

Hong Kong (SAR) Tax Alert

June 2025 | Issue 4



The Highest Court upheld stamp duty group relief only applies to associated bodies corporate with share capital

Summary

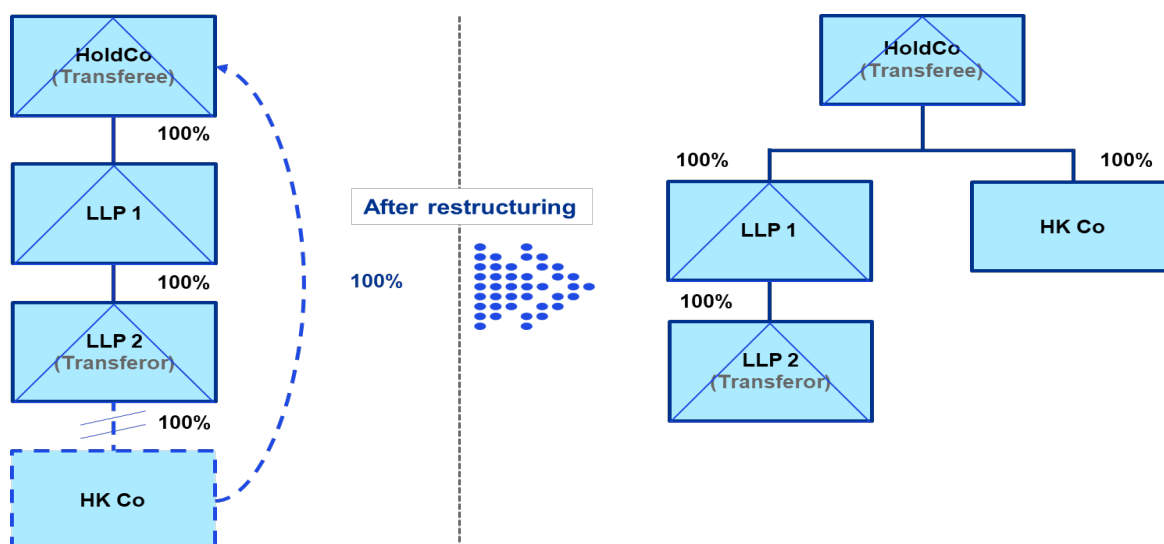


The Court of Final Appeal (CFA) recently upheld the Court of Appeal (COA)'s judgment in the John Wiley case. The CFA unanimously held that the stamp duty relief for intra-group transfer under section 45 of the Stamp Duty Ordinance (SDO) (s.45 relief) is only available to associated bodies corporate which satisfy the 90% association requirement via issued share capital.

In this news alert, we summarise the CFA's analysis and share our observations from the case.

The CFA handed down its judgment in *John Wiley & Sons UK2 LLP and Another v The Collector of Stamp Revenue*¹ on 16 June 2025.

The case concerned whether s.45 relief² is applicable to an intra-group transfer of shares in a Hong Kong SAR (Hong Kong) company (HK Co) from a UK limited liability partnership (LLP 2 or Transferor) to a foreign limited liability company (HoldCo or Transferee) (see the diagram below).



¹ The CFA judgment can be accessed via this link: https://legalref.judiciary.hk/lrs/common/u/ju_frame.jsp?DIS=169656&currpage=T

² Section 45 of the SDO provides a stamp duty relief for transfer of Hong Kong stock or immovable property between **associated bodies corporate** if certain conditions are met. Under section 45, two bodies corporate are "associated" if one is the beneficial owner of at least 90% of the **issued share capital** of the other, or if a third party body corporate is the beneficial owner of at least 90% of the **issued share capital** of each of the two bodies corporate.

Hong Kong (SAR) Tax Alert

Given that LLP 2 does not have any formal share capital (despite it has other features similar to those of a company), the Collector of Stamp Revenue took the view that HoldCo does not have beneficial ownership of at least 90% of the issued share capital of LL2 within the meaning of section 45 and therefore the s.45 relief does not apply.

