



Summary of seminar held at  
Bell Gully in August 2016

## BREXIT – WHAT DOES IT MEAN AND SHOULD WE CARE?

Presenters: **Dr Oliver Hartwich**, Executive Director of the New Zealand Initiative  
**Ian Gault**, Bell Gully partner and Deputy Chairman

### The political backdrop to Brexit

Dr Oliver Hartwich, Executive Director of the New Zealand Initiative detailed the political backdrop to Brexit and David Cameron's referendum promise. He covered:

- Attempts to revitalise the Tory party through initiatives such as the Policy Exchange.
- The deep divide within the Tory party on issues relating to Europe, and David Cameron's understanding that Europe had all but ended the political careers of two prominent former Tory prime ministers (Margaret Thatcher and John Major).
- The nature of the Tory party's leading Euro-sceptic thinkers: not "Little Englanders", but rather economic liberals interested in free markets and free exchange whose objection was to the bureaucracy of the European Union (EU).

David Cameron gave his first speech on Europe in 2013. In that speech he promised a referendum on EU membership. However, he made that "promise" in circumstances where he did not realistically expect to win the next election or, if he did win, to be in any position to deliver (due to responsibilities to coalition partners, among other things).

The polls leading up to the referendum did not accurately predict the outcome because voting to leave was not the politically correct option. This was illustrated in the results of the anonymous versus face-to-face polls. People were sick of EU bureaucracy and had a point to make.

The EU has always been viewed by the continental Europeans as a political project, with membership motivated by a desire to avoid future armed conflict in the region. In contrast, Britain was only ever interested in the economic benefits of the union, so the EU has never really been a natural fit for Britain.

As the EU has increasingly adopted policies that replicate those of a nation state, the gap between British ideals (founded in individualism) and continental European ideals has widened.

### What does Brexit mean for Britain?

The EU is currently in a relatively weak position as an organisation, with security challenges on a number of fronts, including the refugee crisis and Russia.

Other EU members are sceptical of the EU, so they need to be careful not to punish Britain, who is a large market. Germany in particular (and its automotive industry) relies on Britain as a trading partner and any punishment would hurt Germany, as well as other EU members.

Accordingly, Dr Hartwich suggested that the EU will have no appetite to start a trade war with Britain.

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Britain's main concern is immigration. Consequently, Dr Hartwich predicted that the two parties will reach an agreement that maintains Britain's access to the common market, but gives Britain back control over its borders. Formalising an agreement to this effect will, however, take some time.

However, if both parties behave rationally, he believed the consequences of Brexit will not be as bad for Britain as initially feared, or as some commentators have indicated.

## The legal implications of Brexit

Ian Gault, Bell Gully partner, described the legal process by which Britain can leave the EU – Article 50 of the Treaty of the European Union. He covered:

- Article 50's requirement that a state wishing to exit the EU must serve a notice on the European Council to begin the exit process.
- Article 50's provision that, once a notice is issued, the exiting state and the EU have two years in which to negotiate an agreement setting out their relationship after withdrawal.
- How difficult it will be for the UK and the EU to comprehensively define their post-withdrawal relationship within two years (by way of example, Greenland's withdrawal took three years).
- An upcoming UK court case over whether the UK Government has the authority to issue an Article 50 notice under the Royal Prerogative power to conduct foreign affairs or whether the UK Government must first obtain the consent of Parliament.
- Whether the EU could pre-empt the UK by deeming that an Article 50 notice has been served (this seems unlikely in light of the wording of Article 50 and the provisions of the Vienna Convention on the Law of Treaties).
- Whether the UK could withdraw an Article 50 notice after it has been issued.
- The possible permutations of the post-withdrawal UK/EU trading relationship.

## What does Brexit mean for New Zealand?

Dr Hartwich said that Brexit presents an opportunity for New Zealand, which has many expert trade negotiators. New Zealand's position could potentially be strengthened by taking innovative measures such as seconding trade negotiators to the UK, in exchange for the early adoption of a UK/NZ free trade agreement.

He said it is possible that Brexit could have an adverse impact on New Zealand's current free trade negotiations with the EU, given Britain's positive influence in this context. However, it is likely that these negotiations are far enough progressed that any such impact would be minimal.

Another consideration for the New Zealand government is the possibility of establishing an embassy/diplomatic presence in Dublin, as the capital city of what could soon be the only remaining English-speaking EU member state.

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