# THE FREE MOVEMENT OF CAPITAL: THE FIGHT TO CONFIRM JERSEY'S THIRD COUNTRY STATUS

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*In a recent judgment of the English Court of Appeal in October 2017, Jersey's status as a third country for the purposes of the free movement of capital under EU law was confirmed. The judgment has significant consequences not only for the proper construction of the term "third country" but perhaps also for the constitutional relationship between the Crown Dependencies and the UK after Brexit.*

## Introduction

1 On 17 October 2017, the English Court of Appeal (Civil Division) in the case *Routier* v *Commissioners for HM Revenue and Customs*[1] ("*Routier*") held that Jersey is to be treated as a third country for the purposes of the free movement of capital.

2 This private UK case concerned a dispute arising between HM Revenue and Customs ("HMRC") and the executors of the will of the late Beryl Coulter, of Jersey domicile, whose estate included assets in the UK. The executors disputed their liability to pay UK inheritance tax. One particular issue had arisen which involved significant constitutional questions for Jersey, namely whether or not Jersey, and indeed any Crown Dependency, should be considered a "third country" within the meaning of art 63 of the Treaty on the Functioning of the European Union 2009 ("TFEU") regarding the EU free movement of capital.

3 HMRC argued that art 63 TFEU cannot apply to movements of capital between Jersey and the United Kingdom as Jersey is not a "third country". HMRC reasoned that Jersey is not a "country" and consequently cannot fulfil "third country" criteria for the purposes of art 63 TFEU, or indeed for any other purpose. This led to consideration in the English courts of what it means to be a "third country" as understood by EU law. HM Attorney General obtained leave to intervene to ensure that the constitutional relationship between the Crown Dependencies and the United Kingdom in this regard was properly understood.

[1] [2017] EWCA Civ 1584.

4 This article examines in detail the arguments submitted by HMRC and HM Attorney General and explains how the Court of Appeal judgment put Jersey's position in relation to "third country" status beyond doubt, subject to an appeal to the UK Supreme Court.

## HMRC and the meaning of "third country"

5 As mentioned at para 3, HMRC's main arguments on this point focused around their contention that in order to be a "third country," a jurisdiction must possess the status of a "country" in ordinary terms and enjoy sovereignty. This article does not engage with whether or not Jersey and the other Crown Dependencies should properly be described as countries; instead it sets out HM Attorney General's arguments, as accepted by the court, that this is a wholly erroneous approach to the issue of how the term "third country" should be understood as an EU concept.

6 HMRC's primary argument was that Jersey's lack of sovereignty should preclude it from possessing third country status. Further, they submitted that if there were any doubt on that point, the matter could not be viewed as *acte clair* and therefore should require a reference to the Court of Justice of the European Union in any event. HMRC's view informed their submission that if Jersey is not a third country, it should therefore fall to be treated as part of the UK for the purposes of art 63 TFEU. Somewhat obscurely, HMRC further submitted that their position was strengthened by the fact that the current art 63 is not mentioned in the text of Protocol 3 to the UK Act of Accession 1972, meaning that the principle of free movement of capital cannot apply. Accordingly, in reliance on the absence of reciprocity, if Jersey is not bound by the principle of freedom of movement of capital, it should not be able to enjoy its benefits. It followed that free movement of capital between the UK and Jersey was a purely "internal" matter.

7 HM Attorney General's submissions sought to identify the correct approach and the interpretation of the term "third country" by looking to the intention and scope of art 63; the language of Protocol 3; the relevant CJEU case law; and the approach of the EU institutions.

## Article 63 TFEU

8 By way of background, the Single European Act of 1986[2] set the then European Community an objective of establishing an internal market for goods, services, people and capital within six years. The

[2] The Single European Act was the first substantial revision to the Treaty of Rome 1957.

integration has meant that these four "freedoms" are considered to be "one of the EU's greatest achievements"[3]. In the now Treaty on the Functioning of the European Union, arts 63–66[4] provide the *vires* for freedom of movement of capital across the European Union. Articles 64–66 had no particular bearing on the matters at issue. However, given their contextual value, they are reproduced in the footnotes below for ease of reference.

9 Article 63[5] TFEU provides—

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[3] https://ec.europa.eu/growth/single-market_en

[4] Capital and Payments, Chapter 4.

[5] TFEU:

"Article 64

1. The provisions of Article 63 shall be without prejudice to the application to third countries of any restrictions which exist on 31 December 1993 under national or Union law adopted in respect of the movement of capital to or from third countries involving direct investment—including in real estate—establishment, the provision of financial services or the admission of securities to capital markets. In respect of restrictions existing under national law in Bulgaria, Estonia and Hungary, the relevant date shall be 31 December 1999.

2. Whilst endeavouring to achieve the objective of free movement of capital between Member States and third countries to the greatest extent possible and without prejudice to the other Chapters of the Treaties, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt the measures on the movement of capital to or from third countries involving direct investment—including investment in real estate—establishment, the provision of financial services or the admission of securities to capital markets.

3. Notwithstanding paragraph 2, only the Council, acting in accordance with a special legislative procedure, may unanimously, and after consulting the European Parliament, adopt measures which constitute a step backwards in Union law as regards the liberalisation of the movement of capital to or from third countries.

Article 65

1. The provisions of Article 63 shall be without prejudice to the right of Member States:

(a) to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their

> "Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.
>
> Within the framework of the provisions set out in this Chapter, all restrictions on payments between Member States and between Member States and third countries shall be prohibited."

10 As is apparent from the wording, the provisions for EU free movement of capital are unique. Unlike the other three freedoms, its

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place of residence or with regard to the place where their capital is invested;

(b) to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security.

2. The provisions of this Chapter shall be without prejudice to the applicability of restrictions on the right of establishment which are compatible with the Treaties.

3. The measures and procedures referred to in paragraphs 1 and 2 shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in Article 63.

4. In the absence of measures pursuant to Article 64(3), the Commission or, in the absence of a Commission decision within three months from the request of the Member State concerned, the Council, may adopt a decision stating that restrictive tax measures adopted by a Member State concerning one or more third countries are to be considered compatible with the Treaties in so far as they are justified by one of the objectives of the Union and compatible with the proper functioning of the internal market. The Council shall act unanimously on application by a Member State.

Article 66

Where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of economic and monetary union, the Council, on a proposal from the Commission and after consulting the European Central Bank, may take safeguard measures with regard to third countries for a period not exceeding six months if such measures are strictly necessary."

application is expressly designed to allow third countries to enjoy benefits relating to the ease of capital movements, for example, by the facilitation of inward and outward investment flows between the EU and the rest of the world.

11 In Jersey, for 46 years the core relationship of the Island to the EU has been provided for in Protocol 3 to the UK's Act of Accession, 1972. In brief, this relationship establishes the applicability of the EU *acquis* with respect to customs matters, quantitative restrictions and trade in agricultural goods. For all other purposes, EU law is considered inapplicable to the Crown Dependencies.

12 Jersey's submissions for the English Court of Appeal concentrated upon the argument that, as a Crown Dependency, the Island is, or is to be treated as, a "third country" for the purposes of art 63 TFEU and that it can have no other status in accordance with established EU principles.

### Jersey's relationship to the EU treaties

13 The EU treaties[6] provide specifically for the nature of the relationship between the British Crown Dependencies and the European Union. Article 355 TFEU[7] establishes the differing relationships between a number of territories with constitutional links to EU Member States, and is clear about the extent to which EU law applies in each case.[8]

14 Article 355(5)(c) contains the relevant provision made for the Channel Islands and the Isle of Man, along also with the Faeroe Islands and the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus. Subparagraph 5(c) provides—

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[6] The Treaty on European Union and the Treaty on the Functioning of the European Union.

[7] Ex-Article 299 TEC.

[8] Article 355(1) groups certain French overseas departments, the Azores, Madeira and the Canary Islands and sets out that the EU treaties apply in full, subject to some limits and derogations.

Article 355(2): sets out 21 overseas countries or territories, including the British Overseas Territories, with "special arrangements for association". These special arrangements are found in Council Decision 2001/822/EC on the association of the overseas countries and territories with the European Community.

