

Artículo de investigación

Fiduciary ownership in ukrainian legislation

ДОВІРЧА ВЛАСНІСТЬ У ЗАКОНОДАВСТВІ УКРАЇНИ

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The article is devoted to the study of the specifics of the institution of fiduciary ownership in the legislation of Ukraine. Using the method of comparative analysis, the differences between the institution of fiduciary ownership, which is typical for the countries of the continental system of law, and the institution of trust, which exists in the countries of Anglo-American law, are revealed. The origins of the institution of fiduciary ownership since Roman times have been investigated. It is established that the foundation of the trust and fiduciary ownership can be considered the Roman institution of *fiducia*. The features of legal regulation of fiduciary ownership in accordance with the civil legislation of Ukraine are characterized. The requirements, which in some cases are imposed on the trustee (fiduciary owner) are determined. Attention is drawn to the shortcomings of the legal regulation of fiduciary ownership in Ukraine. The main problem is that the concept and legal nature of fiduciary ownership in Ukraine are still not defined in a clear manner. It is proposed to take into account the concept of *fiducia*, recently adopted in the legislation of the Republic of Moldova. This concept is most consistent with world practice and the needs of a market economy.

Keywords: Beneficiary, *fiducia*, fiduciary owner, fiduciary ownership, founder of fiduciary ownership, trust, trustee.

Анотація

Статтю присвячено дослідженню специфіки інституту довірчої власності у законодавстві України. За допомогою методу порівняльного аналізу виявлено відмінності інституту довірчої власності, який є типовим для країн континентальної системи права, та інституту трасту, який існує у країнах англо-американського права. Досліджено витоки інституту довірчої власності ще з часів римського права. Встановлено, що основою трасту і довірчої власності можна вважати римський інститут *фідучії*. Охарактеризовано особливості правового регулювання відносин довірчої власності за цивільним законодавством України. Визначено вимоги, що в окремих випадках висуваються до довірчого власника. Звертається увага на недоліки правового регулювання відносин довірчої власності в Україні. Основна проблема полягає в тому, що поняття та права природа довірчої власності в Україні досі залишаються недостатньо визначеними. Запропоновано взяти до уваги концепцію *фідучії*, нещодавно прийняту у законодавстві Республіки Молдова. Така концепція в найбільшій мірі відповідає світовій практиці та потребам ринкової економіки.

Ключові слова: бенефіціарій, довірча власність, довірчий власник, траст, установник довірчої власності, *фідучія*.

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Introduction

The transition to a market economy in Ukraine was accompanied by a significant reform of civil legislation. During this process, special attention had to be paid to ensuring effective management of property, since it was the area where problems arose after refusing from the administrative-planned management system. The solution was found by referring to the experience of foreign countries in property management issues. As a result the institution of fiduciary ownership appeared in the legislation of Ukraine.

The introduction of the institution of fiduciary ownership in Ukrainian legislation was initially criticized. Objections to the institution of fiduciary ownership are due to the fact that some scholars consider it similar to the Anglo-American institution of trust, which, according to critics, cannot exist in the continental system of law. However, there are a number of arguments that refute the objections raised against fiduciary ownership. First, fiduciary ownership in continental law, although similar to the trust, has its specifics. Secondly, the possibility of the existence of fiduciary ownership settles on the history of its occurrence. It is known, that the basic principles of the institution of trust can be found in Roman law, which formed the basis of almost all modern European legal systems. The practice of European countries, such as France, Romania, where the institution of fiduciary ownership has been introduced recently, testifies to the advantages of this institution.

Theoretical framework

In terms of the active development of entrepreneurial relations, the emergence of numerous regulations that complicate the orientation of legally incompetent citizens in the economic and legal field, and the creation of wider opportunities for owners to manage property, the appeal to fiduciary ownership in Ukraine is most urgent. This institution provides an opportunity to delegate management of one's affairs to a professional, having endowed him with broad powers, practically equal to the powers of the owner. Besides, fiduciary ownership was from the very beginning focused not just on temporary momentary benefits, but on the establishment of long-term relationships for getting income from property. Thus, the use of this institution is also intended to ensure the stability of civil relations.

The relevance of the study of the fiduciary ownership is also predetermined by the novelty

of this legal construction in Ukrainian legislation. This raises a number of problems, both scientific and practical, related to the interpretation of legal provisions intended to define fiduciary ownership.

