

APPLICATION OF SECURITIES AS AN OBJECT OF A TRUST MANAGEMENT AGREEMENT

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ABSTRACT

The institute of trust management (trust) is widely used in the world as the most convenient and widespread method of efficient and optimal use of investments, property, securities. In particular, the transfer of investment, venture and hedge funds to trust management is one of the most effective methods in the economies of developed countries, and the services of professional managers are needed in many sectors.

Defining the legal nature of the institute of trust management of property in the world, harmonization of the rules of application of this institution in Anglo-Saxon law in the continental legal system, development of trust management of investment and mutual funds, definition of the legal status of trust manager, simplification of trust management; It is important to analyze the characteristics of the assignment, define the responsibilities of the trust manager, create a legal framework for the activities of professional trust managers, research the application of trust management in various legal systems and create new innovative scientific developments. Therefore, there is a need to study the legal basis for the transfer of securities to trust management and to improve the legislation governing these interactions.

Keywords: *trust management of property, civil law, securities, trust manager, founder, investment, investment share fund.*

АННОТАЦИЯ

Институт доверительного управления (траста) широко используется в мире как наиболее удобный и распространенный способ эффективного и оптимального использования инвестиций, имущества, ценных бумаг. В частности, передача инвестиционных, венчурных и хедж-фондов в доверительное управление является одним из наиболее эффективных методов в экономике развитых стран, и услуги профессиональных управляющих востребованы во многих отраслях.

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Определение правовой природы института доверительного управления имуществом в мире, гармонизация правил применения этого института в англо-саксонском праве в континентальной правовой системе, развитие доверительного управления инвестиционными и паевыми фондами, определение правовой статус доверительного управляющего, упрощение доверительного управления; Важно проанализировать особенности назначения, определить обязанности доверительного управляющего, создать правовую основу деятельности профессиональных доверительных управляющих, исследовать применение доверительного управления в различных правовых системах и создать новые инновационные научные разработки. Поэтому возникает необходимость изучения правовых основ передачи ценных бумаг в доверительное управление и совершенствования законодательства, регулирующего данные взаимодействия.

Ключевые слова: *доверительное управление имуществом, гражданское право, ценные бумаги, доверительный управляющий, учредитель, инвестиции, инвестиционный паевой фонд.*

INTRODUCTION

Securities play vital role in the system of objects of civil law. The civil circulation of securities, which are a specific commodity, is also unique. The definition of the concept of security in the Civil Code of the Republic of Uzbekistan also reflects the specificity of this object of civil law. According to Part 1 of Article 96 of the Civil Code, documents confirming property rights in the prescribed form and mandatory details are securities, and can be exercised or transferred to other persons only if they are presented.

According to Article 3 of the Law of the Republic of Uzbekistan "On Securities Market" of July 22, 2008, securities are documents that confirm the property rights or debt relationship between the legal entity that issued these documents and their owner, the payment of dividends or interest, and the possibility of transferring the rights arising from these documents to other persons.

It is clear from these definitions that securities are documents that have special characteristics and represent property claims.

The legal literature also emphasizes that securities have the property of being in civil circulation as an object of civil law and are distinguished from other objects by their distinctive features. In particular, Y.B. Nazarov noted that securities are a specific legal category (element), which, on the one hand, plays an important role in the socio-economic life of the country, and on the other hand, has its own legal

characteristics. In this case, the legal nature of securities is not one-sided, in which the right of ownership and obligation is reflected at the same time. This, in turn, creates a number of problems in the legal regulation of the issuance of securities.

DISCUSSION AND RESULTS

However, the optimal regulation of the issuance and circulation of securities can be achieved only by determining whether the institution of securities is subject to the rulings of law of things (res) or the law of obligations¹.

According to Kh.R. Rakhmonkulov, the details of the securities should be in each security, which is allowed to issue in accordance with the law².

According to A. P. Sergeev, securities are characterized by mass approval. Its essence is that the law strictly defines the scope of the grounds for refusal of the debtor to fulfill the obligations imposed on him. In particular, a security issued on the basis of all claims may not be rejected by the debtor on the grounds that there is no basis for the obligation or that it is not valid. Only formal grounds, i.e., a claim for late submission of a security for performance or forging a security, are allowed. If the owner of the security discovers that it is counterfeit, he has the right to demand from the person who issued the security to properly perform the obligation confirmed by the security and to compensate the damages³.