Article 355(3) sets out the relationship for those European territories for whose external relations a Member State is responsible. For example, Gibraltar falls under this category.

> "this Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972."

15 These "arrangements" are those under Protocol 3 to the UK's Act of Accession. Protocol 3 provides in summary—

Article 1(1): That the Community rules on customs matters and quantitative restrictions, in particular those of the Act of Accession, apply to the Channel Islands and the Isle of Man.

Article 1(2): That Community rules, in particular those of the Act of Accession which are necessary to allow free movement and observance of normal conditions of competition in trade in agricultural products and products processed therefrom shall also be applicable.

Article 2:That the rights enjoyed by Channel Islanders and Manxmen in the UK shall not be affected by the Act of Accession but that such persons shall not benefit from Community provisions on free movement of persons and services.

Article 3: That the Euratom Treaty applies to persons or undertakings within the meaning of that treaty.

Article 4: That Crown Dependency authorities shall apply the same treatment to all natural and legal persons of the Community.

Article 5: That the Commission shall propose certain safeguard measures in the event of difficulties arising in the application of the arrangements.

Article 6: That a Channel Islander or Manxman is defined in accordance with the provisions of this article.

16 Although there has been some debate over the years as to the parameters of Protocol 3, especially as EU competence and the "Communities" have changed so significantly since Protocol 3 came into effect, it is clear that the relationship is to be described in terms of the "free movement of goods".[9]

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[9] Aside from the Euratom Treaty application provision at art 3 and the non-discrimination obligation at art 4.

### Jersey's status and the case law of the Court of Justice of the European Union

17 Although there has been relatively little CJEU case law specifically examining the status of the Crown Dependencies, there has been a handful of cases which clarified certain fundamental concepts relating to how they should be properly described. The judgment in *Jersey Produce Marketing Organisation Ltd* v *States of Jersey*[10] found that—

> "it is clear from all the preceding points that, for the purposes of the application of Articles 23 EC, 25 EC, 28 EC and 29 EC, the Channel Islands, the Isle of Man and the United Kingdom must be treated as one Member State."[11]

This finding put the reach of EU treaty articles through the prism of Protocol 3 beyond any doubt, with the key provisions falling squarely and only within the free movement of goods chapter of the now TFEU. The wording to "be treated as" is deliberate and acknowledges that the Crown Dependencies are not Member States of the EU but that they are to "be treated as one Member State" with the UK for the specific purposes covered by Protocol 3. The corollary to this therefore, as the Attorney General advanced, is that for the purposes of those treaty provisions which do not apply, the Crown Dependencies should be treated as "third countries". "Third country" simply denotes a territory as being legally outside the European Union. How the various EU institutions understand the term is demonstrated in a number of adequacy and equivalence decisions which reflect the widely accepted view that the Crown Dependencies fulfil relevant criteria for access to institutions or markets as third countries. These examples are discussed in detail below.

18 In the case of *DHSS v CS Barr*,[12] the scope of art 4 of Protocol 3 (which relates to the need for non-discrimination with respect to the treatment of EU nationals) was considered and the court held that art 4 is not to be interpreted so as to apply EU provisions indirectly which are outside the scope of Protocol 3—

> "In that regard it must be pointed out that, as the United Kingdom rightly emphasizes, the rule laid down in Article 4 of Protocol No

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[10] Case C-293/02 http://curia.europa.eu/juris/showPdf.jsf;jsessionid=9ea7d0f130de1d26166555c84ce5825eab19434ed03a.e34KaxiLc3eQc40LaxqMbN4Pb38Pe0?text=&docid=55593&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=186914

[11] Now arts 28, 30, 34 and 35 TFEU under Title II, Free Movement of Goods.

[12] Case C-355/89.

> 3 cannot be interpreted in such a way as to be used as an indirect means of applying on the territory of the Isle of Man provisions of Community law which are not applicable there by virtue of Article 227(5)(c) of the EEC Treaty and Article 1 of Protocol No 3, such as the rules on the free movement of workers."[13]

19 When looking to art 227(5)(c) (now art 355(5)(c) TFEU), the court was careful to restrict the Isle of Man's relationship to the EU to the text of the treaties and to Protocol 3. Where EU law is not applicable, the relationship with the Crown Dependencies cannot be one where they or it is to "be treated as one Member State with the UK". In such circumstances, the question is then what description should be applied.