Despite the fact that fiduciary ownership was investigated by many scholars (R. Maydanik, A. Jdanov, A. Onufrienko, S. Slipchenko), many issues in this area remain debatable. In particular, the question of the origin of the institution of fiduciary ownership remains controversial; there are problems in delimiting the norms of fiduciary ownership with similar legal institutions, in the characterization of the agreement, on which base the relations of fiduciary ownership are established. The unresolved issue is the fiduciary nature of such agreement. Discussions revolve around fiduciary money management. Certain improvements require provisions on the status of subjects of fiduciary ownership relations.

Methodology

General and special scientific methods were used in the process of research. Legal nature of fiduciary ownership was considered on the basis of the laws and scientific literature analysis. Methodological basis for study was a dialectical method that allowed to review the issues in their development and interconnection.

A historical method was used to determine the origin of fiduciary ownership and its possibility to exist in frames of continental legal system. A comparative method was used for revealing differences between Anglo-American institution of trust and fiduciary ownership, which is typical for Romano-Germanic legal family. The essence and specifics of fiduciary ownership was revealed using dogmatic and legal method.

Results and discussion

Fiducia in roman private law as basis for modern institute of fiduciary ownership

The roots of "trust" along with the idea of "divided ownership" can be found in such an institution of Roman law as fiducia. Gai (Gaius, 2, 60) distinguishes two types of fiduciary transactions: with a friend and with a creditor - fiducia cum amico and fiducia cum creditore (contracte). In the first case, fiducia executed storage, loan, assignment agreements; in the second, it served to establish a real guarantee of the obligation. But this functional differentiation

is secondary: the structure of the contract is the same in all cases. The person who received the thing (fiduciary, *fiduciarius*) becomes a kind of trustee and undertakes, under certain conditions, to return the thing to the creditor (fiduciary, *fiducians*) (Dojdev, 2003; Maydanyk 2000).

Fiduciary relationships originated in *jus civile*. The *fiducia* was mentioned first in the laws of the pre-classical period of the evolution of Roman law (Maydanyk, 2000). Subsequently, *fiducia* disappeared, as a means of securing obligations it was replaced by a pledge (Sanphilippo, 2007). In the Digest, the word "*fiducia*" is replaced by "*pignus*" (Dojdev, 2003).

At first, "fiduciary mancipation" was based only on the good faith of the person to whom property was transferred through this procedure, but on the terms of "*fidei fiduciae causa*". This meant that the purchaser of the item should have used it only for a specific purpose and in case the conditions stipulated by the agreement occur, he should return it to the mancipient. In other words, the case was transferred to "faithful hands". At the same time, the creditor, as the owner, had the right to dispose of the fiduciary thing. He could get any benefit from such a thing. But as a result of the fiduciary contract (*pactum fiduciae*), the ownership of the thing was transferred to the creditor not completely, but only for a specific purpose (to secure the obligation, use or storage of the thing), that is, formally. Subsequently, *pactum fiduciae* was secured by a lawsuit - first praetorian, and then civil - *actio fiduciae*, after which *fiducia* turned into a real contract (Pokrovskiy, 1999).

At its core, fiduciary relationships were a sham transactions, by which the owner transferred the right of ownership to the acquirer, regardless of the purpose for which such a transfer was made. In this regard, fiduciary contracts were used to formalize various kinds of relations. Based on the fiduciary contract, it was possible to transfer a thing for hire, having agreed with the "employer" to resell (remancipate) things after a certain time. In the same way, a thing could be fiduciary deposited, etc. (Maydanyk, 2000).

Thus, fiduciary relationships were a conditional deal. The agreement that things are being sold or otherwise transferred fiduciary meant that the new owner promises to be the owner only for a specific purpose, and is morally obligated to return them to the property of the former owner after the goal of the agreement is reached. Such purpose could be the use, storage of things or the provision of obligations to the creditor. In the

first case, fiduciary relationships were formalized using *fiducia cum amico*. In this agreement, any thing could be transferred in the property with obligation to keep this thing and return it intact.

The fiduciary, which was to ensure the interests of the lender, was called *fiducia cum creditore*. The debtor transferred by means of mancipation (or in *jure cessione*) a thing into the creditor's ownership to secure the debt, but on condition that in case of fulfillment of the obligation secured by the pledge, the pledged thing should be transferred back to the debtor's ownership (Puhan, 1998; Rogoja, 2005).

