

The Concept of Property Trust Management Agreement and its Legal Analysis

*Topildiyev Bakhromjon Rakhimjonovich*¹

Abstract: In this article, the nature of the property trust management contract, which has a unique place in the system of civil legal contracts, is covered from the point of view of its development prospects. The author puts forward proposals for improving the national legislation on the trust management contract based on the basis of the formation of the institution of trust management in the system of foreign countries.

Key words: Property, trust management, contract, parties, management institution, obligation, liability, trustee.

Today, in the context of ongoing globalization in the world, there is a convergence of different legal systems. Previously, they were legal constructions specific to only one legal system, but now they are considered as common legal relations for other legal systems.

The trust institution, which is considered one of such legal structures, first appeared in Anglo-American law and began to be included in the legislation of countries belonging to the continental law system from the second half of the 20th century. Of course, the introduction of the trust institution into the national legislation of the countries related to the continental legal system was carried out not by directly copying its provisions, but by adapting the rules of this institution to the important principle postulates of the continental legal system. In this case, the rule of division of property rights in the Anglo-American legal system was denied, and the trust institution was adapted based on the rule of indivisibility of property rights instead.

It should be recognized that the institution of trust management of property was included in the national legal system of Uzbekistan based on the rules of the continental legal system. In this case, not only the essence of the trust, but also the priority of the regulation of this legal institution through the contract, the main role of legal instruments in the regulation, the rights and obligations of the parties that make up the content of the property trust management contract have been fundamentally changed, and the national was formed based on the originality.

It is characterized by the expansion of the system of civil-legal constructions aimed at introducing property into civil circulation in the conditions of market relations. Civil legal contracts have a special place in the system of tools aimed at ensuring the interests of subjects and increasing the income of owners and beneficiaries of property by introducing property into circulation. After all, according to the purpose and tasks of its structure, civil legal contracts that ensure the circulation of property bring property into economic circulation in one form or another and bring benefits to the owner and other persons. In the category of contracts that ensure the introduction of property into civil-legal circulation, along with rental contracts, contracts related to the provision of services based on mutual trust: the contract of assignment, the contract of mediation and the contract of trust management of property. enters.

Although the property trust management contract does not directly aim to bring the property into civil circulation through disposal, it is precisely through this civil-legal construction that the property is brought into civil circulation and thereby its beneficial properties are appropriated in a factual and legal sense. This situation is also understood from the definition given in the current legislation

¹ Tashkent State Law University Professor of the "Civil Law" department. doctor of legal sciences



regarding the property trust management contract. According to this definition, the trustee undertakes to manage the property in the interests of the founder of the management or the person designated by him (beneficiary). In this case, "property management" means the most basic set of factual and legal actions defining the nature of this contract and is widely interpreted as an economic-legal category.

Economically, property management is an activity aimed at obtaining profit and income from property and activities related to it.

In the legal sense, the concept of property management is understood as a set of actions related to property rights and its implementation. According to TGStepanova, "management" of property in relation to trust management of property means ownership by a trustee of property belonging to another owner in the interests of the owner or the person designated by him (beneficiary) within the framework established by law or contract. It is understood to perform actions such as making, using and disposing².

According to VVGorbunov, it is necessary to use the term "management" in determining the definition of the property trust management contract. It is in management that the essence of the fiduciary's obligations to independently implement the powers given to him by the owner (management institution) lies. The ability of the trustee to act at his own discretion, contractual obligations for the provision of services (assignment, mediation, agency agreement) in which the authorized person can act only within the scope of the authority granted to him. is the most important sign that differs from

The content of the management is understood from the activities of the trustee in connection with the implementation of the powers given to him to acquire, use and dispose of the property related to the management institution based on the property right, in the interests of the management institution, but for a fee. Management is a complex of various tasks, rights and obligations that must be performed by the owner, and it includes the exploitation of the property for the purpose of extracting useful purposes (except for the consumption of the property), economy implementation or other use thereof. By its legal nature, management is understood as a derivative right from property rights. The trustee is given powers directly by the owner, but their scope is limited, and these powers are exercised only in the interest of the owner or a person designated by him³.

It should be noted that the management category is also recognized as an administrative-legal tool in jurisprudence. This implies that the state performs its functions by managing almost all socio-economic spheres. "Management" in administrative law is a process of purposeful and continuous influence of the subject of management on the object of management. To lead is to direct something or someone. Management is purposeful, i.e., the influence of people on their social life activities in a conscious, predetermined manner, directly (in the form of self-management) or specially created bodies. and structures (state bodies, public associations) can be implemented⁴.