The duty payers disagreed and appealed against the Collector's ad valorem stamp duty assessment to the District Court³ and won. But the District Court's judgment was overturned by the COA in the appeal lodged by the Collector. The duty payers then appealed to the CFA.

The key question for the CFA

The key question for the CFA in the appeal is how the terms "body corporate" and "issued share capital" should be interpreted under section 45 of the SDO. The two main arguments put forward by the duty payers in the appeal are:

1. the expression "body corporate" in section 45 constitutes an open-ended class of foreign corporations, which does not expressly exclude LLPs, and
2. the expression "issued share capital" in section 45 refers to a class of participation interest that is economically and juristically analogous to share capital under Hong Kong law.

The CFA's judgment and analysis

Below is a summary of the COA's analysis and comments:

Interpretation of "body corporate"

- The terms "company" and "body corporate" have no strictly technical meaning.
- Section 45 of the SDO originally used the term "company" (and referred to companies with limited liability). The section was subsequently amended by using the term "body corporate" rather than "company". The reason for the change is not clear. Based on the records of the legislature, the amendment simply occurred as part of a "tidying up" exercise.
- However, at the time of the change, only three types of company could be formed under Hong Kong law, namely (i) a company limited by shares, (ii) a company limited by guarantee and (iii) an unlimited company. All of them are a body corporate with share capital.
- Thus, it is reasonable to infer that the legislative intent of the change was to expand the scope of s.45 relief from just companies with limited liability to all bodies corporate having a share capital.
- An LLP, on the other hand, is a form of business entity introduced after the enactment of section 45.
- Based on the above legislative history of section 45, the argument in (1) above should be rejected.

Interpretation of "issued share capital"

- In the absence of any context or language of section 45 indicating that the term "issued share capital" was intended to be used in any different sense, the term should be interpreted to bear the same natural and ordinary meaning as it is employed in the company law context and other Hong Kong legislation, including the Inland Revenue Ordinance.
- The term should be interpreted in the same way whether or not foreign entities are involved.
- The definition of "share capital" put forward in the argument in (2) above is vague and uncertain with no support in the historical context of section 45.

Based on the above, the CFA dismissed the duty payers' appeal and upheld that s.45 relief does not apply in respect of LLPs without share capital.

KPMG Observations

As the highest court in Hong Kong, the CFA judgment is final and set the precedent for cases with similar fact pattern. It is noteworthy that the CFA included a remark in its judgment that (1) a significant number of stamp duty relief applications based on grounds similar to those in this case are pending and (2) whether section 45 should be rectified to account for cases similar to the present one is a **matter for the legislature**. A clear signal that reform of the law is required (as suggested in our previous coverage of this case³) and it is not up to the courts to fix this type of problem.

³ For previous coverage of the case, please refer to our [Hong Kong Tax Alert - Issue 11, August 2022](#) and [Hong Kong Tax Alert - Issue 9, July 2024](#).

Hong Kong (SAR) Tax Alert

As highlighted in our previous tax alerts³, given the diversified forms of legal entity employed by business groups nowadays and that some of them do not have share capital in a narrow sense, it would be more sensible from a policy perspective to amend section 45 of the SDO to (1) grant stamp duty relief to associated legal entities in any forms (and not just limited to bodies corporate) and (2) allow the 90% association relationship be established by other means (e.g. ownership interests other than shareholding) rather than just through issued share capital.

In this regard, we will continue to advocate and lobby with the government for a law change. References could be made to (1) the change in the HMRC's view of the law in the UK which it now regards a "body corporate" as including an LLP for the purposes of the stamp duty group relief (though the HMRC still holds the view that an LLP does not have issued share capital) and (2) the legislation on stamp duty group relief in Singapore which uses the term "permitted entities" that is defined to specifically include a limited liability partnership where the contributed capital of the partnership is entirely held by permitted entities.

In the meantime, business groups contemplating an intra-group transfer of a Hong Kong company or immovable property between legal entities other than in the form of a company or legal entities without issued share capital (e.g. an LLP, LLC, or other forms of body corporate) should consider what other options are available.

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