THE COURT OF FINAL APPEAL

John Wiley & Sons UK2 LLP & Another v The Collector of Stamp Revenue
FACV No 11 of 2024

Appellants:	**John Wiley & Sons UK2 LLP and Wiley International LLC**
Respondent:	**The Collector of Stamp Revenue**
Hearing Date:	**12 May 2025**
Judges:	**Chief Justice Cheung, Mr Justice Ribeiro PJ, Mr Justice Fok PJ, Mr Justice Lam PJ and Mr Justice Gummow NPJ**
Counsel for the Appellants:	**Mr Stefano Mariani (Solicitor Advocate)**
Counsel for the Respondent:	**Mr Eugene Fung SC, Ms Elizabeth Cheung and Mr Shaun Elijah Tan**
Subject Matter:	**Taxation – stamp duty – statutory interpretation – Stamp Duty Ordinance (Cap 117) s 45 – whether the meaning of "body corporate" covers limited liability partnerships – whether the words "issued share capital" are capable of applying to membership interests in limited liability partnerships**

Facts:

As part of a group's corporate restructuring, John Wiley & Sons UK2 LLP ("**Wiley LLP**"), incorporated as a limited liability partnership ("**LLP**") in the United Kingdom, sold its entire shareholding of a subsidiary to another group entity, Wiley International LLC ("**Wiley LLC**"), which indirectly owned the whole of Wiley LLP through another LLP.

Both Wiley LLP and Wiley LLC (collectively "**Duty-Payers**") applied to the Collector of Stamp Revenue ("**Collector**") for relief from *ad valorem* stamp duty for the sale of the shares under section 45 of the Stamp Duty Ordinance (Cap 117) ("**SDO s 45**") which relevantly grants an exemption from stamp duty for transfers of Hong Kong stock between associated "bodies corporate" where one is a beneficial owner of not less than 90% of the "issued share capital" of the other.

The Collector rejected the Duty-Payers' application, on the basis that Wiley LLP and Wiley LLC were not "associated" with one another under SDO s 45 because Wiley LLP, as an LLP, did not have "issued share capital" which was at least 90% owned by Wiley LLC.

Dissatisfied with this result, the Duty-Payers appealed to the District Court. His Honour Judge K C Chan allowed the appeal, holding that an LLP effectively had "share capital" as its ownership capital was divided into quantifiable portions, expressed in monetary or proportionate terms. Therefore, Wiley LLP's intra-group sale of shares to Wiley LLC, as its 100% beneficial owner, was a conveyance between associated bodies corporate exempt from stamp duty under SDO s 45.

The Collector then appealed to the Court of Appeal, which reversed the decision of the District Court and allowed the appeal. The Court of Appeal held that while the term "body corporate" encompassed more than the concept of a company, the legislative intention behind SDO s 45 was still to confine relief from stamp duty to associated bodies corporate where one beneficially owned 90% of the issued share capital of the other. Additionally, in relation to the term "issued share capital", as there was neither a specific definition in the SDO of those words, nor any special context suggesting a different meaning, the term was to be interpreted following its well-established dictionary and company law definition, meaning the total monetary value of the consideration paid or agreed to be paid by the shareholders in return for issued shares. Therefore, as Wiley LLP did not have "issued share capital" in this sense, the Duty-Payers were not entitled to relief from stamp duty under SDO s 45.

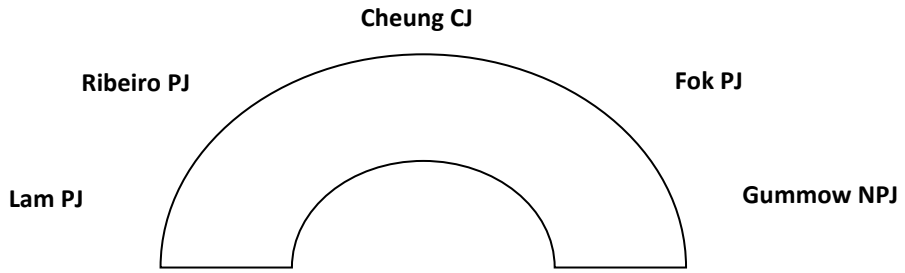
Appeal to the Court of Final Appeal:

The Duty-Payers now appeal to the Court of Final Appeal on two questions of great general and public importance which ask, on a true construction of SDO s 45:

1) is the meaning of the words "body corporate" confined to a company, or is it capable of extending to other kinds of body corporate, and, specifically in this case, an LLP, which is a body corporate, although not a company; and

2) is the meaning of the words "issued share capital" confined to "issued share capital", or is it capable of extending to other kinds of participation interests – that is, a participation in a body corporate importing economic and management rights akin to those of ordinary shares in a company limited by shares – that are in substance analogous to "issued share capital" as that notion is understood in Hong Kong corporate law, and, in this case, whether those words are capable of applying to a membership interest in an LLP?

Decisions of the Lower Courts:

Court	Case Reference	Date of Judgment	Order
District Court (HHJ K C Chan)	DCSA 2/2021	15 July 2022	Appeal by the Duty-Payers against the assessment of the Collector allowed.
Court of Appeal (Kwan VP, Au and Chow JJA)	CACV 23/2023	5 July 2024	Appeal by the Collector against the judgment of the District Court allowed.
		25 September 2024	Leave to appeal to the Court of Final Appeal granted on two questions of great general or public importance.

Seating plan of the Judges' Bench: