which have not been disclosed to shareholders? It is difficult to tell by Aveo's statutory disclosures in Australia whether some transactions are in the best interests of all Aveo shareholders. Aveo's investments in China are curious in this regard and, on the face of it, transfer wealth from Australian shareholders to China.

Many Australian aged care companies such as Lend Lease are expanding into China; it's a huge market and a huge growth opportunity. Aveo is adapting its Australian business model to the Chinese aged care market.

The Aveo brand has expanded into China but there is no mention of it in the company's 2016 and 2017 annual reports. It is not clear if the majority of Aveo shareholders have received, or will ever receive, any benefit from the use of Aveo's intellectual property in China or derive value from the company's investments in China.

Aveo China is showcased on a [Chinese website](#) in Chinese. This links back to Aveo Australia but a search of Aveo's Chinese investment on the Australian website shows no mention of the China play.

Why is this significant? The Aveo brand has been developed in this country with assistance from the capital of apparently unwitting shareholders. Aveo pays virtually

no tax and its government subsidies are rising so this is a matter for government as well as shareholders.

Should share sales in companies using the Aveo brand name – and related transactions – be disclosed to Aveo shareholders and the ASX? Aveo declined to respond to specific questions but issued this statement:

“Aveo Group, as a public company listed on the Australian Securities Exchange, has always met its continuous disclosure obligations and follows strict corporate governance procedures concerning any potential related party transactions. Every significant commercial initiative concerning Aveo Group is considered by Aveo Group’s Board of Directors, the majority of whom are independent non-executive Directors and in compliance with Aveo Group’s corporate governance policy which includes procedures concerning related party transactions. Aveo has always and continues to disclose all related party transactions to its shareholders. Neither Tian An Australia Limited nor China Medical & HealthCare Group Limited is a related party of Aveo Group.

Geoff Grady and David Hunt continue to hold positions as directors of Aveo China Limited. Aveo Group Limited’s 2014/15 ATO Corporate Tax data is appropriately disclosed.”

Among the 46 entities listed in ASIC’s companies database with the name “Aveo” included, Aveo China Pty Ltd is the Australian company which owns shares in Aveo China Limited (ACL). ACL is a company incorporated in Hong Kong, but neither company is disclosed as a material subsidiary in Aveo’s recent annual reports.

To discover further information, shareholders in Aveo might have to look in Hong Kong. Aveo’s chief executive, Geoff Grady, and chief financial officer, David Hunt, are directors of ACL, according to the company’s 2016 annual return in Hong Kong. FKP, the predecessor company to Aveo, invested in and made interest free loans to ACL in 2013.

We can’t be sure if these transactions are continuing.

There are also other Aveo related party transactions to consider. The related party entity incorporated in Hong Kong, ACL, sold 49 per cent of its shares to entities controlled by a China Medical & HealthCare Group (CMHG).

This doesn't show up in the Australian filings and presumably Aveo does not consider the transaction either to be a related party transaction by nature or material enough to disclose.

[According to the Australian Accounting Standards Board:](#)

"A related party transaction is a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged. Close members of the family of a person are those family members who may be expected to influence, or be influenced by, that person in their dealings with the entity ..."

The Bermuda connection

Aveo's chairman SH Lee has a significant interest in CMHG (11.81 per cent via the Lee and Lee Trust) and the Lee family has a long and complex relationship with CMHG's largest shareholder.

CMHG, a company "incorporated in Bermuda" but listed in Hong Kong, controlled 70 per cent of the issued shares of Aveo China (Holdings) Limited ("Aveo China"). On April 13 this year, CMHG announced it had entered into an agreement to buy the remaining 30 per cent of the shares in Aveo China which it did not already own. Price: \$14.8 million.

Aveo China is incorporated in the tax secrecy jurisdiction of the British Virgin Islands; and after the transaction, would be wholly owned by CMHG.

The shares in Aveo China are being sold by Group Sino Investment Limited, a Hong Kong company, which is a wholly-owned subsidiary of Aveo Healthcare Limited (AHL – an Australian subsidiary of Aveo). Aveo's CEO Grady is chairman of AHL, which is 86.6 per cent owned by Aveo and CFO David Hunt is also a director of AHL.

Incidentally, the remaining interest in AHL appears to be held by members of the O'Shea family, which owns TriCare, another major Australian for-profit aged care company. TriCare's tax practices were covered in the recent Tax Justice Network report on aged care companies. It picked up \$66 million in government subsidies last year.

The O'Shea family was ranked #31 in the Courier Mail's 2013 Queensland Rich List last year with \$335 million in wealth, up \$73 million from the previous year and also runs Nutrifresh, a company which sells pre-packaged food to aged care facilities.

But we digress. The terms of the current share sale to CMHG also involve CMHG transferring its current 49 per cent interest in ACL (HK) – not to be confused with Aveo China incorporated in the British Virgin Islands – to AHL (Australia). This would leave AHL owning all the shares in ACL. However, it is not clear what role ACL plays now or would play in future.

Nor is it clear whether Aveo shareholders have received, or would ever receive, any benefits from Aveo's investments in China, the use of the Aveo brand name or any benefit arising from the application of the Australian company's expertise and experience in the burgeoning Chinese market for aged care services. Aveo's shareholders have been kept in the dark about all of these transactions, although they have been disclosed to CMHG shareholders via filings submitted to the Hong Kong Stock Exchange. Aveo's chairman, through the Lee and Lee Trust, has a nearly 12 per cent interest in CMHG.

