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ISOLAS Brexit Advisory Group November 2016

Image courtesy: HM Government of Gibraltar



From the CEO's Notebook

Welcome to the second Brexit Advisory Group newsletter. This edition covers the many positive opinions voiced at the Gibraltar Day in London on the 31st October and the Funds breakfast the following day. Certainly the appearance of a UK Secretary of State for the first time at the Finance Centre lunch during Gibraltar day in London is a very tangible manifestation of the UK Government's commitment for Gibraltar's voice to be heard in the Brexit negotiations.

Yet, in this seemingly blue sky of positivity some dark clouds hang ominously in the distance. William Hague has spoken of the risk that Spain will use Gibraltar as blackmail in the Brexit negotiations, threatening to veto deals unless the

UK grants them concessions over us. Whilst the stance of the recently deposed Spanish Foreign Minister and other Spanish politicians can be seen as sabre rattling, to make such noise, within the sheath a sabre must reside. The appointment of a new man to the role of Foreign Minister in La Moncloa, it is hoped, will be the advent of a softer position vis a vis Gibraltar.

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However furthermore, we must not forget that the UK will also have to consider the position of its other Overseas Territories as well as the Crown Dependencies. That is why the work of the Gibraltar Government to ensure that Gibraltar's voice is not lost has been so important, even in this early stage. It is clear that the Chief Minister

and Minister Isola have, to date, largely succeeded in this.

Given the importance of the UK market to us, the promise, by the UK Government, of continued access was a vital commitment to get and one that has provided great reassurance to elements of our financial industry as well as to other sectors of our economy. Here the devil will be in the detail. Will the access be greater than currently? What will the terms be and will there be conditions? Small nuances in terms can make significant differences in competitiveness. Here the local market players and their Associations can be of great assistance to Government. There are certain anomalies in our current access, for example, in the areas of pensions and insurance transfers. If these can be removed via the negotiations on UK access, new and expanded market opportunities will become available to us. We need to prioritise the vital from the simply desirable. Industry is better placed than Government to identify these and the clear willingness of Government to listen means these opportunities can be taken.

The task is huge and the road long, but at least the first steps have been taken, and taken in the right direction.



Donald Trumps Brexit



by Selwyn Figueras

It happened again. Unexpected, (or was it?) as it was, Donald Trump stormed to a substantial victory in the US general election held this month, much to the surprise, probably concern, of many establishment figures and observers around the world.

The gloom lasted no more than a couple of hours though - it took just one 15 minute acceptance speech to make markets forget all talk of walls and expulsion of immigrants and for the focus to turn, expectantly, at what the new Trump era of deregulation of financial services, repatriation of jobs and business to the UK and a wholesale review of America's trade arrangements with the world could bring.

Theresa May's warm congratulations, Boris Johnson's call with VP Mike Pence and the apparent closeness of Mr Farage to the President-elect, all contrasted sharply with the rather

cooler response to the election by the German Chancellor, Angela Merkel and the impromptu meeting held by the EU to discuss the result of the poll. These contrasting approaches translated into diametrically divergent responses in the currency markets, Sterling surging against Euro whilst the latter wilted.

The relevance of the American election to Gibraltar's position in the Brexit context has, surprisingly quickly, become apparent in the shape of comments in the Spanish media that suggest that the US Republican, ultra-conservative think tank, the Heritage Foundation, which has close ties to the President-Elect and which will likely play a key role in the development of the Trump administration's foreign policy, attaches great importance to Gibraltar remaining a British Overseas Territory.

In other developments, and as highlighted in Marcus Killick's introduction to this edition of the newsletter, the British Secretary of State for Trade, Dr Liam Fox MP, recently confirmed the British Government's commitment to Gibraltar of maintaining single market access to the UK for our financial services industries. Further, the news of a change at the helm of the Spanish foreign ministry has also been well received locally. It is expected that his replacement, a European politician through and through, who harks from the nearby town of Jerez de la Frontera, will be keen to adopt and maintain a softer, more conciliatory approach to the Gibraltar issue than his predecessor. It is

understood, in fact, that in recent days, when meeting for the first time, the British and Spanish foreign ministers made only a passing reference to Gibraltar, in stark contrast with the approach of the previous Spanish foreign minister.

Despite these developments, and even if we ignore the Deloitte 'Brexit Update' of the last few days, all we hear from the British Government is, still, that Brexit means Brexit.

From a local perspective, this has really very little meaning at all. We expect that, as soon as Article 50 is triggered, whether that is by way of an act of Parliament or by the use of the Royal Prerogative (we will watch the proceedings in the Supreme Court with bated breath), we are fully engaged in the process of re-discovering the Gibraltar proposition and in building the strategy to get the message out that we continue to be open for business and plan to be so for a long, long time, despite what challenges we may face.

As a firm, we are spearheading a number of public/private initiatives to develop and deploy new solutions, solutions created in acknowledgment of the new opportunity that life outside the EU represents.

One thing is clear. In the words of Chief Minister, Fabian Picardo, "if pressed to choose between London, Britain and the UK on the one hand or Brussels, the EU and single market on the other, we know what our choice will be. We will choose our relationship with Britain every time."