20 The case of *Commission v UK*[14] considered Council Directives adopted under arts 100 and 100a[15] of the EC Treaty[16] in the context of their application to Gibraltar where Gibraltar was not expressly excluded by the wording. Gibraltar's relationship with the EU might be best described as the "mirror image" of the Crown Dependencies' relationship, with much of the EU *acquis* applying to it since the UK's accession but excluding the free movement of goods provisions. In *Commission v UK*, Gibraltar was treated for all free movement of goods purposes as a "third country"—

> "Although Gibraltar was no longer to have the status of third country as a result of the accession of the United Kingdom to the EEC Treaty, which from then on applied to Gibraltar subject to the special provisions of the UK Act of Accession, its position remained comparable to that of a third country in respect of trade in goods both with Member States and with third countries."[17]

21 Therefore, despite the application to Gibraltar of all the other single market freedoms, its "position [with respect to free movement of goods] remained comparable to that of a third country". The judgment also recalls that at the time of the UK Act of Accession, Gibraltar had been included on Annex II to Regulation 1025/70[18] which "contained a list of third countries and territories to which that regulation applied". In the process of ensuring that Gibraltar was in the same position with regard to the Community's import liberalisation

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[13] Paragraph 16.
[14] Case C-30/01.
[15] On the approximation of laws.
[16] These directives covered chemical substances, fuel standards, noise emissions, packaging waste and genetically modified organisms.
[17] Paragraph 39.
[18] Establishing common rules for imports from third countries.

system as it was before accession, "its position as regards access to the markets of the Member States remains the same as it was before accession".[19] In other words, Gibraltar remained a "third country" or "third territory" for such purposes; the terms being used interchangeably.

22 In *Gibraltar Betting & Gaming Association Ltd v HMRC*,[20] the Advocate General's Opinion referred back to the case of the *Commission v UK*. Advocate General Szpunar observed that—

> "In dismissing the Commission's application, the Court held that the exclusion of Gibraltar from the EU customs territory implied that neither the Treaty rules on free movement of goods nor the rules of secondary EU legislation intended, as regards free movement of goods, to ensure approximation of the laws, regulations and administrative provisions of the Member States pursuant to Articles 114 and 115 TFEU, were applicable to it. This is, in my view, a logical conclusion against the background that Gibraltar is, as seen above, excluded from the Union's customs territory. In this respect, therefore, as expressed by Advocate General Tizzano in that case 'Gibraltar must be considered as a third country for the purposes of the Community provisions on movement of goods'."[21]

23 With respect to free movement of capital provisions, he went on to observe that "if, as is uncontested and clear, Gibraltar is not a third country, logically, for the purposes of Article 56 TFEU, it has to form part of a Member State".[22]

24 What emerges is that a territory is *either* to be treated under EU law as "part of a Member State" or indeed as a "third country." Indeed, the relevant EC Treaty provisions require it to be determinable, in every relevant situation, whether a transaction (including a movement of goods or persons) is taking place—

(a) within the territory of a single Member State, in which case it may be a "wholly internal situation"[23] so that the transaction is not "cross border";

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[19] Paragraph 42.
[20] Case C-591/15.
[21] Paragraph 35 of the Advocate General's Opinion.
[22] Paragraph 40.
[23] Paragraph 45 of the Opinion refers to the Isle of Man when looking at art 45 TFEU (free movement of workers provision) and states that—

> "the free movement of workers, as enshrined in Article 45 TFEU, does not apply to the Isle of Man. It is therefore logical that, as regards

(b) between two Member States, so that treaty provisions governing transactions between the Member States apply;

(c) between a Member State and a third country, in which treaty provisions governing interaction with third countries apply; or

(d) between two third countries, in which case EU law is plainly not applicable.

25 Therefore, the EU provisions governing the free movement of goods, services, people and capital do not contain provisions for transactions with territories which are neither Member States nor third countries, and a jurisdiction such as Jersey has to be assessed accordingly.

