UDC 341

INSTITUTE OF TRUST: INTERNATIONAL LEGAL ASPECT

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Historically, the most developed property management mechanisms exist in Western Europe (Germany, France, Great Britain, Spain), Japan, as well as in the USA and Canada.

The processes of property management that take place in developed countries are very similar. There are three main models of property management at the state level: Anglo-American, German and Japanese.

Within the framework of the Anglo-American model, which was presented in many countries, a clear tendency towards the transition of state-owned facilities into national trusts has recently been traced [1].

The most common understanding of a trust is an agreement (transfer of ownership to a specific person, who manages it in favor of another person).

There is also another understanding of trust as an institution of trust (transfer of ownership by the owner to the trustee) or as a specific person (monopoly, company, organization). According to the most interpretations of the trust, it is the transfer of ownership by the owner to another trustee in management of property in favor of other persons.

Despite the fact that the interpretations of the trust are different, its essence is leads to the above-mentioned defection, but in different forms of interpretation either contract, agreement, power of attorney, or a document that provides the appropriate transfer, either a form of representation, or a company, organization, or a proxy that performs the relevant functions.

Usually any objects of civil rights can be defined as trust property, with the exception of cases, where the law directly establishes that a particular object cannot be transferred to the trust. For example, the laws of some US states prohibit the alienation of the right to compensation for damage caused to human health as a result of tort.

Anglo-American law and doctrine proceed from three basic requirements for property transferred in trust:

- the founder of the trust must have rights to the property transferred to the trust, including the right to alienate this property;
- property should not be excluded from property turnover, that is, it may be in private ownership and alienated;
- the property must be capable of identification and must be precisely defined.

As already mentioned, the subjects of relations, arising from the institution of trust, are the founder of the trust, trustee and beneficiary. The founder of the trust can act as a beneficiary or trustee, and also the trust can be established in favor of an indefinite number of persons, such a trust is called public (public-trust), in contrast to the usual private trust (private-trust) established in favor of specific individuals.

The beneficiary bears almost no liability for the trust. However, if the beneficiary incited the trustee to violate the conditions of the trust and thereby caused damage to him, the court may demand compensation from the beneficiary for losses incurred by the trustee.

When establishing a trust, the founder must directly name the beneficiary (s), otherwise, define them. The absence of a beneficiary of a private trust entails the invalidity of creating a trust.

Speaking about the legal status of the beneficiary, it should be noted that the law of England and the USA, paying great attention to the regulation of the powers of the trustee, contains a small number of provisions governing the rights of the beneficiary.

The main right of the beneficiary is the right to demand income from the trustee from managing the property transferred to the trust. If the beneficiary refuses to receive the benefit (income) on the trust property, the trust ceases, since the trust cannot exist without the beneficiary.

The principal obligation of the trustee consists in the accurate execution in the interests of the beneficiary of the instructions of the constituent act containing the expressed intention of the property owner to establish trust. The constituent act is a document containing the grounds for the trustee to manage the property, as well as a document that defines the functions of the trustee and instructions that he must strictly follow.

From the English law view, the activities of a trustee should be free of charge, although deviations from this rule are currently possible, since often the functions of a trustee are performed by specially created state institutions (Public Trustee) that operate for a fee. In the USA, the opposite is true, and regardless of whether this condition is provided for by the provisions of the articles of incorporation or not, the trustee has the right to payment of remuneration to him.

Once a trust has been established, its conditions regarding the beneficiary, the subject of the trust, management methods, etc., are final and unchanged. The party to the trust, as a rule, has the right to unilaterally change the terms of the trust only if this is expressly indicated in the document on the establishment of the trust.

Currently, in the countries of Anglo-Saxon law, the institution of fiduciary ownership (trust) is considered as the universal legal title of the target property right that arose under the Law of Equity based on the concepts of fiduciary relations and divided property.

This institution is very often used in England, as it can serve for very different practical purposes: to protect the property of legally incapable persons, married women, and to liquidate the inheritance; often this form is used both for organization and for the activities of charitable and other institutions [2].

Today, the trust has become especially significant, because its use avoids the truly catastrophic consequences that arise in the family when significant assets inherited.

There cannot be one of the forms of representation in trust. This historically incorrect approach cannot explain some aspects of this issue. Trust is not something akin to a power of attorney, but it is a certain disintegration of the right of ownership, some elements of which belong to the manager, and others to the beneficiary.

The peculiarity of the trust as another form of holding property is that the property of the trust does not belong either to the founder (he loses the right to own it from the moment the property is transferred to the manager), or to the manager (he only manages this property and is the formal holder of the title to the property), or to the beneficiaries until the date of termination of the trust.

In the countries of the Romano-German system of law over the past century, there has been a desire to adapt the legal construction of trust to their domestic law, to regulate relations related to the transfer of property to a trust, using related institutions of continental law. In this case, as a rule, the fundamental feature of the trust is overlooked, namely, the splitting of the right of ownership of property transferred to the trust into a title under a common law (title) and a title under a right of justice (equitable title). Romano-German law does not know such a "splitting" of property rights.

The trust institution serves to achieve a variety of goals, from preserving and transferring property from generation to generation within the family, to building complex financial schemes. According to Madame S. Godeshaw, who is one of the most staunch adherents of recognition of trusts in the Romano-German legal system, "the goals that the trust leads towards are as limitless as the imaginative lawyers can be."

Literature

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