Usually "management" is understood as a public legal category. However, "property management" is closer to the private-legal aspect than the public-legal aspect, and represents the introduction and use of objects that require management from an economic point of view. In this case, it is necessary to distinguish the "property management" category from the "economy management" category. According to XSIslamhodzhayev, economic management is one of the types of state management, and it includes the following tasks: comprehensive control over the fulfillment of requirements embodied in the legal norms regulating this or that social relationship; harmonizing and determining the general direction of the activities of the participants of relevant relations, comprehensive protection of their legal interests and rights; it also includes⁵ defining and normatively strengthening the state policy in

²Stepanova T.G. Civil-law regime doveritelnogo upravleniya nedvizhimym imushchestvom: a vtoref . d is cand . go away science - M.: 2005. - 12 p.

³Gorbunov V.V. Contract of Trusteeship Management: autoref . d is cand. walk science – Ekaterinburg: 2000. – S.8-9.

⁴Hojiev E., Hojiev T. Administrative law. - Tashkent: 2006. - B. 14-16.

⁵Islamkhodjaev H.S. Organizational and legal aspects of the membership of the Republic of Uzbekistan in the World Trade Organization. -Tashkent: NMIU "Uzbekistan", 2008. - 19 p.



the field of economy, the procedure for drawing up state contracts (agreements), the procedure for registration, licensing, and the like.

Of course, it is assumed that the state performs its functions by managing almost all socio-economic spheres. The term property management has both an administrative and a civil-legal connotation. If the property is the property of a state enterprise, which is considered a property complex, the property of state bodies, administrative and legal means are also used to manage it and exercise economic control over it. From a civil-legal point of view, the management of property is manifested in the implementation of legal and factual actions against property based on a contract, and such actions are performed by a third party.

However, it should be recognized here that in the current legislation, the decision of the court, guardianship and patronage body (Article 850 of the Criminal Code) is provided as the basis for the creation of trust management of property. shows the mixed use of public-legal and private-legal means. Therefore, the category of "property trust management" can be interpreted as a framework of relations implemented through private-legal and public-legal elements and representing the harmony of these two regulatory methods.

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Another important aspect specific to the property management category is the powers of the non-owner manager and the issue of the legal relationship between him and the owner and the distribution of powers in relation to the property. The importance of this situation for the property management category can also be explained by the fact that in recent years, terms such as "professional managers", "corporate managers" are often encountered, and large shareholders or owners of other valuable securities own corporations and management of concerns is handed over to such persons. This is a positive situation from the economic point of view, because the property will bring more profit. Because, compared to the owner, such managers have higher knowledge and skills in their respective economic fields, and their economic activity is definitely beneficial for the owner, the state and the society compared to the non-professional manager. However, it is necessary to strictly define the powers of the owner and the professional manager in relation to the property, thereby guaranteeing the interests of the owner. In addition, in recent years, in a number of companies in the world, under the name of "raiding", ⁶the cases of seizing the property of the owner in various ways have come to the fore, which shows the relevance of this issue.

In the current civil legislation, certain rules regarding the legal relations between the owner (or trust management institution) and the trustee have been formed. Such rules are mainly reflected in defining the boundaries of the powers of the trustee. For example, according to part 2 of Article 849 of the FC, transfer of property to trust management does not result in the transfer of property rights to the trustee.

According to BBSamarkhodzhayev, by entrusting property to trustee management, the owner of the property does not give the manager the legal right to own, use and dispose of it (they remain with the owner of the property, as before), but only gives the trustee the right to exercise these legal rights on his own behalf. gives

⁶Raiding (English raid - invasion, raider - invader) is an artificial way of taking away an enterprise against the will of its owner or manager. Usually, raiding is expressed by a group of individuals in creating artificial conditions to artificially reduce the price of acquisition of property rights to the property of the enterprise. Raiding is often considered to have existed since the birth of stocks, and various games in the stock market are noted to have created the basis for this reality. The main essence of raiding is more manifested in buying it for a pittance by reducing the company's shares or merging it with another company // Wikipedia. The free encyclopedia.



At the same time, the owner of the property cannot exercise his legal rights to own, use and dispose of the property assigned to him while the trust management contract is in force ⁷.

This shows that the activity of the property manager is manifested only in the implementation of some of the powers of the owner in relation to the property. The activity of the property manager must be focused on the interests of the owner and the person designated by him - the beneficiary (Part 1 of Article 849 of the Criminal Code), and deviation from this goal leads to the termination of trust management relations.