The obligation of the fiduciary to return the thing after reaching the goal of the transaction, at first was just moral and was ensured only by the credibility of the creditor. As N. Slyusarevsky notes, at the time of the appearance of fiduciary transactions, ancient Roman law did not consider them legal just as other informal agreements, and the participants in such transactions were not able to protect their rights in court if one of them violated the terms of the agreement (Slyusarevskiy, 1998).

Sanctions for the non-performance of such agreements were moral, not legal, therefore the obligation of the acquirer to return the thing to the original owner after the achievement of the goal of the contract was not legal, but ethical, "moral". Accordingly, such transactions were based, first of all, on the trust to the person to whom the thing was transferred into fiduciary property, on the fidelity of the acquirer to his word (*fides*).

It should be noted that the category *fides*, along with another important category of Roman law *aequitas* (principle of legal justice) formed the basis of the concept of natural rights. The concept of natural law became the basis for the activities of praetors that led to the formation of the so-called praetorian law. Praetorian law arose due to the fact that praetors were allowed to create edicts in cases of insufficient regulation of relations by written law or when the use of *jus civile* led to unfair consequences (Sanphilippo, 2007). Thanks to this approach, fiduciary relations, due to the activities of praetors, got legal protection.

These principles of Roman law were adopted in English law when the Lord Chancellor was allowed to adjust the norms of common law that led to the formation of the law of justice. Just like Roman *jus civile*, English law was produced in

strict dependence on the formal procedure. Therefore, in this situation, the occurrence of the same problems that the Roman *jus civile* faced at one time was quite logical. In England, to resolve situations not provided for by common law and regulate relations in accordance with the principles of good faith and morality, a court of the Lord Chancellor was created, which resulted in the formation of the English law of justice by analogy with Roman praetorian law. This analogy testifies to the reception of Roman law by English law (David, 1999).

The analogy between Roman and English law is also manifested in the fact that with the help of the law of justice protection of informal obligations was ensured (since it established a special regime for the subjective right of the beneficiary and the obligations of the trustee). It was just like in case when informal obligations in Roman law got their protection thanks to the activities of praetors.

In such a historical context, the formation of “the most important creation of the law of justice” takes place (Jdanov, 2002) - the institution of trust, which has become a typical example of adjusting the provisions of English common law according to the requirements of morality and good faith.

Thus, English law was largely influenced by Roman law. This influence was the reason why English law was divided into common law and the law of justice. And thanks to the law of justice such a specific institute as trust appeared. This gives reason to refute the categorical allegations that analogs of trust unable to exist in the continental paradigm.

Introduction of fiduciary ownership in Ukrainian legislation

The establishment of the trust institution in Ukraine took place in several stages. The first mention of trust in Ukraine appears with the adoption of the Law of Ukraine “On Banks and Banking Activities” dated March 20, 1991, which introduced the concept of “trust operations”. This led to discussions about the legal nature of such transactions. Some scholars argued that it was usual relations of representation adapted to the conditions of privatization of state property, which only at first glance resembled the institution of trust in English law (Onufrienko, 1994). Others believed that such operations were the beginning of the application of the trust in Ukraine (Alekseev, 1994).

The position that the Ukrainian legislator was initially focused on the development of trust relations confirms the fact that at that time a large number of legal documents mentioning the concepts of trust appeared in the legislation of Ukraine. In particular, this was the Decree of the Cabinet of Ministers of Ukraine “On trust companies” dated March 17, 1993, the Regulation “On holding companies that are created in the process of corporatization and privatization”, approved by the Decree of the President of Ukraine dated March 11, 1994, the Regulation “On financial and industrial groups in Ukraine”, approved by the Decree of the President of Ukraine dated January 27, 1995 and other legal acts (Slipchenko, 2000).

The main regulatory act, which played a decisive role in understanding the Ukrainian trust, was the Decree of the Cabinet of Ministers of Ukraine “On Trust Companies” dated March 17, 1993 (hereinafter - the Decree). Despite the fact that the very definition of a trust was not mentioned in the Decree, in fact, this act introduced the construction of trust in Ukrainian legislation. As follows from Art. 1 of the Decree, a trust company is a company with additional responsibility that carries out representative activities in accordance with an agreement concluded with property trustees regarding the exercise of their rights as owners. In this case, the trustee of the property, legal entity or citizen, transfers to the trustee the authority of the owner with respect to the property belonging to him in accordance with the terms of the agreement concluded between them. That is, the principal is entitled to transfer powers to the trust company to its property, and the trust company has the right to dispose of the property of the principal. It turns out that in this case the trust company has a property right to the property of the principal, which is nothing else than the right of trust (Shypka, 2003).

