

The Community Collusion Fund

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It's not often that *Webb-site* finds itself in agreement with [Ronnie Chan Chi Chung](#), Chairman of [Hang Lung Group Ltd \(HLG, 0010\)](#) and its subsidiary [Hang Lung Properties Ltd \(HLP, 0101\)](#), but kudos to him for being the only tycoon so far to come out and say that neither company will be contributing to Hong Kong Chief Executive [Donald Tsang Yam Kuen's](#) proposed "Community Care Fund" or **CCF**. Mr Chan (who, notably among tycoons, does not sport a [Bauhinia Gong](#) of any colour) was quoted by *SCMP* as saying:

"I have talked to the [Hang Lung] board. We don't think we have to make the donation to the fund. Hong Kong's success was built on a free economy and simple taxation...It would be better to make a private donation instead of donating money under the company's name; The [company's] money belong to the shareholders - not the management"

Here's an excerpt from Donald Tsang's [policy address](#):

"To encourage the business sector's participation in helping the poor, I have decided to set up a Community Care Fund, to which the Government and the business sector will each contribute \$5 billion to support people in need in areas not covered by the Comprehensive Social Security Assistance Scheme. The fund will be chaired by the Chief Secretary for Administration. I will raise funds from the business sector. The initial response has been positive. I am confident that the fund can directly benefit many people in need. The Government will put forward an execution plan after consulting the community"

This proposal is wrong on so many levels that is hard to know where to start. Note the choice of words "will each contribute" and "the initial response has been positive" - quite obviously he had already lined up several pledges before his address, and those tycoons were quick to announce support in the following few days.

What is it for?

"Areas not covered by CSSA" - that begs the question: why not? The "C" stands for "comprehensive" after all. If there are deficiencies in CSSA or other existing welfare schemes, then fix them, and fund them annually with taxpayers' money as part of the budget, approved by the Legislative Council in the usual way. That is what taxes are for - to fund education, welfare, healthcare, law and order, and the other core infrastructure of a modern society. But setting up an off-balance-sheet vehicle, with one-time LegCo approval of a HK\$5bn grant and no proper budgetary oversight thereafter, is no way to run public finances. It's the Government's favourite trick - set up a fund, such as the [Innovation and Technology Fund](#), endow it with a lump sum, push it through the Finance Committee and then it is out of reach of budgetary oversight forever after.

"I will raise funds from the business sector"

Isn't that what taxes are for? If there is really a shortage of public funds for justifiable welfare expenditure, then uniform tax increases should be applied to raise the necessary funds. This does not require any passing around of the hat, calling up favourite friends before your policy address and asking them to chip in. If taxes are increased, nobody can expect special favours from the Government for paying them. But in any case, there is no shortage of public funds - our government holds over HK\$1.1 trillion of liquid reserves - the fiscal reserves and the accumulated surplus [in the Exchange Fund](#), and will run another one of its structural surpluses this year thanks to [huge land premiums](#) and [stamp duty addiction](#).

Fiduciary duties and SCR

This may come as a surprise to a whole industry of consultants that makes its living telling companies how to polish their annual reports with green-wash and "Corporate Social Responsibility" or **CSR** reports, but companies aren't actually responsible for society. Yes, you read that right. The term CSR is upside down - it should be **SCR** - [Social Corporate Responsibility](#). Societies are responsible for companies. Societies, through their legislatures, make the laws, including tax laws, labour laws and environment laws. Companies then comply with those laws or face the consequences. Obeying those laws, it is the fiduciary duty of directors of companies to legally maximise shareholder value.

If it makes good business sense to advertise or promote the company, its brands or products, then they spend company money on that. If some of that expenditure goes to charities, rather than for-profit advertising outlets, then it is a happy consequence, but not the objective. As Lord Bowen said in the case of *Hutton v West Cork Railway Co.* (1883):

"The law does not say that there are to be no cakes and ale, but there are to be no cakes and ale except such as are required for the benefit of the Company"

Pure altruistic charity, without any benefit in return, is a personal choice for individuals, including tycoons, but not one that they can lawfully make with other people's money. We can't expect companies to do any more than is in their rational self interest. So when we read that some of these tycoons are going to get their listed companies to support the CCF, then it implies that:

- either the board of the company believes that the donation will result in commensurate benefit to the company; OR
- they do not expect commensurate benefit for the company, and are in breach of their fiduciary duties

But if they think the company will get something in return, then what? For example, will the Government decide not to impose tighter regulation, such as a [cooling-off period for new property sales](#), or stricter disclosure requirements? Will they back-pedal on the proposed [competition law](#), or water it down to protect cartels? Will they recommend retention of the rotten-borough "[functional constituencies](#)" in 2016 and 2020? Will they decide against introducing a [class action system](#) for consumers and investors? After all, the next Chief Executive may serve until 2022. From the tycoons and listed companies' point of view, donating to the CCF might well be a very good investment, but from a public interest point of view, it is a recipe for collusion and corruption of policy-making. Even if the CCF donation is not made by a listed company, but by a tycoon or his wholly-owned company or foundation, the fact that it is made to the same government whose policies affect his business interests is a giant conflict of interests for the Government.

What about the Community Chest?

HK already has an organisation called the [Community Chest of Hong Kong](#), incorporated by [special ordinance](#) in 1968 to act as an umbrella fund-raising body for numerous welfare charities. The Chest raised HK\$278m in the year to 31-Mar-2010 and disbursed \$190m. If the tycoons and listed companies really believed it was in their shareholders' interests to donate to welfare in the large amounts "requested" by Donald Tsang, then they could have done so by giving it to the Community Chest, an organisation which at least maintains the appearance of being independent from Government, even though his wife is its President.

But they did not. The Community Chest did not receive anywhere near HK\$5bn this year. The fact that tycoons see fit to give the money to the CCF rather than a more independent body such as the Community Chest, which would give them an equal amount of publicity and benefit the welfare community, suggests that only by giving this money to the CCF can they expect sufficient benefits in return.

The line-up

It is telling that only a dozen names, each chipping in HK\$400m or [\\$500m](#), will be enough to make up the Chief Executive's target of HK\$5bn, and that is what is happening. If nothing else, it underlines that only a few big names call the shots in HK and each stands behind dozens of members of the Election Committee which elects the Chief Executive. In the 2012 CE elections, they will each have 50% more representatives than in 2008, because the corporate sub-sectors are being expanded to keep pace with the increase in the Election Committee from 800 to 1200 members.

Legislators, wake up

Legislators should stop this nonsense by vetoing the HK\$5bn allocation in the Finance Committee. Instead, they should insist that the Government identifies the areas of welfare which need improvement, and the gaps in the so-called "comprehensive" assistance scheme, and fill them using the proper process and budgeted annual funds, without asking for donations. If legislators vote in favour of the CCF allocation, then they are voting in favour of a scheme which invites collusion and corruption of the policy-making process.

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