



Lamy Lexel
AVOCATS ASSOCIÉS

FRENCH LEGAL TRUST

Overview

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Part I : Presentation

History

- Recently emerged in France (1990s)
- February 19, 2007 Act (new title in the French Civil Code)

Definition

= contract according to which a settlor transfers all, or part, of its assets, rights or guarantees to a Trustee that, in maintaining them separately from its own “patrimoine”, acts according to a specific objective for the benefit of its beneficiaries or the settlor itself.

- Temporary transfer of ownership
- creation of new patrimony

Trust objectives

- Objectives:
 - Management trust
 - Guarantee trust

Trust objectives

Management trust

= the Trustee has to administrate, manage and run assets and then transfer its property to the Beneficiary

Trust objectives

Guarantee trust

- = creation of a guarantee for a creditor who immediately obtains the property of the assets from the Settlor. Afterwards, either the obligation is executed and the Trustee transfers the assets back to the Settlor, or the obligation is not executed and the Trustee keeps the assets and gives them back accordingly to the contract (creditor...)
- Possibility to use the trustee patrimony to guarantee the repayment of many successive credit operations if specified in the contract



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Part II : Parties

The Settlor

- Individuals (since the Law of August 4th, 2008) + corporations
 - Individuals
 - Specific rules for persons under 18/People legally incapable because disabled/Married people
 - Corporations
- Resident of an EC Member State

The Trustee

- Has to be on this list :
 - All lawyers (since the law of August 4th, 2008)
 - Financial companies
 - Insurance companies
 - Investment companies
- Resident of a EC Member State

The Beneficiary

- Can be :
 - The Settlor
 - The Trustee
 - Anyone
- Individuals or corporations



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Part III : Trustee patrimony

Legal aspects

Liberalities

If you create the trust with the intention of giving the assets, guarantees or rights for free

→ Trust null and void

Legal aspects

Composition

- We can find in the trustee patrimony :
 - Assets/Rights/Guarantees
 - Existing or future
 - Assets and liabilities
- Possibility to keep the use of a business or a building for professional use

Legal aspects

Rights on the trustee patrimony

- The private creditors of the Trustee have no right on the trustee patrimony (the Trustee has 2 patrimonies)
- The Trustee has full powers on the trustee patrimony with third parties. Possibility for the Settlor to limit the Trustee's power ; but a non binding effect to third parties except if they knew about it when they signed the contract...

Legal aspects

End of the trustee patrimony

- The contract can designate the Beneficiary(ies)
- When no Beneficiary is designated in the contract, everything goes back to the Settlor
- Maximum : 99 years



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Part IV : Trust agreement

Conclusion of the trust contract

- Express consent (term, Trustee's remuneration...)
- A written contract with compulsory terms
- Publicity of the contract
- In the National File of Trust

The Settlor's obligations

- To transfer the assets/rights/guarantees they promised to transfer
- To respect the issued conditions set in the contract
- To pay the Trustee as stated in the contract
- No modification or revocation of the Trust contract if acceptance of the Trust by the Beneficiary

The Trustee's obligations

- To act for the trusts good
- To be answerable to the Settlor, or a third party designated in the contract, at any time
- To say expressly when they are acting in the name of the Trust
- To fulfill their obligations as stated in the contract
- No substitution of the Trustee

End of the Trust

- When all the Beneficiaries renounce to the Trust
- Liquidation, winding-up, disappearance of the Trustee
- Termination of the contract



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Part V : Tax aspects

Tax aspects

- Tax neutrality
- No VAT



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Part VI : Examples

Net Cacao (a French chocolate factory) creates a rescue trust

- Judicial arrangement (“redressement judiciaire”) of Net Cacao: a reorganization plan, ordered by the court, of a company unable to meet its obligations
- Tribunal authorization to create a trust : assets only (mainly properties) and not liabilities put in a trust in order to obtain loans

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