According to Z.A.Amonov, it is known that the main purpose and function of securities is to confirm property rights. That is, a property claim of one person against another is expressed in a document called a security, and this claim applies to the person who holds that document or whose name is written on the document. A property right or property claim is directed to a person who has issued a security or who has stated that he has assumed a property obligation⁴.

In our opinion, securities, like other objects of civil law, are subject to civil circulation and are the object of various civil law contracts. In particular, securities can be the subject of transactions, gifts, exchange agreements, as well as trust management agreements.

According to Article 851 of the Civil Code, securities can also be the object of trust management of property, and the general rules of the Civil Code and the provisions of the Law "On Securities Market" apply to them.

¹Y.B. Nazarov Problems of legal regulation of the issue and circulation of securities in civil circulation. Abstract of thesis ... Doctor of Law. - Tashkent: 2008. - 16 p.

²Rahmonqulov Kh. Objects of civil law. - Tashkent: TSIL, 2009. - 45 p.

³ Civil law: Textbook: In 3 volumes. Vol. 1. - 6th ed., Rev. and add. / N.D. Egorov, I.V. Eliseev and others; Editor-in-chief P.A. Sergeev, Y.K. Tolstoy. - M.: TK Welby, Prospect Publishing House, 2003, 265-266pp.

⁴Amonov Z.A. Property rights as an object of civil law: PhD dissertation - Tashkent: 2011. - 67 p.

The following features of securities trust management are: the objects of trust management are not only securities, but also funds intended for investing in securities, as well as securities and cash received in the process of trust management of securities; individuals who are able to carry out activities on trust management of securities are limited to professional participants of the securities market⁵. The current legislation also reflects the procedure for conducting securities management activities, the definition of the rights and obligations of the manager in the legislation and contracts.

It is known that civil law (and legal acts related to the regulation of trust management of property, of course, depends on civil law) consists of the Civil Code, which regulates civil law relations, and other laws adopted in accordance with it. It should be noted that there is no legislation defining the features of the legal regulation of trust management of securities today.

These special rules provided for in the Civil Code are also reflected in the Law "On Securities Market". In addition to the norms of the Civil Code, this law defines the following features of trust management: the objects of trust management are not only securities, but also funds intended for investing in securities, as well as securities and cash received in the process of trust management; individuals who are able to carry out activities on trust management of securities are limited to professional participants of the securities market. The law also contains provisions on the procedure for conducting securities management activities, the definition of the rights and obligations of the manager in the legislation and contracts⁶.

It is known that civil law (and legal acts regulating the trust management of property, of course, depends on civil law) consists of the Civil Code and other laws adopted in accordance with it (Article 3 Civil Code). In conclusion, it can be concluded that today, as stated in Article 851 of the Civil Code (except for the Law "On Securities Market"), there is no legislation governing the legal regulation of trust management of securities.

There are also a number of legal documents regulating the relationship related to the trust management of securities. These include decrees of the President of the Republic of Uzbekistan, resolutions of the Cabinet of Ministers, and normative legal acts of the Central Bank.

⁵Konstantinov G.L. Trust management of property in the securities market in the Russian Federation (civil law aspect): Abstract of Phd dissertation. - M.: 2013. - 5 p.

⁶A.M. Soloviev Trust management in the securities market: PhD dissertation. – Stavropol: 2004. - 14 p.

The fact that the trust management of securities is not legally regulated by law, allows these legal relations to be regulated by Presidential decrees and on their basis, as well as by Government decisions taken for their implementation. However, these documents should not contradict the Civil Code and other laws in any case.

In accordance with the third part of Article 3 of the Civil Code, the normative acts of the Central Bank may express civil norms only in the cases provided for in the Civil Code, other laws and legal acts, and within them. Even considering that these organizations operate in the securities market, as well as have certain powers in the field of legal regulation of relations related to money and the activities of credit institutions, it should be noted that these organizations have legal authority over the trust management of securities and funds. It is hard to believe that it can carry out legal creativity in the field of complex regulation of relations, which is also proved in practice⁷.