However, this legal construction has generated significant practical problems, and after the discussions about the inexpediency of trust in the context of the continental system of law.

After the Resolution of the Cabinet of Ministers of Ukraine “On the shortcomings in the work of trust companies” dated June 26, 1995, where the imperfection of the legislation governing their activities was noted, as well as the Resolution of the Cabinet of Ministers of Ukraine “On the results of complex audits of the activities of trust companies” of November 1, 1995, which noted “numerous facts of abuse and fraud with financial resources, which entailed significant

material and moral losses of citizens, damaged the property interests of the state" attitude to fiduciary ownership is changing dramatically. After that from the draft of Civil Code of Ukraine where "fiduciary ownership" and "trustee" were initially mentioned, any provisions concerning the fiduciary ownership were excluded and the concept of fiduciary management of property was implemented (Shypka, 2003).

The draft Civil Code of Ukraine of 1996 introduced chapter 68 "Fiduciary Management of Property". That seemed to be the end of discussions concerning fiduciary ownership in Ukrainian legislation. However, such discussions resumed even after the new Civil Code of Ukraine secured Chapter 70 "Property Management". In Ukraine, fiduciary ownership was reintroduced into legislation through the Law of Ukraine "On Amending Certain Legislative Acts of Ukraine" dated March 19, 2003. The specified law introduced into the Civil Code of Ukraine a provision, according to which a special type of property right is the fiduciary ownership, which arises as a result of a legal prescription or on the basis of the fiduciary management agreement.

Thus, in Ukrainian legislation both institutions – fiduciary management and fiduciary ownership, - exist simultaneously. Perhaps such specific way of development of Ukrainian legislation was due to the fact that in Ukraine in the early 90s, despite the emergence of de facto trust relations, de jure the concept of trust in its English-American interpretation was not enshrined in law. After a while, the continental trust model (fiduciary ownership) was implemented in Ukrainian legislation.

With the introduction of the institution of fiduciary ownership in the Ukrainian legislation, the legislator managed to avoid the so-called "splitting" of the owner's powers, which meets modern European legislative trends. However, the final clarity in determining the nature of fiduciary ownership in Ukraine until today has not been achieved. Despite the consolidation of fiduciary ownership in Ukrainian legislation as a "special type of property right", a clear legal concept of this legal structure does not exist in Ukraine. To regulate trust relations, the legislator refers to the legal provisions on fiduciary management of property, giving the possibility to establish fiduciary ownership in the fiduciary management agreement. Therefore, to clarify the nature of fiduciary ownership, one has to look at this institution in its classical sense, bearing in mind that fiduciary ownership in the countries of

the Roman-German legal family differs from the Anglo-American institution of trust.

Based on the provisions of Ukrainian law, when establishing fiduciary ownership in Ukraine, as in other European countries of the continental legal family, one person who establishes fiduciary ownership, that is, acts as a founder, transfers property to be managed in the interests of another person called a trustee beneficiary indicated by him. At the same time, the founder himself may act as a beneficiary (Art. 1029 of the Civil Code of Ukraine). When transferring property to the trustee, the latter has a special right to it - the right of fiduciary ownership. At the same time, the trustee is the sole subject of property rights to the transferred property, only the obligation rights belong to the founder of the fiduciary ownership and the beneficiary, that is, in such case there is no "splitting" of the ownership between two subjects.

Specifics of the fiduciary ownership as a special type of property under the legislation of Ukraine

The specificity of the fiduciary ownership as a special type of property right, according to the legislation of Ukraine, consists primarily in the fact that not only law but also the so-called nominal owner (founder of fiduciary ownership) determines the limits of the right of fiduciary owner. In addition, the owner exercises his right at his discretion, regardless of other persons, and acts in his own interests, while the fiduciary owner in managing the property transferred to him is primarily guided by the instructions of the founder of the fiduciary property and acts in the interests of the beneficiary.

The right of trust arises because of a direct indication of the law or on the basis of a property management contract. The subjects of Ukrainian fiduciary ownership are the founder of the fiduciary ownership, the trustee (fiduciary owner) and the beneficiary. If fiduciary ownership is established in the interests of the founder, the latter is at the same time a beneficiary. In this case, only two entities appear in such relations.

