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Trust management agreement property and prospects for its development in the Republic of Uzbekistan

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Abstract

The article deals with issues related to the contract of trust management of property and problems of its development in the Republic of Uzbekistan. Attention is drawn to the stage of development of the legal basis of the contract of trust management of property in the world and in the Republic of Uzbekistan. Mention the elements that reflect the trust, according to the author "in the clear", given the conclusion that the civil law point of view, trust management associated with the introduction of common law system the rules of the Institute of trust with adaptation to the system of continental law, and its basis is an agreement involving two or three parties.

Keywords: trust, trust management, legislation, property, legal system, owner, element, law, contract.

Introduction

The trust management institution and the asset trust agreement are considered to be essentially interrelated categories. Article 850 of the Civil Code of the Republic of Uzbekistan lists the grounds for the establishment of trust management of property and, first of all, it states "the agreement of trust management of property concluded between the founder and the trustee" ^[1]. Although other facts are given in this article as grounds for the emergence of trust management, a contract should be concluded between the founder and the trustee for relations of trust management. For example, when appointing trust management of property on the basis of a court decision, it is indicated who is the founder of the management, trust manager and beneficiary, and also that the property should be managed in the interests of the beneficiary, in addition, the conclusion of an agreement between the parties is provided. In such situations, trust management also applies to other grounds for its appointment. So, when trust management is appointed "by the decision of the guardianship and trusteeship body on the determination of trusteeship over the property of the person over whom trusteeship is established", an agreement may also be concluded between the guardianship authority and the guardian. This provision was provided for in article 35 of the Law of the Republic of Uzbekistan dated January 2, 2014 No. 3PY-364 "On guardianship and trusteeship" ^[2].

If you pay attention to the stage of development of the legal foundations of the asset trust agreement, you need to pay attention to the laws of England. Since trusting property, the institution of a trust in English, initially arises in England, a series of laws were subsequently passed on the institution. In particular, the Law of April 9, 1925, "On Trustees", adopted in England and Wales, provides rules regarding the coordination of trustees, in the Act of 1996 "On Real Estate Trust and the Appointment of Trustees", Laws of 1987 "On the recognition of trusts", of 2000 "On trustees" provide important rules on trust management of property.

Main part

Subsequently, this institution began to be applied not only in the countries of the Anglo-American system of law, but also in the countries of continental law. In the 20s of the last century, the rules regarding trust management were also reflected in the legislation of such countries as Russia, Germany, Japan, the Netherlands, Italy and others. But, the institution of trust management in these countries was not expressed in the traditional "pure" form. Since, in legal systems formed on the basis of Roman law, the institution of trust management of

Property was introduced into the legislation in a unique way, proceeding from other approaches and legal mechanisms.

Today, most researchers acknowledge that the following four elements are required to reflect the trust “in its purest form”:

- a) Trust is governed by fair law;
- b) The right of the beneficiary to the property is ensured by The right on the basis of fair right;
- c) The obligations of the trustee are vested in fair law;
- d) The obligations of the trustee are trusted by nature (based on trust, i.e. fiducation) ^[4].

But, the legal definition of a trust is not given either in the laws of England or in the judicial practice of this country. Most English authors give similar definitions of this concept. So, in the opinion of E. Zhenks, the trustee conscientiously and voluntarily assumes obligations, and the law, if such an obligation is accepted, imposes the obligation to fulfill it, that is, conscientiously own and manage the property in the interests of another person or persons ^[5].

According to A. Underhill, a trust is an obligation, in accordance with it one person (trustee) must manage the property transferred to him by another person (founder) in the interests of a third party (beneficiary) who has the right to demand enforcement ^[6].

Judge Haighton notes that “a trust governed by English law is an obligation under the law of justice, and the founder and beneficiary have the right to demand that the trustee faithfully fulfill the obligation to manage the property” ^[7].