26 In HM Attorney General's submissions, *Prunus SARL and Polonium SA v Directeur des services fisceaux*[24] was of particular note in furthering Jersey's arguments. This case examined the status of the British Virgin Islands (BVI) for the purposes of free movement of capital provisions. The BVI is one of the UK's Overseas Countries and Territories (OCT) and the facts concerned the disputed status of a transaction between France and the BVI.

27 At para 31 of his opinion, Advocate General Cruz Villalón[25] reasoned that OCTs are to be treated as "non-European" territories, except when EU law expressly provides otherwise. At paras 29–31 he accordingly emphasised the need for a "systematic interpretation of the Treaties" and highlighted the illogicality which would inevitably result should free movement of capital provisions not benefit the OCTs on account of their particular constitutional status in relation to a Member State. He observed that such a situation would result in a "paradox in that a freedom granted to third countries would be denied to territories with which the Union has special relations".[26]

28 A distinct facet of the now art 63 TFEU was mentioned at para 7 and referred to in *Prunus* at para 20 of the judgment as "unlimited territorial scope." In short, there is not intended to be *any* restriction on the flow of capital. The court observed that it followed that the rule

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Article 45 TFEU, the situation between the UK and Isle of Man is not purely an internal one."

[24] Case C- 384/09 http://curia.europa.eu/juris/document/document.jsf?text=&docid=82127&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=354294

[25] http://curia.europa.eu/juris/document/document.jsf?text=&docid=83751&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=354294

[26] Paragraph 66.

must "necessarily" be regarded as applying to the movement of capital to and from OCTs. The court stated—

> "Article 63 TFEU prohibits 'all restrictions on the movement of capital between Member States and between Member States and third countries'. In view of the unlimited territorial scope of that provision, it must be regarded as necessarily applying to movements of capital to and from OCTs."

29 *A fortiori*, the Attorney General submitted, art 63 TFEU must be regarded as necessarily applying to movements of capital to and from the Crown Dependencies.

30 It is important to note, however, that it is here that any comparison between Crown Dependency and OCT must end, as was illustrated by the case of *X BV v Staatssecretaris van Financiën*.[27] This case concerned a transaction between the Netherlands Antilles and the Netherlands to which the special provisions concerning free movement of capital contained in Council Decision 2013/755/EU[28] (on the association of the overseas countries and territories with the European Union) applied. As the wording to the title suggests, this decision applies *only* to OCTs and not to Crown Dependencies, which means that comparing the relationship of the two types of jurisdiction is not conclusive. Nonetheless, the Advocate General's opinion on the status of the Dutch Antilles was clear and complemented Jersey's arguments as he opined that the territory had to have the status of a "third country", despite also being subject to the special provisions contained in the OCT decision. The absence of an equivalent to the OCT decision for the Crown Dependencies arguably sets them further apart from the EU than the OCTs. It follows therefore that Jersey's (and the other Crown Dependencies') constitutional position makes third country status even more appropriate.

## The EU institutions

31 The relevant EU case law is supported by the understanding and practice of the other EU institutions. Here, the European Commission and other EU bodies have consistently treated Jersey as a third country for purposes which fall outside Protocol 3.

32 For example, under Directive 95/46/EC (on the protection of individuals with regard to the processing of personal data and to the free movement of such data), there are restrictions which are set out in

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[27] Case C-24/12 and C-27/12

[28] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013D0755

the preamble and at arts 19 and Chapter IV on transfer of data out of the EU to third countries. Such transfers may only take place where those third countries are accepted as having adequate data protection standards. Jersey's adequacy was confirmed in 2008 at para 10(5) of Commission Decision 2008/393/EC[29]—

> "The Bailiwick of Jersey is one of the dependencies of the British Crown (being neither part of the United Kingdom nor a colony) that enjoys full independence, except for international relations and defence which are the responsibility of the United Kingdom Government. The Bailiwick of Jersey is therefore to be considered as a third country within the meaning of Directive 95/46/EC."

