

## **TRUSTEESHIP AS AN ASSET MANAGEMENT METHOD**

### **Doctoral thesis summary**

In this doctoral dissertation will be analyzed the management aspects of trusteeship present in the Polish legal system. The main objective of this paper will be answering to the following research questions:

- 1) What is the legal nature of trusteeship agreement and what are its specific elements?
- 2) What may be the subject of fiduciary duty agreement?
- 3) Do the fiduciary relationships require specific regulation in the statutory law?

In order to answer above mentioned questions, it will be necessary to provide answers to the following auxiliary questions:

- 1) Is trusteeship allowed under Polish law?
- 2) Which trusteeship model is appropriate for the Polish legal framework?
- 3) To which known legal constructs the trusteeship is or may be applicable?
- 4) How are the interests of the beneficiary of fiduciary relationship protected?

The reliable analysis of above mentioned questions will help to outline the basic rules that apply to managerial fiduciary relations.

The research for this dissertation was carried out primarily using the dogmatic method, which analyzed legal acts, jurisprudence, and the achievements of legal science in the field of fiduciary duties. The historical-legal method was also used as an auxiliary – primarily in the assessment of the sources of trust law, as well as for some aspects related to the protection of the beneficiary's interests - and the comparative law method, which was used to correctly select the fiduciary model, which is applicable to the Polish legal regime.

This paper was divided into six chapters. The Chapter 1 deals with the issue of defining trusts by jurisprudence and doctrine. Then, the issues related to the admissibility of trusts based on the freedom of contract were discussed, including the statement of trust for sham activities, the clause of civil law circumvention, the clause against tax avoidance and limitations resulting from property and inheritance law. Finally, the trust is compared with other civil law institutions which, *prima facie*, may be of a similar nature.

The Chapter 2 discusses the historical origins of the fiduciary relationships. Four theories of the origin of modern fiduciary activities that appear most frequently in the literature on the subject were discussed. That is, Roman law and the institutions of *fideicommissum*, *fiducia cum creditore contracta* and *fiducia cum amico contracta*, medieval canon law, Islamic law with particular emphasis on the *waqf* institution and Salic law that created the institution of *salmannus*. The purpose of this chapter is to show that the trust is one of the oldest legal institutions and to present the similarities between its historical and contemporary understanding.

The Chapter 3 is dedicated to the models of fiduciary relationships present in various legal systems. The Anglo-Saxon model is presented on the example of trust structure and international legal regulations concerning this issue, as well as the Romanesque model and the Germanic model. In addition, the trust institutions historically known in Poland were briefly discussed. Addressing the above issues is intended to indicate the model of trusteeship appropriate for the Polish legal system.

The Chapter 4 takes a detailed look at the managerial fiduciary agreement. The provisions of the statutory law applicable to such an agreement were discussed in particular. Then, the focus was on the general characteristics of such an agreement, mutual obligations of the parties and the principles of terminating such a legal relationship. Issues related to the legal form of the contract were also raised. The purpose of such analysis is to reconstruct the fiduciary management agreement by indicating the elements that should be included in it in order to ensure legal security for all parties and to ensure the certainty of legal transactions.

The Chapter 5 concerns the practical use of trusteeship in the applicable provisions of statutory law. The first part recreates the catalog of things and rights that may be the subject of a trust. Then, the investment institutions known to the Polish legal system, once based on trusteeship, or based on it today, were discussed. This includes investment funds, mutual funds (known as fiduciary funds), collective securities portfolio management and an asset management agreement that includes one or more financial instruments. The next step was to present banking fiduciary activities, i.e. fiduciary account, housing fiduciary account, escrow account, as well as activities performed by custodian banks. The next part focuses on the relationship between inheritance law and trust. For this reason, the institution of the executor of the will, the

succession administrator was analyzed, contracts for inheritance were discussed, and the issues of the proposed regulation concerning a family foundation were discussed. The last part of this chapter concerns trusteeship based on statutory law provisions, i.e. the relationship between the State Treasury and certain state agencies, i.e. National Center for Agricultural Support and Military Property Agency. The analysis in this chapter will show the scale of the possibility of using trusteeship as well as the variety of goals that can be achieved through the use of trusteeship.

The Chapter 6 deals with the protection of the interests of the parties to the trust relationship. The civil law methods of protecting the interests of the beneficiary of a trust, raised in the literature, were analyzed in detail. Next, the issue of the trustee's criminal liability, which may be incurred in the event of breach of the provisions of the trust management agreement, was discussed. The last part discusses the administrative obligations related to the conclusion of a trust management agreement. They concern the notification of the beneficiary to the Central Register of Beneficial Owners base on anti-money laundering regulations and the possible notification of the trust agreement as the intention of concentration, which is subject to preventive control by the President of the Office of Competition and Consumer Protection. Both of these obligations effect on the anonymity of the beneficiary of the trust, and therefore affect the scope of protection of its interests. The purpose of the analysis in this respect is to indicate the scope of protection measures that are available to the parties to this legal relationship, to demonstrate their possible weaknesses and to present *de lege ferenda* how their effectiveness can be improved.

The conclusions of the analysis were divided in to two parts, conclusions *de lege lata* and conclusions *de lege frenda* in order to proper organize the answers to the research questions given in the Introduction to this dissertation.

**Keywords:** trust, fiduciary duties, asset management, contract, civil law, contract law.