The founder of fiduciary ownership can be both an individual and a legal entity that owns the necessary volume of legal capacity. It is also allowed to establish fiduciary ownership by the state through its bodies, which act on behalf of the owners of the property in connection with the inability of the latter to exercise their rights on this property (Maydanyk, 2002).

General rules for determining the founders of fiduciary ownership are enshrined in Art. 1032 of the Civil Code of Ukraine. As a rule, the owner of the property acts as the founder of fiduciary ownership. However, guardians or guardianship and custody bodies, which act in the interests of some property owners (such as minors, incompetent or partially capable or recognized as missing persons) can also be founders of fiduciary ownership.

A trustee (fiduciary owner) is a person to whom property is transferred into fiduciary ownership, and who on his own behalf owns, uses and disposes of this property in the interests of the beneficiary within the limits stipulated by law and by the founder. The trustee should be an entrepreneur, both an individual and a legal entity.

Public or local authorities cannot act as a trustee, unless otherwise is provided by law. Such a ban is explained by the fact that the trustee has subsidiary liability for the obligations that arise during his activity as a fiduciary owner, which in these cases is unacceptable.

The beneficiary also cannot be a trustee, which follows from the contents of part 3 and part 5 of Art. 1033 of the Civil Code of Ukraine, since this contradicts the very essence of the Ukrainian fiduciary ownership model, which provides for the commission of actions exclusively in the interests of others.

In some cases, the fiduciary owner faces some special requests. Thus, the right to manage cash and other values belongs only to banks that have a license to carry out the relevant banking operations (Art. 47 of the Law of Ukraine “On Banks and Banking Activities”).

Special requirements are imposed on the fiduciary owner in carrying out professional activities in the securities market (Art. 4 of the Law of Ukraine “On State Regulation of the Securities Market in Ukraine”). Securities management activities can be carried out only on the basis of a special license issued by the relevant executive authority (National Securities and Stock Market Commission of Ukraine).

According to Art. 2 of the Law of Ukraine “On financial and credit mechanisms and property management in housing construction and real estate operations” dated June 19, 2003, the fiduciary owner must be a financial institution, which on its own behalf acts in the interests of the founders of fiduciary ownership and manages

the borrowed money in accordance with the legislation, the Rules of the fund, and also received in the prescribed manner permission / license. The authorized capital of such an institution must be at least one million euros and must be fully paid exclusively in cash before the start of raising money from the founders of fiduciary property.

According to Art. 2 of the Law of Ukraine “On Mortgage Lending, Transactions with Consolidated Mortgage Debt and Mortgage Certificates” dated June 19, 2003, a trustee (fiduciary owner) is a financial institution that acts on its behalf, managing mortgage assets in the interests of the founder of fiduciary ownership, and has appropriate permit/license. Besides, Art. 34 of this Law provides for a number of requirements that must be met by the trustee of mortgage assets. In such a situation, the trustee may be a bank that has the permission of the National Bank of Ukraine to perform fiduciary management of funds and securities under contracts with legal entities and individuals, or another financial institution, if it meets the requirements established by a specially authorized executive body in regulation of financial services markets.

The beneficiary in fiduciary ownership relations is the person in whose favor the property is managed. This can be both the founder of fiduciary ownership, and the third person indicated by him (Articles 1029, 1034 of the Civil Code of Ukraine). In the latter case, the property management agreement is concluded according to the model of the agreement in favor of a third party (Art. 638 of the Civil Code of Ukraine). At the same time, the beneficiary, despite the fact that he does not participate in the conclusion of the contract, receives the right to demand from the trustee the proper performance of his duties and the right to present his claims to the trustee (Part 2 of Article 1034 of the Civil Code of Ukraine).

The beneficiary in a fiduciary ownership relationship may be any individual, legal entity or state. An exception is established only concerning a trustee who cannot be a beneficiary under the same agreement (Part 3 of Article 1033 of the Civil Code of Ukraine).

In some cases, the beneficiary may be determined by law. Thus, in case the property of minor children and wards is transferred into fiduciary ownership, the beneficiary, according to the law, is always the wards (Art. 72 of the Civil Code of Ukraine). In the case of managing

the property of a missing person, the property management agreement is concluded in favor of the missing person (since it is believed that the individual remains alive), or in favor of his dependents [9, p. 3].

There are also some restrictions concerning the property, which can be transferred to the fiduciary ownership. It is impossible to transfer into fiduciary ownership property, which cannot be separated from other things, and property whose transfer into fiduciary ownership is expressly prohibited by law.