Summary of political developments UK and Gibraltar

- Theresa May's vision of post-Brexit Britain was met with different reactions, the party faithful greeted it with 'rapturous applause' at the Conservative conference, but the outside world was less impressed with her plan. The reaction in the financial markets was "punishing": the pound fell to its lowest level since 1985. Foreign leaders were "appalled" by the Tories' xenophobic rhetoric, and May's own cabinet is reportedly split between supporters of a "soft" or "hard" Brexit. Source: The Week.
- Labour's shadow Foreign Secretary, Emily Thornberry, has highlighted the "vital" need for Britain to keep its doors open to trade and services with Gibraltar in the wake of the Brexit vote. Ms. Thornberry acknowledged the concern in Gibraltar following the outcome of the June 23 referendum, she stressed it was imperative that Britain and the Labour Party continue to show their solidarity with Gibraltar during these uncertain times. Source: Gibraltar Chronicle
- Cripps LLPs recent survey of more than 200 senior decision makers in the UK's South East businesses yielded some interesting results, 62% stressed the priority for the British government when negotiating the UK's withdrawal from the EU was maintaining access to the single market, 29% believed that regaining power for the UK's parliament and courts to determine its own legislation was a priority, and only 7% cited restricting free movement as a priority (2% cited other reasons). Source: Cripps LLP Blog
- A memo suggesting Theresa May's administration has no plan for Brexit was not commissioned by the British government and has no "credence", the Prime Minister's official spokeswoman has said. The document, prepared by accountancy firm Deloitte and



FOCUS ON

High Court Brexit Ruling

On Thursday 3rd November following a three day hearing the Lord Chief Justice Lord Thomas, Master of the Rolls Sir Terence Etherton and Lord Justice Sales were given the task of ruling on the historic Brexit challenge case of R (Miller) v Secretary of State for the Exiting the European Union [2016] EWHC 2768 in the High Court.

The question before the Court was whether, as a matter of UK constitutional law, the (UK) Government is entitled to give notice of a decision to leave the European Union under Article 50 without parliamentary approval and a vote from MPs.

The Lord Chief Justice, Lord Thomas, said "the court did not accept the argument put forward by the (UK) Government, as there was nothing in the 1972 European Communities Act to support it. In the judgment of the court the argument is contrary to language used by parliament in the 1972 act, and to the fundamental principle of sovereignty of parliament and the absence of any entitlement

Brexit High Court Judgement. Gina Miller was part of the party that brought the case against the government.

on the part of the crown to change domestic law by the exercise of its prerogative powers." By passing the European Communities Act 1972 parliament had decided to give effect to European Law. There has been nothing in the legislation to enable the (UK) Government (without a further act of parliament) to repeal this legislation and the prerogative powers of the (UK) Government do not extend this far.

It was noted that the decision was not decided on whether the UK should be in or out of the EU; it was purely on a point of law.

The legal dispute led by Gina Miller, a financial entrepreneur and anti-Brexit campaigner, focused on Article 50 of the treaty on European Union, which states that any member state may leave "in accordance with its own constitutional requirements" – an undefined term that allowed both sides to pursue rival interpretations. Ms Miller commented after the ruling saying: "It was the right decision because we are dealing with the sovereignty of parliament".

The government was given permission to appeal and the Supreme Court will hear arguments on 5th December.

obtained by The Times, warned that the current splits are delaying the government's ability to agree a negotiating strategy. Source: Gibraltar Chronicle.

- Mariano Rajoy was sworn in as the leader of Spain's new minority Conservative government. His popular party is returning to power off the two inconclusive elections that left the country in political limbo for 10 months.
- Spanish Congress has implicitly rebuked the actions of its former foreign minister over the issue of Gibraltar, describing them as

“unilateral.” “...the lower chamber's Foreign Affairs Committee approved a non-binding resolution asking the government to “establish an institutional framework on a state strategy for Gibraltar that should be reached by consensus.” Source: Gibraltar Chronicle

- Following months of speculation, it was confirmed that Spain's Prime Minister, Mariano Rajoy, would be replacing Jose Manuel Garcia Margallo with Mr Alfonso Maria Dastis Quecedo as Spanish Foreign Minister. In welcome news, it was noted that the new Spanish foreign minister, originally

from the nearby town of Jerez de la Frontera and a Eurocrat through and through, is expected to adopt a softer approach to the Gibraltar question than that of his predecessor's openly hostile tack over the last five years.

- Gibraltar “is part of the UK” and its particular circumstances will be reflected in Britain's exit deal from the EU, the UK's ambassador to Spain said this week, adding that co-sovereignty was not an option. Simon Manley made the comments in a wide-ranging interview on Brexit published by La Nueva Espana newspaper earlier this month.

BREXIT

Hard v Soft

Hard Brexit

- Making independent trade deals
- Losing full access to the single market
- Full control over immigration from the EU
- Applying new rules within the UK's own territory
- Reverting to World Trade Organisation rules

Soft Brexit

- Remaining close to the existing arrangements with the EU
- Not subjecting Britain's exports to border checks
- Accepting the “four freedoms”: movement of goods, services, capital and people
- Continued free access for EU nationals to live and work in the UK and membership of the European Economic Area



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