33 Similarly, Regulation (EU) No 575/2013[30] (on prudential requirements for credit institutions and investment firms) provides for decisions to be made on equivalence relating to supervisory and regulatory requirements expected of third countries and territories for the purposes of the treatment of financial exposures. Here, a jurisdiction is again either considered "part of" the EU for these purposes or is a "third country" and Commission Implementing Decision 2014/908/EU[31] includes Jersey on the list of "equivalent third countries and territories" at Annexes I, IV and V. Other "third countries" in the Annexes include Australia, Brazil, China, and Hong Kong.

34 Further recognition for Jersey as a third country came in 2016 when the European Securities and Markets Authority ("ESMA") recommended to the EU European Parliament, Council and Commission that Jersey should be amongst those "third countries" (12 "non-EU countries") to be granted an Alternative Investment Fund Managers Directive ("AIFMD") passport. Articles 35 and 37–41 of the AIFMD[32] (as amended) provide specifically for the management of "non-EU" alternative investment funds and alternative investment fund managers by virtue of sets of conditions and a passport scheme. In this case, the term "third country" is synonymous with a fund or fund manager being "non-EU".

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[29] http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008D0393

[30] https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32013R0575

[31] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014D0908

[32] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:0073:EN:PDF

35 Indeed, we have not identified any instance since 1972 of an EU institution considering Jersey or another Crown Dependency as anything other than a "third country", apart from in relation to those areas of the EU *acquis* which apply by virtue of Protocol 3. This accords with the findings of the Court of Appeal which rejected the HMRC arguments that this point was not *acte clair* under EU law and so should be referred for preliminary ruling to the CJEU.

## Why is this case so important?

36 There are many implications for Jersey and the other Crown Dependencies when considering the outcome of the *Routier* case. The first and perhaps most urgent today is that it is consistent with the instances under EU law, as seen with data protection, where special provision has already been made for Jersey by EU institutions as a third country. Legal certainty in these respects is crucial.

37 Furthermore, in the finding that Jersey is a third country for the purposes of the free movement of capital, and that it may enjoy the benefits of that freedom outside the EU, and quite apart from its constitutional relationship with the UK, the breadth of capital movements and what these might encompass is broad. They might include, for example, all financial markets transactions, such as investment in companies, transfers of shares or securities, lending, gifts and the establishment of trusts.

38 In recognising Jersey's proper status, other jurisdictions, such as the United Kingdom and other EU Member States, are thus prohibited from ever introducing restrictions affecting capital movements to and from Jersey if those are more discriminatory in nature than equivalent measures affecting domestic investments in a Member State. More generally too, the free movement of capital status of a jurisdiction is very likely to inform how it is perceived overall in international markets, on exiting Crown Dependency corporate structures for example.

39 The effects of Brexit, of course, pose a further set of questions and it may be that the direct economic benefit of having specific EU law protection for free movement of capital between the UK and Crown Dependencies may need to be reconsidered in future on account of the UK's own anticipated "third country" status. The implications of Brexit on this point can be discussed when the negotiations between the UK and EU are finalised. Whatever the outcome, however, the result of this judgment for Jersey and the other Crown Dependencies will continue to be significant as regards all remaining EU Member States.

## Conclusion

40 In her judgment at para 43, Lady Justice Arden gave judgment on the question of whether Jersey (and, by extension, the other Crown Dependencies) is a third country in the strongest possible terms—

> "Therefore . . . in my judgment . . . Jersey is to be treated as a third country for the purposes of the principle of freedom of movement of capital. If Protocol No 3 or the Treaties had provided that freedom of movement of capital applied [to apply *sic*] to Jersey, it would have been treated as part of the UK, but that freedom is not mentioned in Protocol No 3 or the Treaties as applying to Jersey."

41 On the basis of this finding, she emphasised at para 48 that it is nothing less than the "obligation of the UK to treat Jersey as a third country for the[se] purposes". As a third country, Jersey can enjoy free capital flows in exactly the same way as any other third countries around the world.

42 This case illustrates the ongoing importance of promoting a better understanding of the constitutional status of the Crown Dependencies. With the implications of Brexit in mind, legal solutions for the Crown Dependencies will require a vigilant approach which ensures that their unique status is properly observed and robustly protected for the future.

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