

Challenges for trustees in an unpredictable legal and planning environment

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Abstract

The industrialized nations are losing their economic power and dominance as a consequence of the irresponsible fiscal policies and exaggerated public expenditures that have marked the past. It can also be seen at the government level that laws and constitutions are being bent or disrespected under the pretext of the greater good. This current situation in the industrialized world poses a great threat to private wealth. Ensuring the protection of legitimate wealth for future generations is turning into a major challenge for trustees.

Once certain changes are irreversible . . .

From the middle of the nineteenth century up to very recent past, the three traditional highly industrialized regions—Western Europe, North America, and Japan—dominated the global economy. They were the regions with the most developed infrastructure as well as the most developed administrative and judicial systems. Because of their judicial systems, the rule of law was inviolable in these regions. Respect for the rule of law was the cornerstone of their economic and social prosperity and development. Of late, however, exactly these regions have been confronted with a number of changes. But what are the changes they are facing now?

The traditional industrialized nations are losing their economic clout and dominance. As a consequence of irresponsible fiscal politics and exaggerated public expenditures, these countries have accumulated extraordinarily high debts, which most of them cannot service anymore. This leads to a loss of reputation within the global context. The economic cure would be to reduce public expenditures and regulations (eg in labour law) in order to stimulate the economy. However, this step is very unattractive for the existing governmental and political institutions (such as political parties) and the established *class politique* because spending contributes significantly to the power of the person or institution which has the capacity to allocate funds. Thus unfortunately, instead of pursuing the aforementioned economic cure, the industrialized world is trapped in a labyrinth of new laws, additional regulations on a national and supranational level, and increasing governmental supervision. This in turn means additional public servants and controllers. Salary payments to that staff immediately increases top-line GDP, but that work is non-productive—it creates nothing. Consequently, the mutual trust between the class politique and the people is waning dramatically, even as the flood of laws and regulations makes adherence to the rule of law increasingly difficult. It is a known fact that an oversupply of money leads to inflation and thus to a disrespect of money. Analogously, the overwhelming rules and regulations, which are difficult for the public to understand, are leading to a disrespect of the rule of law.

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It can also be seen that, at the government level, laws and constitutions are being bent or disrespected under the pretext of the greater good (eg non-observance of Maastricht criteria, certain operations to save the European financial system, and the avoidance of a fiscal cliff in the USA). Another interesting aspect is the fact that, especially in the USA, persons and groups who demand a balanced budget and respect of the Constitution are stigmatized as *extremists*. In Europe, such persons and groups are considered strange and old-fashioned.

The massive flood of laws and regulations, combined with the disrespect of laws by governments, jeopardizes the legal system. In the extreme, this might lead to the end of the rule of law. At present, the industrialized world has little chance of achieving economic growth. Combined with the well-known fiscal problems, this will lead to increased unemployment, a further erosion of the efficiency of the welfare system, and hence to social unrest. Social unrest is the seedbed for populist politics. For the near future, the following scenario is easily conceivable: a combination of populist politics and disrespect of the rule of law.

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This current situation in the industrialized world is highly threatening to private wealth. It is even more dangerous because the industrialized countries were actually supposed to be a good example to the rest of the world! One knows that private wealth and the

preservation of wealth are crucial for a prospering economy and a stable social system. If the global economic situation teeters on the brink, the protection of wealth becomes even more important. Currently, one can see that there is not only a flight of capital to countries that people still consider trustworthy but also there is a physical migration of people. The physical move is not only limited to wealthy individuals, but it also includes scientists and highly qualified professionals. Of course, this could be considered normal in a competitive world. However, as the respect for achievements and private means and values is being eroded, private assets as well as the fruits of achievements are progressively being viewed as public wealth and thus subject to redistribution or bureaucratic waste. And what is the reaction of politicians? Instead of trying to improve the situation in their own country, they are increasing their pressure on successful countries with the intent of making those countries and their systems less attractive. Under the pretext of *international solidarity*, they consider their own people, if they emigrate, to be disloyal or even criminal, although they only want to have more personal freedom.

A new era for the trust industry begins

The main objective of the trust industry is to preserve wealth over generations. Considering the aforementioned tendencies, it is turning into a major challenge for trustees to ensure the protection of legitimate wealth for the future. At this point, however, it needs to be emphasized that challenge means opportunity. The opportunity for the trust industry within the global context is that, in the years ahead, the trust industry's know-how, experience, and services will become significantly more important. The trustees, as a part of their duty to ensure the protection of wealth, will have to consider all possible global challenges and opportunities. This includes, for instance, the proper selection of jurisdictions. Trustees will need to think long term and try to foresee long-term trends and developments in legislation, economies, and social cohesion.

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The intent of most founders of trusts and foundations is to protect a family's assets over generations. They furthermore want their descendants to feel responsible for the long-term means of well-being for the family. This need implies that a trustee must act in the best interest of a family; hence, it should be the trustee who empowers certain family members in order to uphold the founder's intention. As in previous times, when a trustee acted as the personal adviser to a family, they not only gave them professional advice in all legal matters but also supported family members methodologically in all aspects of estate planning, wealth protection, and transgenerational wealth preservation. It was and is a basic requirement for a trustee to:

- know the family personally;
- be aware of the strengths and weaknesses of certain family members;
- be acquainted with the family's short-term financial needs and the long-term family vision;
- know and understand the economic circumstances of the family; and

- have a good knowledge of the overall economic and political environment.

By doing so, a trustee is able to advise and support a family in good conscience. A trustee shall personify a certain *passion for service* and shall view *service* and *performance* as a privilege in attending to the family's prosperity.

Today, it will become again increasingly important for trustees not to be seen just as an agent but rather as a person of trust who supports the members of a family in their ability to take responsibility instead of being financially dependent solely on grants from the family trust. This means that, in addition to the basic principles mentioned at the outset of this passage, a trustee should also be capable of encouraging a family to achieve their goals by means of Family Governance,¹ as Family Governance is the key to gaining greater awareness of the importance of private wealth. Private wealth supports not only a family's autarky and the development of family members (eg through enhanced education opportunities) but also tends to be invested with a long-term view and comprises a private as well as an economic component. The investment of private wealth through a large number of decision-makers ensures that the investments are well diversified across the economy. And last but not the least, private wealth is also allocated to support charitable and philanthropic purposes and projects.

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1. Cf article from Francis von Seilern-Aspang, 'The Liechtenstein Foundation in the Context of Family Governance', 18 (6) *Trusts & Trustees*, 2012, 574–578.