



INDUSTRIE- UND FINANZKONTOR

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Transparency is misunderstood

consequences such as malevolence, envy, increased expectations or dangers through third parties. The justifiable desire for financial privacy and personal security derive from this. The economic, political and social instabilities in many regions of the world also contribute towards this. Therefore, the more «transparency» is misunderstood, the higher the demand for legitimate asset protection will be.

«Transparency» is a concept like many others. And yet we attach a special importance to this concept. Some states still try to undermine the financial privacy of their citizens by means of various monitoring mechanisms under the pretence of transparency. The reasons behind this are well-known.

However, too much transparency in financial matters makes one vulnerable and can have negative

Not all jurisdictions are equally suitable for comprehensive asset protection and for many this is a thorn in their side. Jurisdictions which acknowledge asset protection are characterised by legal and planning certainty, economic, political and social stability as well as an infrastructure and administration of justice with which asset protection can even be implemented. In the past years and to date a wedge has been driven between asset-friendly jurisdictions and public opinion, in which false arguments are deliberately brought forward and the so-called

«rich» are pilloried. But not only a specific group of people is entitled to asset protection, and asset protection is also not there to circumvent a national fiscal sovereignty or to conceal assets! No. Asset protection is there to safeguard assets early and legally against future loss risks such as expropriation or personal incapacity. Therefore, if someone grapples with asset protection, this testifies to foresight and attentiveness for the benefit of future generations and society.

Private assets never have merely a private, but always also an overall economic component! Precisely those private assets which are invested with a long-term focus and shall be retained contribute substantially towards the well-being of businesses, institutions and society as a whole – and thus ultimately towards the well-being of every individual.

Michael von Liechtenstein

The financial centre Liechtenstein

The world is in a phase of fundamental change. Many things which for decades were considered valid and functioned reasonably well are now being called into question or losing their «raison d'être». Examples of this can be found, amongst other places, in the Arabian world, Europe and the USA.

America, the land of unlimited opportunity – the country where the impossible becomes possible. The land where the global financial crisis had its roots. That country is now confronted with a budget deficit that is beyond the faculty of imagination and could pose life-threatening circumstances for an entire nation. Suddenly, the USA finds itself forced to set sharply defined limits, change previous attitudes and jump-start innovation. How well this will ultimately work out remains to be seen. What also remains to be seen is how strongly the events of recent years will impact America's leadership role in the world.

Changes are also on the horizon in Europe. The EU member states are handcuffed in a field of tension between integration and autonomy. The problem: because of, or perhaps despite, the strong desire for integration, all too often the needs of the individual are being ignored. Over the long run, this could result in negative consequences for this alliance of states. Moreover, some of the member countries are highly indebted and therefore being forced to introduce rigorous austerity programmes. That, in turn, will put the welfare state and social serenity to the acid test in Europe.

For months now, devastating scenes have been taking place in the Arabian world of a magnitude that one would have hardly considered possible. The populace is seeking freedom and self-determination more than ever

before. They are simply fed up with the unilateral way things are determined in their countries. How this battle will ultimately turn out is still unclear at present. But for certain is: once ignited, a burning desire for freedom is not so easy to extinguish. Political, economic and social instabilities are hallmarks of today's world and are provoking the call for more regulations and controls. And at the end of the day, everyone struggles to gain the most favourable positioning on the global stage.

But what does all of this have to do with Liechtenstein?

The pressure emanating from other states is systematically engulfing also microstates such as Liechtenstein. And today, those microstates are faced with the conflicting priorities of accommodation and independence. On one hand, it is essential that they become integrated into the international community of nations, but, on the other, their state sovereignty and self-determination should be preserved. Consequently, the Liechtenstein financial centre is also in a phase of transition. With the Liechtenstein Declaration of 2009, this transition was officially inaugurated. However, already years before that, Liechtenstein was a proponent of key international standards. All too often and perhaps conveniently, this fact goes unmentioned in most foreign media.

The challenge now is to position the Liechtenstein financial centre strongly in the arena of global competition. The conditions for that are good. For one, on the slippery slope of the global financial crisis, the Liechtenstein financial centre demonstrated admirable traction. And secondly, progressive steps are being taken to pave the way into the future for Liechtenstein's financial centre. Several examples: Liechtenstein corporate law stands out for its liberal basis and the diversity of

forms it recognises (e.g. foundations, trusts, «Anstalten», etc.). Then there is the fact that the Principality's newly adopted tax law provides for very competitive taxation which, amongst other things, encourages entrepreneurship. Moreover, the European conformity of the new tax law has been validated; hence the accusation of «ring fencing» is now off the table without any significant consequences in terms of the overall tax burden. Also, the Liechtenstein government is conducting intensive discussions with key countries and trading partners in effort to supplement the previously concluded TIEAs (Tax Information Exchange Agreements) with Double Taxation Treaties. And not least of all, the players in the Liechtenstein financial centre have decades of outstanding experience in the fields of wealth planning, asset structuring and asset protection.

The bottom line:

In a world that harbours many uncertainties, one in which the call for more regulations and controls is becoming ever louder and where the threat looms that self-determination will be suffocated – in such a world, it should come as no surprise that the desire for stability and trust is becoming stronger every day. Stable, competent and with an unmistakable profile – these are the distinctive hallmarks of the financial centre Liechtenstein.

Recognition of Liechtenstein foundations under civil law in Switzerland

Decision No. 135 III 164 of the Federal Supreme Court of Switzerland from 17th November 2009 marks an essential milestone in the recognition of Liechtenstein foundations (especially family foundations) under civil law in Switzerland.