Shareholders in Aveo, indeed government regulators too, would do well to ask management to examine the transfer of value from Australia to Lee family interests in Asia, or more specifically from Aveo to CMHG.

The sales agreement, which is a Hong Kong document, provides that the parties will enter:

- *“(i) a trade name license agreement ...[for] the right to use the trademark “Aveo” for a period of one (1) year for a nominal fee of HK\$1.00 [\$0.17]; and*

- *(ii) a consultancy agreement providing ...[for] consultancy services for its eldercare business and projects for a period of five (5) years for a nominal fee of HK\$1.00 [\$0.17] respectively."*

Are Lee family interests getting the Aveo brand to use offshore for the princely sum of 17c?

Are Aveo's minority shareholders getting a raw deal vis-a-vis the company's investments in China? It seems they may not know as the transactions have not been disclosed.

Aveo links to CMHG

According to a note in CMHG's 2017 annual report filed in Hong Kong, *"Mr Lee Seng Hui together with M Lee Su Hwei and their brother Lee Seng Huang [Aveo chairman] are the trustees of Lee and Lee Trust, being a discretionary trust. The Lee and Lee Trust controlled approximately 74.53 per cent of the total number of issued shares of Allied Group and were therefore deemed to have an interest in the shares in which Allied Group was interested"*.

Chong Sok Un, a long-time associate of the Lee family, was the executive director and chairman of CMHG since 2002 but was made deputy chairman in 2015. According to CMHG's annual report, Ms Chong holds a 17.9 per cent interest in the company. CMHG, under various names, (most recently COL Capital Limited) has been listed on the Hong Kong Stock Exchange since 1991. It was only renamed CHMG in 2016.

In 2013, when Ms Chong was Chairman of COL Capital Limited, the company made a loan of over \$75 million dollars, through Treasure Wagon Limited – an indirect wholly owned subsidiary of COL incorporated in the British Virgin Islands – to a subsidiary of the FKP Group in Australia. FKP was the predecessor company to Aveo and SH Lee was also chairman.

A July 2017 ASX filing from the recent takeover of Tian An Australia Limited through the Lee family's Allied Group, indicates Ms Chong's share in CMHG was over 45 per cent and that CMHG had a nearly 16 per cent interest in Tian An Australia Limited. These filings are another example of the connections between Ms Chong and Lee family-controlled businesses.

Reviews by the Australian Takeover Panel, the body which investigates concerns about takeovers of ASX-listed companies, have discussed Ms Chong's long-time relationship with the Lee family. Ms Chong has been involved in several takeovers of ASX Listed companies involving Lee family businesses. The panel reviewed takeover efforts of Mount Gibson Iron in 2008 and Dragon Mining Limited in 2014.

An ASX filing from 2016, said that Ms Chong, through CMHG and its subsidiaries held over 9 per cent of the shares in Tanami Gold, another company which appears to be controlled by Lee family interests.

This story is making absolutely no suggestions of impropriety on behalf of Ms Chong and Lee family interests, merely pointing out the associations.

A subsequent ASX filing disclosed the Lee family, through China Elite Holdings Limited in the British Virgin Islands, had acquired over 34 per cent of the shares of Tian An and had made a takeover offer which had been approved by shareholders. The takeover effort is being led by another Lee family-controlled entity, Oasis Star Limited, also incorporated in the British Virgin Islands.

Name changes cloud the picture. Tian An had been previously named PBD Developments Ltd (PBD). A July 2015 filing by Mulpha to the Malaysian Stock Exchange announced the company's sale of a 20 per cent interest in PBD to Oasis Star Limited, a wholly-owned subsidiary of Tian An China Investments Company Limited. The filing also says that through the Lee and Lee Trust the three siblings had an interest in the transaction and that Lee Seng Huang (current chairman of Aveo), Mulpha's Executive Chairman and major shareholder, "abstained from board deliberation and voting on the disposal."

Tian An announced the “Notice of Completion” in the takeover bid by Oasis Star on December 12, 2017. This year, on January 4, [an announcement to the ASX](#) by Tian An showed CMHG, the company controlled by Ms Chong, had sold down its stake from 15.98 per cent to 3.2 per cent.

Time to clean house

Aveo’s minority shareholders would do well to request more transparency and disclosure from company management in light of what might be considered to be conflicts of interest relating to the major shareholder. Disclosure issues are vital for shareholders. In this case however, there is a more fundamental matter to be considered, the stewardship of Australia’s elderly.

Aveo is now on an aggressive campaign to expand from its base of retirement villages into nursing homes, to capture elderly customers for the rest of their lives. Management, according to sharemarket sources is well regarded for its competence (though there are concerns about the major shareholder conflicts).

Nonetheless, the unnecessarily and deliberately complicated structure of this property and aged care empire requires the blowtorch of a parliamentary inquiry and investigation. Aveo is Australia’s number one, pure-play senior living stock. It pays a pitiful amount of tax, receives large taxpayer subsidies and is poor on disclosure and accountability.

Coming soon: Lend Lease, tax chicanery and senior living.

A number of minor amendments have been made to the original version of this story about Aveo in order to clarify the complex corporate interactions.

Jason Ward is an analyst and member of the Tax Justice Network whose previous work includes tax investigations into Exxon, Chevron and the Petroleum Rent Resource Tax.

Ward did the [report](#) for the Australian Nursing and Midwifery Association and Tax Justice Network -Australia which found the six largest for-profit companies were

given over \$2.17 billion in government subsidies in 2017, representing 72 per cent of their total revenue of more than \$3 billion.