The rule regarding the impossibility of transferring into fiduciary ownership of property that cannot be separated, follows from the provisions of Art. 1030 of the Civil Code of Ukraine, according to which property transferred into fiduciary ownership should be separated from other property of the founder, as well as from the property of the trustee.

Ukrainian law allows to transfer into fiduciary ownership also of corporate, obligation and property rights, securities, enterprises as a single property complex. A specific object of fiduciary ownership can be a web-site. As it is known, web-site today is qualified as property which can be sold, given for rent so on. Some scholars mention, that a web-site in its legal nature can be equaled to the enterprise as a single property complex (Nekit K., Ulianova H., Kolodin D., 2019).

In cases provided by law, funds may also be transferred into fiduciary ownership. Such a situation is provided, in particular, by the Law of Ukraine "On financial and credit mechanisms and property management in housing construction and real estate operations" dated June 19, 2003. In this case, funds are transferred specifically to achieve the goals set by the contract and cannot be used by the trustee for other purposes. The contract, on the basis of which the fiduciary ownership on such funds is established, provides for the specific purpose for which it is intended, and a number of restrictions on the actions of the trustee related to the property transferred to him.

Given the fact that the Civil Code of Ukraine defines the right of fiduciary ownership as a special kind of property right, we can say that the content of the right of the fiduciary owner is the power to own, use and dispose of property allocated for fiduciary ownership. Such a conclusion follows from the provisions of Art. 1033 of the Civil Code of Ukraine. However, one

should not forget about the specifics of the right of fiduciary ownership, which is also manifested in its content. When establishing fiduciary ownership, all powers related to the management and disposal of the allocated property are transferred to the trustee, however, at the same time, the beneficiary retains the right to demand transfer of income from the operation of the property to him.

A specific feature of the right of fiduciary ownership as a special type of property right is that the trustee exercises the powers belonging to him at his discretion, but with the restrictions established by the founder, and only in the interests of the founder or the person indicated by him. The trustee has a certain obligation to the founder of the fiduciary ownership. The main responsibility of the trustee is to manage the property in strict accordance with the provisions of the contract and the instructions of the founder. While exercising his duties, the trustee must care about the property and, above all, ensure the safety of the property. The trustee has the obligation to transfer to the beneficiary all the benefits and income received from the property transferred to the trustee.

To enable the trustee to act at his discretion, the founder of the fiduciary ownership, after determining the management objectives and the entry into force of the contract by which the allotted property is transferred to fiduciary ownership, does not have the right to give the trustee any instructions or otherwise intervene in activity of the latter.

The grounds for termination of fiduciary ownership may be: the achievement of the purpose for which it was established, the expiration of a predetermined period, the onset of circumstances that, under the terms of the contract, should cease to exist, the death of the beneficiary (or the liquidation of the beneficiary legal entity). Fiduciary ownership is also terminated in case of the loss of the transferred property. Since the trustee, as a rule, performs his duties personally, his death, recognition of incompetent, partially capable or missing are also grounds for termination of the fiduciary ownership.

In case of the termination of the fiduciary ownership, the property shall be returned to the founder of the fiduciary ownership if the contract or law does not establish other consequences of the termination of the fiduciary ownership (Art. 1044 of the Civil Code of Ukraine).

Conclusions

The current situation in Ukrainian legislation does not allow us to make unambiguous conclusions about whether fiduciary ownership will continue to be qualified as a type of property right or it will take its place in the system of rights in rem (other than ownership). It seems that the answer to this question will be given by practice, which will eventually make its own adjustments.

Nevertheless, despite some uncertainty and the problem of the need to distinguish institutions of trust and fiduciary ownership, Ukraine does not remain aloof from modern European trends in the reform of legislation.

Until recently, Ukraine was the only country in the post-Soviet space that has made an attempt to implement into legislation fiduciary ownership, which is different from the trust. It allows avoiding the “splitting” of the owner’s powers and ensuring effective management of his property. The benefits of this institution are evidenced by the practice of European countries, where the need for its existence in a market economy is no longer in doubt. Following the tendency to use for property management such an efficient institute as fiduciary ownership, the Republic of Moldova became the second post-soviet country, which implemented fiducia in its legislation. For the moment it is a good example for Ukrainian legislator how to solve the problem with clarifying the meaning and understanding of the institute of fiduciary ownership.

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