To date, this case has not been properly assessed by the competent state authorities, but the legal literature pays special attention to the assessment of this case. In particular, L.Y. Mikheeva assesses the legislation in the field of regulation of trust management of securities as follows: it is doubtful that such notions as “conclusion of a trust management agreement”, “terms of a trust management agreement” and others can be included in the list of legal documents regulating these relations. In particular, restrictions on the types of securities that can be trusted should be established by law, not by decisions made by the Federal Securities Commission.”⁸

However, dubious (adopted in terms of its legal force) normative documents, which are common in the legislation, serve as the main source of legal regulation of relations related to the de facto management of securities. In this case, the issue of non-application of the Regulation on trust management of investment instruments to the Law "On Securities and Securities Market" until the adoption of the relevant law may create a legal gap in the regulation of these legal relations and, consequently, various abuses result. Therefore, given the current situation, the conclusion about the need to accelerate the preparation and adoption of the law on the characteristics of trust management of securities seems more accurate.

Such cases are also specifically regulated by law if, under a trust management agreement, the manager recognizes the proceeds from the management of the securities issued to him by the founder or from the sale of such securities as

⁷Konstantinov G.L. The process of globalization and the development of trust management of valuable assets in the countries of continental European and Anglo-Saxon law // History of State and Law. 2008. - No. 3. - 35 p.

⁸Mikheeva L.Y. Securities and monetary funds as objects of trust // Economy and law. 1998. - No. 9. – 44p.

investment funds in the securities. In this case, the following rules are provided: 1) the trust management agreement is considered concluded from the moment of transfer of securities to the trust manager for management in order to obtain performance or sale of securities; in this case, the rights and obligations of the manager arise only in the part related to the management or sale of securities; 2) in the part related to the rights and obligations of the parties related to the trust management of funds intended for investment in securities, the contract is valid only from the moment of receipt of funds by the trust manager.

The first rule does not seem to apply to obligations under a contract of trust management of property: the trustee is charged with obtaining management of the securities or undertaking to sell these securities, instead of exercising the trust management of the property. The relationship in this form is not the subject of a trust management agreement, but the subject of an assignment agreement (in which case the manager acts on behalf of the founder and his power of attorney), a commission or agent agreement (in which case the manager acts on his own behalf). The transfer of income amounts to a trustee can be considered as the subject of a trust management agreement. So, in this case, we are talking about a mixed contract, which includes the rights and obligations that include the obligations of various contracts. Such agreements are legally regulated by the application of the rules governing the relevant obligations in respect of certain legal relationships arising.

An issue such as an investment declaration by a trust manager is also relevant in concluding a trust management agreement. The legislation stipulates that in addition to the mandatory conditions of the trust management agreement provided by law, the agreement on the transfer of securities investment funds to trust management must also have an investment declaration of the manager, which specifies the directions and methods of investment funds.

The investment declaration of the trust manager of investment assets is an integral part of the agreement on trust management of investment assets. The provisions of the investment declaration are binding on the trust manager of the investment assets to be complied with to the extent necessary on the same grounds as the other provisions of the contract. In addition, the conclusion of contracts means that the founder of the management agrees to invest in any investment assets - investment objects - the rules set out in the investment declaration, including the funds belonging to him.

The investment declaration of the trust manager should include the following information: setting the purpose of the trust management; the list of relevant objects

on which the management founder can invest funds, ie the manager's legal possession of securities that are part of the property of the management founder; information on the composition of investment assets, which must be maintained by the trustee of investment assets for the entire term of the agreement (ratio of securities of different types and issuers; ratio between securities, cash and other types of investment assets of the trustee under trust management); the period for which the provisions of this investment declaration are valid and mandatory for the trust manager of investment assets.

It appears that the investment declaration of the trust manager is an integral part of the trust management agreement if the parties wish to do so. In other words, in the text of a trust management agreement, the parties must state the rule that the investment declaration of the trust manager is an integral part of the contract entered into by them. The absence of such a provision in the contract of trust management of invested securities and securities does not mean that the investment declaration of the trust manager is an integral part of this agreement, as it does not specify the will of the parties.