Legal uncertainty prevailed with regard to recognition of Liechtenstein family foundations under civil law in Switzerland before 17th November 2009. According to Swiss legal opinion, the so-called «*unconditional maintenance foundations*» – i.e. foundations in which an economic necessity for support of beneficiaries is missing – were regarded as impermissible. However, in July 2007 with the entry into force of the «*Hague Convention on the Law applicable to Trusts and on their Recognition*» (Hague Trust Convention) Switzerland had already accepted the fact that foreign legal entities are to be fundamentally recognised in Switzerland if the Swiss legal system cannot offer any comparable products. Then on 17th November 2009 the Federal Supreme Court of Switzerland rendered the decision with which the legal capacity and actionability (consequently, the legal subjectivity) is fundamentally recognised whereby the corresponding legal certainty is given under civil law. From this it follows that a Liechtenstein family foundation can also be used by the Swiss market as an instrument for asset protection.

Asset protection originates through the principle of asset separation. For instance, the founder separates himself from a specific asset by endowing it upon a Liechtenstein family foundation. This asset is then protected against possible liability claims by third parties, any unauthorised access as well as political or economic instabilities. With asset protection a founder fundamentally intends to maintain a specific asset over the course

of several generations and to safeguard its substance.

Asset protection represents an essential focal point of the Liechtenstein Foundation Law. The Liechtenstein Foundation Law fundamentally differentiates between private-benefit and common-benefit foundations. For instance, in further succession a founder can preclude the enforcement of beneficiary rights (of entitled beneficiaries or prospective beneficiaries) in the statutes within the familial purpose in cases of attachment proceedings, a compulsory execution or a bankruptcy. Furthermore Liechtenstein law recognises a period of at most two years within which possible rights to a compulsory portion can be asserted. The principle of double connection also applies, whereupon the contestation of a gift due to the reduction of any compulsory portion is only possible if this right to a compulsory portion is not only permissible in the homeland of the heirs (e.g. in Switzerland), but is also permissible in accordance with the applicable law for the acquisition procedure (i.e. in Liechtenstein). Furthermore, if a founder has not reserved any right of revocation or amendment (which is normally the case) there is no possibility for contestation on the part of the creditor.

From a fiscal perspective, an asset is no longer attributed to a founder if he has separated himself from the asset. The same principle also applies to beneficiaries if no specific beneficiaries are named in the bylaws of the foundation. In such a case one speaks of a Liechtenstein family foundation in the form of a discretionary foundation. The Liechtenstein discretionary foundation differs from the other forms of foundations through the arrangement of beneficiary rights. For instance, the founder stipulates the class of beneficiaries during the formation of the foundation. The class of beneficiaries cannot

be amended by the foundation council. The foundation bodies decide from time to time and at their own discretion on a possible allocation to one or more beneficiaries from this class of beneficiaries. Consequently, a legal entitlement to a benefit only arises with the corresponding, valid resolution through the foundation council. Accordingly, fiscal relevance in many countries only appears if a discretionary beneficiary has actually received an allocation from the foundation. A discretionary foundation consequently enhances asset protection and the discretion of a foundation.

Conclusion:

Asset protection is important in a dynamic market environment with much uncertainty. The Liechtenstein Foundation Law provides comprehensive asset protection, and in particular the Liechtenstein discretionary foundation is well-suited for asset protection. As a result of the decision by the Federal Supreme Court of Switzerland of 17th November 2009, the Liechtenstein family foundation can also be used by the Swiss market as a recognised instrument for asset protection.

Client Accounts Departement: Efficiency and Analysis



Markus Johann
Director Client Accounts Department
Member of the Management Board, Deputy Director



Dear Reader

Wealth means freedom and obligations at the same time. Long-term asset maintenance includes the duty to take all measures which safeguard financial well-being. Industrie- und Finanzkontor endeavours to help clients secure financial well-being by means of *growth* and *protection*. The Client Accounts Department at Industrie- und Finanzkontor is an important component in this equation and the field of activity is extensive.

Our activities include classic financial accounting: i.e. payment transactions, securities accounting, financial statements or balance sheets and profit and loss accounts as well as *cash flow* calculations. The numerical preparation occurs in accordance with customary criteria within the bounds of commercial and tax law.

We also offer the client further services in the form of analyses. For example:

- Performance calculations.
- Strategic *cash flow* management.

- Cost accounting for comprehensive overviews.
- Liquidity planning and budget preparation for cost monitoring.
- Evaluation of securities portfolios as an instrument for negotiations.
- Support in tax planning in cooperation with our experts.

With our work we strive to make income and expenditures, credit balances and accounts payable as well as profits and losses transparent. In this way the client can determine the profitability of investments or the potential for optimisation. We strive to offer every client a customised support service at a reasonable cost.

The Client Accounts Department at Industrie- und Finanzkontor is not comparable with a classic *back office*. On the contrary, the Client Accounts Department at Industrie- und Finanzkontor provides an important interface and must be efficient. Our goal is to work beyond the legal requirements and to render all additional accounting-related services for individual consulting services.

We attach great importance to the fact that we not only portray an asset situation numerically, but also make it comprehensible and tangible for clients in order to provide certainty that assets are well managed within the framework of the objective.

The goal of Industrie- und Finanzkontor is to identify a client's real needs and to safeguard financial well-being. The Client Accounts Department strives to make the abstract nature of accounting coherent and comprehensible.

Markus Johann