It is worth emphasizing that the asset trust agreement is a relatively new institution for the industry and science of civil law of Uzbekistan. In addition, this institution is relevant in the face of differences in the understanding of property rights in the continental and Anglo-American systems of law, as well as the harmonization of legal systems at present. At the same time, in the Anglo-American system of law, the determination of the positive and negative features of a trust agreement, called a trust, and included in the system of substantive legal institutions, located in the system of contractual constructions of continental law, its introduction into the legislation and law enforcement practice of Uzbekistan is one of the civilistic tasks Sciences.

Most jurists who have studied the history of the trust institute put forward the idea that trust management of property appeared in the 12th-13th centuries in England. It is known that land has always been transferred only to the heir on the basis of inheritance. Overcoming various obstacles to the allocation of land for other purposes created considerable problems. As a result, a trust institution arose to radically “circumvent” these barriers and not violate established standards ^[8].

In the legal literature ^[9], it can be noted that the development of trust management of property was divided into four stages:

The first stage, the use of special land rights. This right appeared after the Norman War (XI-XII century). In the law of 1376, norms were introduced that the lands of the debtor could be seized by the creditor and transferred to a third party for trust management of property, in the law of 1391 - that if the land owner transfers them to trust management of religious and other corporations, other individuals, his right to land terminates.

The second stage, refers to the beginning of the XV century, as a means of combating the feudal lords, the Lord Chancellors recognized the right to trust the property of others. During this period, the right to “trust” is protected by the court. All disputes arising from the relationship of “trust” were resolved by the courts of justice. The property, mainly land plots were divided into two parts, that is, the legal property owned by the owner and the property of the trustee — the property of “justice”.

The third stage, in England in 1536 the Law "On trust management of property" was adopted. After the adoption of this law, all disputes arising from the “trust” passed from the “justice” courts to the courts of general jurisdiction. But, the execution of the law remained the responsibility of the Lord Chancellor. In turn, the Lord Chancellor conducted business on the basis of the law of “justice.” The general courts still relied not on the rule of law, but on primary law - the right to “justice.” Only by the XVII century, the proceedings on began to be conducted in accordance with the provisions of this law.

The fourth stage is in the XVII century. At this time, after the abolition of the feudal system (1660), the relations of “trust” began to be applied to other property objects besides land plots. The “trust” has become more modern and the limits of the law of “trust” have been expanded.

The above steps indicate the absence of a relationship between the institution of trust management of property and Roman law. This institution arose directly during the development of England, on the basis of the actions of officials aimed at regulating the relations between the estates existing in society.

At the present stage of development, in our opinion, trust management of property can be appointed for various reasons, including a will, an agreement. On these grounds, the interests of the person trusting the property and the owner may be provided. In determining trust management of property, the owner transfers to the person managing the trust property all rights associated with this. The owner can determine the goal of management for the trustee or transfer the right to freely manage the property, indicating the receipt of any income.

In English-American law, the real content of the concept of trust management of property is that the person transferring the property to trust management - the founder - is the owner, and the person whose interests he pursues is the beneficiary. In this case, the owner transfers his property to another person for management, pursuing the interests of the beneficiary. In this case, the owner may be the beneficiary.

There is no concept that a specific person should act as a beneficiary. Beneficiaries can be an unlimited number of persons. Such “trusts” are considered public trusts. Otherwise, they can be considered trusteeship trusts. For example, trusts can be assigned during a health or cultural event. If the interests of a particular person are pursued in a private trust, the public trust, on the contrary, is applied in the interests of the public interest ^[10].

“Trust” is also used in forming a portfolio of securities, organizing the activities of pension funds, insolvent organizations (bankrupts). In addition, holding companies are organized based on trust relations. These companies have the status of a legal entity, they are engaged in the transfer of shares of other companies to a person for trust management of property, they are in charge of the activities of these companies.

There are constructive forms of trust management. That is, in practice the concept of special or special trust is applied. We can observe a similar form of trust in the relationship between the principal and the agent, the company and its directors, members of the partnership, the trustee and the lawyer, guardian, guardian, etc. In trust management, one person, acting in the interests of another person, is able to receive income for his score ^[11].