In the current context of reforms in Uzbekistan, it is important to transfer securities to trust management, in particular, the transfer of shares and bonds, which are part of investment securities, to trust management. However, the current legislation does not have a system of rules for the transfer of securities to trust management, and the norms in this regard are fragmented in some legislation. In particular, Article 30 of the Law of the Republic of Uzbekistan "On Securities Market" of June 3, 2015 contains provisions on the activities of a trust manager of investment assets, according to which a legal entity - a trust manager is transferred to another person:

- securities, including securities acquired in the management of investment assets;
- investment asset management activity is the exercise of trust management on its own behalf for a specified period of time in the interests of the person or the person indicated by him, intended for investment in securities and received in the process of managing investment assets.

Also, the fourth part of Article 53 of this law stipulates that the issuer, unless otherwise provided by law, has no right to enter into transactions on the shares issued by him on the condition of their redemption, as well as to transfer the issued shares to trust management.

The norms on the transfer of securities to trust management are also reflected in Article 9 of the Law "On Investment and Share Funds". The first part of this article stipulates the restrictions on trust management, the procedure for payment and reimbursement of expenses, the grounds and conditions of termination of the contract, the liability of the parties and other in accordance with the law contract that provides rules is a trust management contract.

If we analyze this norm, it is possible to highlight the following specific aspects:

- parties to the contract, ie as counterparties to each other:

- a) trust manager and investment fund;
- b) a trust manager and shareholder investors are identified;

- The following are the important terms of the contract:

- a) restrictions;
- b) the procedure for payment and reimbursement of expenses;
- c) the grounds and conditions for termination of the contract;
- g) liability of the parties.

This list of conditions is left open and it is noted that there may be other conditions in accordance with the law. In other words, the essential terms of the contract of trust management of investment and mutual funds also include the conditions provided for in Article 853 of the Civil Code. The requirements of the essential terms of the trust management agreement, specified in the first part of Article 9 of this law, as a special rule, apply only to the transfer of investment and mutual funds for trust management.

It should be noted that the agreement on the transfer of securities, in particular, investment and mutual funds for trust management, is represented in the current legislation as a merger agreement (the second part of Article 9 of the Law "On Investment and Share Funds"). That is, Article 360 of the Civil Code applies to this agreement. According to the first part of this article, an agreement is an agreement in which the terms are defined by one of the parties in forms or other standard forms and can be accepted by the other party only by full accession to the proposed agreement.

In this case, the question arises as to who will develop the terms of the contract for the transfer of investment and mutual funds to trust management, ie which of the parties. In our opinion, in this case the terms of the contract should be developed by the investment and mutual fund by the relevant standards. This is because the purpose of trust management is to manage the property (in this case, the investment and

mutual fund) in the interests of the management institution, the new investment and the mutual fund.⁹

However, the legislation stipulates that trust management is carried out in accordance with the trust management agreement, which is signed by the head of the trust manager:

with the chairman of the supervisory board of the investment fund in accordance with the decision of the general meeting of shareholders; by signing and joining the agreement with the investors of the mutual fund.

It is not allowed for an investment fund to enter into a trust management agreement with several trustees at the same time.

The trust management agreement must contain an investment declaration, which is an integral part of it and sets requirements for the composition of investment assets.

The term of a trust fund trust management agreement should not exceed five years. If the owners of the investment shares have not demanded the withdrawal of all investment shares belonging to them, the term of the agreement may be extended for one year by the decision of the general meeting of shareholders.

In accordance with paragraph 2 of the Regulation "On trust managers of investment assets" approved by the Cabinet of Ministers of the Republic of Uzbekistan dated April 19, 2003 No 189, the trust management of investment assets is carried out by commercial organizations licensed to manage investment assets with commercial banks licensed.

A trustee of investment assets must have its own tangible assets in the amount of at least 5% of the average annual value of the investment assets managed by him.

The amount of own material assets of the trust manager of investment assets and the average annual value of net assets of investment assets managed by him shall be determined in accordance with the procedure established by the authorized state body for regulation of the securities market in agreement with the Ministry of Finance.

