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# CAPITAL CONTROLS IN THE UK?

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Legal Briefings

Since the US Dollar departed from the gold standard in 1971 much of the world has abandoned or substantially relaxed capital and exchange controls. International trade and investment has grown dramatically since that time and it is acknowledged that open markets stimulate trade. The UK has been since the 1980s at the forefront of countries advocating open economies and international trade and investment.

Until recently, it would have been laughable to envisage the UK either needing or wanting to introduce capital and exchange controls, but there have been persistent rumours that the Labour Party would take this course, if it won the next General Election, in order to counter a flight of capital from the UK, or the risk of this occurring. The Shadow Chancellor, John McDonnell, in a speech in January 2019 was emphatic that the Labour Party, if it came to power, would not introduce capital controls and there is no reference in the Labour Party manifesto.

The rumours have provoked debate and prompted us to research the issue. We have prepared a paper that looks at the legalities and practical issues related to exchange control, which concludes:

- The UK would be unlikely to meet EU rules that would allow introduction of capital and exchange (payment) controls while still an EU Member or in transition, unless and until it became at imminent risk of being unable to meet its debts as they fell due.

- Labour plans for future relationships with the EU after the UK ceased to be an EU Member State would likely produce a very close relationship with the EU in which the UK had to agree to EU rules on free movement of capital and payments, reinforced by the need to support the economy of the island of Ireland with no internal borders. The alternative, following a referendum, might be continued membership of the EU.

- If the UK did leave the EU into transition, but transition ended without a new trade relationship with the EU being finalised and the UK reverted to WTO terms in dealing with the EU, then the conditions in which capital controls might be introduced by a Labour-led Government are more likely to occur.

- In those circumstances, the UK's international obligations (eg under IMF, WTO and OECD rules) would continue to constrain UK action, particularly with regard to payment controls and it would require extreme circumstances – close to national bankruptcy – for new payment controls to be introduced even on a temporary basis. Damage to the standing of the UK internationally could be considerable in the event that it were to introduce capital and exchange controls.

- Introduction of capital and exchange controls using current UK law would not be a simple matter and primary legislation of considerable complexity would be required.

- It seems probable that there would be adverse consequences in maintaining controls, particularly on a long term basis. These adverse consequences might well outweigh any advantage to be gained from the controls. In particular, any flight of capital from the UK would be consolidated and inward investment halted, given the availability of many other open economies where international capital could be invested.

- Other measures to stabilise the currency and attract/retain inward investment might well prove the better course and more likely to preserve vital supplies and investment for the UK economy and to maintain employment.

Against this background, The Shadow Chancellor's strong public refutation is understandable. But as debate continues, we hope our paper will assist in understanding of the issues and the legalities. Please let Monika.Kirova@hsf.com know if you would like to request a copy of the full paper.

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# KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.

**JAMES PALMER**
PARTNER, LONDON

+44 20 7466 2327
james.palmer@hsf.com

**DOROTHY LIVINGSTON**
CONSULTANT, LONDON
+44 20 7466 2061
Dorothy.Livingston@hsf.com

**ANDREW CANNON**
PARTNER, LONDON

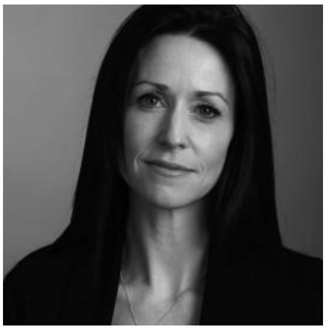
+44 20 7466 2852
Andrew.Cannon@hsf.com

**ANDREW LIDBETTER**
PARTNER, LONDON

+44 20 7466 2066
Andrew.Lidbetter@hsf.com

**NICK PANTLIN**
PARTNER, HEAD OF TMT & DIGITAL UK & EUROPE, LONDON
+44 20 7466 2570
Nick.Pantlin@hsf.com

**ERIC WHITE**
CONSULTANT, BRUSSELS
+32 477 883 993
eric.white@hsf.com



**HANNAH AMBROSE**
SENIOR ASSOCIATE, LONDON
+44 20 7466 7585
Hannah.Ambrose@hsf.com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