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Court of Final Appeal affirms UK limited liability partnership not entitled to intra-group stamp duty relief

On 16 June 2025, the Court of Final Appeal (CFA) handed down its judgment in *John Wiley & Sons UK2 LLP and Wiley International LLC v. The Collector of Stamp Revenue [2025 HKCFA 11]*, dismissing the duty payers' appeal. The CFA upheld the Court of Appeal's (CA) decision, affirming that a UK limited liability partnership (LLP) is not entitled to stamp duty relief under Section 45 of the Stamp Duty Ordinance (SDO) for an intra-group transfer of Hong Kong stock.

Section 45 of the SDO provides stamp duty relief for the transfer of Hong Kong stock or immovable property from one associated body corporate to another. To qualify for this relief, the bodies corporate must be "associated", i.e. being the "beneficial owner of not less than 90% of the issued share capital of the other"[1] (Association Requirement).

The CFA ruled that the term "issued share capital" should be interpreted in its ordinary and natural meaning. Since UK LLPs cannot issue and allot share capital, they do not meet the Association Requirement and are therefore not eligible for stamp duty relief.

Case background

John Wiley & Sons UK2 LLP (UK LLP), an LLP incorporated in the UK, held 100% of the shares in a Hong Kong-incorporated company (HK company). UK LLP was wholly owned by another UK-based LLP (Intermediary UK LLP), which in turn was 100% owned by Wiley International LLC (US LLC), an LLC incorporated in the US. As part of an internal group restructuring, the entire share capital of HK company was transferred from UK LLP to US LLC.

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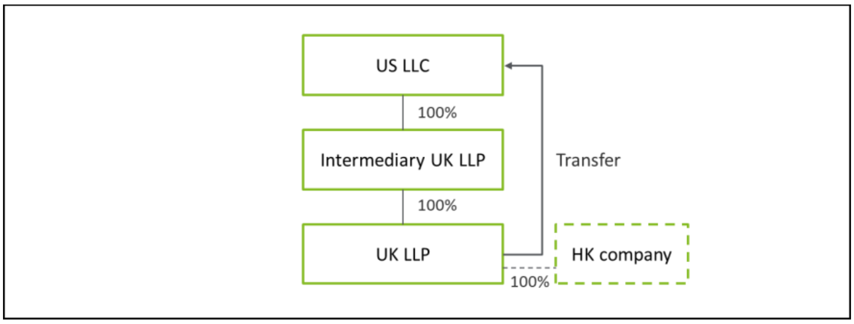
[1] or a third body corporate is beneficial owner of not less than 90% of the issued share capital of each



The dispute

UK LLP being the transferor and US LLC being the transferee, applied for stamp duty relief in relation to the transfer of shares in HK company. The Collector of Stamp Revenue rejected the application on the grounds that UK LLPs do not have "issued share capital" and therefore could not be "associated" bodies corporate under Section 45 of the SDO. The duty payers appealed to the District Court (DC).

Courts' decisions[2]

DC: The DC adopted a purposive approach to interpret "issued share capital" under Section 45 of the SDO and allowed the duty payers' appeal.
CA: The CA overturned the DC's decision, holding that UK LLPs do not have "issued share capital" based on the interpretation in the context of company law.
CFA: The CFA upheld the CA's decision, affirming that UK LLPs do not have "issued share capital" and therefore do not qualify for stamp duty relief under Section 45 of the SDO.

Body corporate

Under the UK Limited Liability Partnerships Act 2000, an LLP is a body corporate as it has legal personality separate from that of its members. In determining whether the transaction was eligible for the stamp duty relief under Section 45 of the SDO, the CFA examined the legislative history of the use of the term “body corporate” in Section 45. It concluded that the legislative intent was to provide stamp duty relief to all bodies corporate having a share capital, not an open-ended class of foreign corporations.

Issued share capital

The main dispute centered on the interpretation of the term "share capital". The duty payers argued that "share capital" should be broadly interpreted to include participation interest in the assets and income of a corporation (or body corporate), and analysed by reference to its substance if foreign laws are involved. In the context of an LLP, a member's "share" in the capital and income is proportional to its capital contributions, suggesting that an LLP should be regarded as having share capital in substance. The DC accepted this argument.

However, both the CA and CFA held that "issued share capital" in Section 45 of the SDO should be interpreted according to its ordinary and natural meaning, which is the total monetary value of the consideration paid by shareholders in return for shares issued by a company. This interpretation applies regardless of whether a foreign corporation is involved. Since UK LLPs cannot issue and allot share capital, they do not meet the Association Requirement and are not eligible for stamp duty relief under Section 45 of the SDO.

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[2] For a detailed discussion of the lower courts' judgments, please refer to our previous Hong Kong Tax Analysis Issue H108/2022 and Issue H116/2024.

Our observation

The decision is expected to have significant implications, as highlighted by the CFA, with a substantial number of similar stamp duty relief applications pending before the Collector of Stamp Revenue. This judgement may not only apply to UK LLPs, but may also extend to other foreign LLPs / corporations without share capital. Having said that, LLPs have differing features across jurisdictions. For example, while an LLP in the UK is regarded as a body corporate under UK law, an LLP formed in Hong Kong is not considered a body corporate under Hong Kong law. Businesses considering restructuring, especially those involving LLPs and LLCs, should seek professional advice to assess the availability of stamp duty relief in their cases.

Despite the CFA concluding that the legislative intent of Section 45 of the SDO was to provide stamp duty relief to all bodies corporate having a share capital, the Collector of Stamp Revenue has previously commented that an LLP can be a parent of a group but cannot be a subsidiary of another body corporate for the stamp duty relief under Section 45 of the SDO to apply (as quoted in the DC judgment). This leaves some flexibilities to interpret that an LLP that is a parent of a group and holds "issued share capital" of another body corporate may still qualify for the relief, provided that the Association Requirement is fulfilled. It would be helpful if the Stamp Office can provide more guidance to clarify its stance.

This case raises the question of whether Section 45 of the SDO should be amended to cover other business forms, including LLPs. LLPs are relatively new business forms that emerged after the last amendment of Section 45 of the SDO. Singapore has explicitly extended stamp duty relief to LLPs regardless of their place of formation. To enhance Hong Kong's competitiveness, the government should consider rectifying and modernizing the legislation for stamp duty relief. This modernization should cover other business forms, including LLPs and LLCs, and address the calculation of the 90% threshold under the Association Requirement in the context of the no-par regime under the new Companies Ordinance.

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