Investment and mutual funds are established for the management, accounting and efficient and sustainable operation of securities. Typically, if an investment fund intends to issue shares, a mutual fund is a set of funds provided by investors for trust management¹⁰.

⁹Efimova Y.S. Mutual investment fund in the system of property and obligation relations: abstract of Ph.D. dissertation. - Vladivostok: 2019. -- 12 p.; Zabazhanova O.V. Trust management agreement for a mutual investment fund: theory and practice of legal regulation: PhD dissertation - M., 2014. -- 217 p; Zaitsev O.R. Trust management agreement for a mutual investment fund: PhD dissertation - M.: 2005. -- 383 p.

¹⁰Lukyanchenko D.V. Mutual investment funds in civil legal relations: PhD dissertation. - M.: 2014. —170p.

M.V. Plyushchev analyzes investment and mutual funds from the point of view of the property complex and emphasizes that the fund is the common equity of shareholders¹¹.

Analyzing this opinion, Yu.S. Efimova believes that in this case the issue of the formation of property rights in relation to the shareholders, ie non-cash funds and uncertificated securities, is controversial¹².

In our opinion, in this case, the shareholders will have the right to demand, not the right of ownership over the share in the fund. Because due to the fact that the fund is organized in the form of a joint-stock company and the share of its shareholders in it is a security - a share, the owner has the right to demand, not the right of ownership.

The general essence of the rules of concluding a trust management agreement is reflected in the following. Activities related to the trust management of securities and related investment funds should, as a rule, be carried out in accordance with a single trust management agreement concluded between the management founder and the trust manager. However, these parties can enter into a number of trust management agreements. One of these agreements regulates the activities of the trust management of securities, while the other regulates the investment funds of the founder of this management.

In the second case, the question arises as to the extent to which the conclusion of a separate agreement on the trust management of investment funds of securities meets the requirements of the second part of Article 851 of the Civil Code. According to this norm, money cannot be a separate object of trust management, except as provided by law. Since this question does not have a positive answer, in our opinion, it is not necessary to formalize a legal relationship with several separate agreements.

The contract of trust management of securities and securities investment funds is considered concluded by the founder of the management from the date of transfer of securities to the trust manager. If the trust management agreement provides for the transfer of several securities by the management company to the trust manager at different times (step by step), then the contract is concluded from the date of transfer of the initial package of securities to the trust manager. It is from this point that the manager's rights and obligations to manage the securities entrusted to him arise. The rights and obligations of the management founder on other securities arise from the moment they are transferred to the trustee by the management founder.

¹¹Plyushchev M.V. The legal nature of a mutual investment fund and an investment share: PhD dissertation. - Rostov on Don: 2005. —207p.

¹²Efimova Y.S. Mutual investment fund in the system of property and obligation relations: Abstract of PhD dissertation. - Vladivostok: 2019. -- 6 p.

Given the nature of the contract of trust management of property, such an approach to the entry into force of this contract does not contradict the second part of Article 365 of the Civil Code. It stipulates that in accordance with the law, in order to conclude a contract, the property must be transferred to trust management, and from that moment the contract is considered concluded. It should be noted that although the rules on the contract of trust management of securities are regulated by law, in practice these rules are reflected not in the law, but in departmental regulations. In turn, it is doubtful that such documents are of a universal nature.

CONCLUSION

In conclusion, it should be noted that the improvement of the legal framework for the transfer of securities, including investment and mutual funds, and the creation of a consistent system in this area will allow the development of entrepreneurship in our country, the effective use of profitable property and securities. In this regard, the Law "On Investment and Share Funds", "Transfer of Investment Funds to Trust Management", "Validity of the Agreement on Trust Management of Investment Funds", "Property for Trust Management of Investment Funds", Investment Management Fund Management Company Liability", "Rules of trust management of mutual investment fund", "Registration of rules of trust management of mutual investment fund and changes and additions to it" in the authorized state body, "Requirements to management company", "Requirements to founder (participant) of management company", It is proposed to introduce new articles such as "Liabilities of the management company", "Restrictions on the activities of the management company", "Remuneration and expenses for the trust management of the joint-stock investment fund and mutual investment fund".

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