The property transferred to the trust must be managed separately from the property of the trustee. The obligation to compensate the harm caused to the beneficiary as a result of improper performance of his duties rests with the trustee. In case of abuse of authority, the issue of criminal liability of the trustee may also be considered.

Upon the achievement of the goals set upon the organization of the trust, the expiration of the agreed period of validity, the death of the beneficiary, and other cases, the relationship of trust management of property shall be considered terminated, the contract shall cease to be valid. Cases of termination of transactions are indicated in the contracts.

The trust institute has a concept of dividing property into separate parts in the course of trust management. So, part of the property for management and use belongs to the trustee, and the second part, that is, the income part and the profit received as a result of using the property, belongs to the beneficiary.

Canadian law is based on the Anglo-American system of law, but there is no application of the concept of separation of property. In particular, the civil law of Quebec Canada does not recognize trust relationships. Articles 1260–1370 of the Civil Code of a given province [12] describe in detail the relationship of fiduciation (based on trust) and the management of another person's property. At the same time, the founder allocates his property or part thereof, thereby creating other property. Allocated for specific purposes, this new property is transferred to the fiduciary manager. The fiduciary manager takes this property, uses it and manages it. In relation to this property, the founder and the fiduciary will not have any property rights (Articles 1260-1261 of the Quebec Civil Code).

Fiduciation is established for personal or public interests. The establishment of a fiduciary for personal interests should be understood as pursuing the goals of honoring the memory of the deceased, other personal interests, earning income for members of a pension fund, or shareholders, employees, members of a company or association. When a fiduciation is created in the public interest, public interests or public goals are provided. For example, income received from fiduciation may be spent on future cultural, religious, educational or scientific events. In this case, the receipt of profit by the founder or fiduciary, or the management of the enterprise are not determined as the main goal (Articles 1266, 1268-1270 of the Quebec Civil Code).

The fiduciary manager does not have title to fiduciary property. He uses only the right to use other people's property. The fiduciary manager maintains documentation related to the management of property on his behalf, controls property, takes measures for the purposeful storage of property (article 1278 of the Quebec Civil Code).

The introduction into the Anglo-American legal system of certain conflict of laws rules can be seen in addition to Quebec civil law in the laws of other states that are not based on the Anglo-American legal system. For example, if you pay attention to German law, here you can also note the

regulation of legal relations between the owner and the person managing his property. "In such relations, the owner - this may be the owner of the property or the person managing the property of others. Their relationship is governed by a contract concluded between them or other acts. Income derived from property management activities is distributed between the owner and the person entrusted with property management. This form of relationship is used mainly when the owner-founder transfers the property to the trustee taking into account the legal status." For example, the owner, being a foreign citizen, does not have the citizenship of the state where his property is located, or does not have the ability to work on its territory, and accordingly cannot manage his property. In this regard, he entrusts the management of property to a trustee ^[13].

As a conclusion, we can say that in the Anglo-American system of law, in contrast to the continental system of law, the principle of separation of property is applied. In this case, the right of ownership can be divided between the owner and the person with whom he enters into an agreement, as a result of this situation to some extent may threaten the ownership of the owner. Unlike Anglo-American law, the principle of unity and indivisibility of property rights is applied in the system of continental law, which to a certain extent ensures the priority of the rights of the owner. But, recently, the harmonization of legal systems of the whole world has had a sensitive effect on all legal systems of the world, this situation indicates the need to study and study legal mechanisms similar to a trust in the Anglo-American legal system.

Conclusion

At the stage of the consistent development of the provisions regarding the trust management agreement, it should be said that certain features of this agreement were used in some civil law constructions, including in such civil law relations as "recognition of a citizen as missing", "custody and guardianship", "executor of the will", but, in essence, the purpose of the appointment and the procedure for the implementation of such structures was mixed with some administrative and legal elements. From the civil law point of view, trust management is connected with the implementation of the rules of the institution of trust from the common law system with adaptation to the continental law system, and its basis is an agreement with the participation of two or three parties.

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