Property management is always based on a trust and is entrusted to a trustee with expertise in the relevant field based on the owner's desire to generate income from the property. It should be noted that the identity of the trustee is of great importance to the person who established the trust. When a person entrusts his property to trust management, he risks damage to his property and its destruction. Therefore, the trustee should have a high level of trust in the person in charge. However, this level of risk and trust occurs not only in trust management legal relationships, but also in the case of a buyer who has made an advance payment for goods or a seller who has given a large amount of goods on credit; the owner of money or deposit who made money deposits in the bank; a client who entrusts property to an intermediary for sale (a person who instructs an intermediary to conclude a contract for his own benefit, to perform certain actions) and other similar relations, there is a risk to the property. For this reason, they must fully trust their counterparties. The bottom line is that trust cannot be argued to be unique to fiduciary management relationships.

Some authors emphasize the similarity between "trust management of property" and "trust management". For example, until the introduction of the trust management contract into the civil law, KISklovsky came to the following conclusion: "when we compare trust with management (or operational management), trust is a legally more precise concept..., trust can be compared with similar institutions in international law... Due to the lack of accuracy in the construction of business management (operational management) relations, trust problems have arisen ⁸.

the institution of trust management was introduced into the civil law, PV Turyshev addressed this problem and said that "it is possible to introduce a trust (trust to manage property) into the civil law." Because both the state and the enterprise itself have the ability to exercise the right to the property of the state enterprise in parts ⁹.

At this point, it is necessary to pay attention to the analyzes and opinions of legal scholars and some experts during the introduction of the institution of trust management of property into the current FC.

It is known that before the FC was implemented, the role of state and municipal property in the economic life of the state was very large. For this reason, the introduction of the trust caused different approaches and opinions ¹⁰.

to preserve the state and municipal enterprises operating in the process of preparation of the FC project as independent enterprises, it was decided to transform them into a unitary commercial enterprise as their organizational and legal form. In this case, they are given limited property rights, and state and municipal property are managed in the right of economic management. At the same time, in order to protect the interests of third parties (creditors of unitary enterprises), certain rights of the owner in relation to the property have been reduced. For example, the right of agreement (permission) is reserved for the owner only in transactions related to the disposal of immovable property (Article 177 of the Criminal Code).

⁷Commentary on the Civil Code of the Republic of Uzbekistan. Volume 2 // edited by H.R. Rahmonkulov and O. Okyulov. - Tashkent: Baktria press, 2013. - 859 p.

⁸Sklovsky K.I. Sobstvennost v grajdanskom prave. Stavropol, 1994. - 235 p.

⁹Turyshev P.V. Trast i dogovor doveritelnogo upravleniyaimushchestvom : d is .. candy. walk science - M.: Moskovskii gosudarstvennyy universitet im. M.V. Lomonosova, 1997. - 24 p.

¹⁰Shatokin O. N. Dogovor doveritelnogo upravleniya imushchestvom v grajdanskom zakonodatelstve RF : avtoref. dis. Candy. walk science – Belgorod: 2004. – 23 p.



The state-proprietor has never divided the right to his property . Only in the period of economic changes taking place in the country, in order to increase the role of economic management, he limited his rights to property . When the owner - the state or municipal organization has the right to appoint the head of the unitary enterprise, control the operation of the enterprise, the effective use of the property by the enterprise, reorganize or liquidate the enterprise at any time, there was no division of property rights.

In addition, in order to have the right to conduct business, it is necessary to have the status of a legal entity. There is no need to establish a legal entity when transferring property to a "property management trust" or "trustee" . In this case , property turnover relations arise between the owner, trustee and interested parties.

Thus, the relations "trust management of property", "trust management", "management" are united by a single case - *management of another's property* . However, these relationships cannot be put into one system . Each of them regulates different civil relations according to its legal nature.

In civil law, there are the following distinguishing features of a trust management compared to a trust management of property:

First of all, the legal relationship in entrusting the management of property occurs between the subjects of equal rights and property independent civil law - the owner, the trustee and the beneficiary (beneficiary). In this case, there will be no chance to influence each other. In fiduciary management , there is subordination between the owner and the subject of economic management (operational management).

in all cases, the contract is the basis for the origin of the "property management trust" relationship . The contract is also available in trust management. However, another person may appear as the owner in the "property management trust" . For example, a guardianship and patronage body, executor of a will.

Thirdly, personal trust (fiduciary) is not considered the main feature of legal relations in the relationship of "trust management of property". In trust management, personal trust is primary.

Fourthly, "property management trust" is a type of binding legal relationship. In this case, the person entrusted with the management of the property cannot abandon his obligations while fully complying with the contract .

Fifth, in the relationship of "property management trust", the person entrusted with the management of property protects the interests of the owner or the beneficiary during the performance of the owner's tasks, but acts as a title owner in his name before third parties . The person entrusted with the management of the property must inform third parties of this legal status . Otherwise, he will be recognized as the owner and will be responsible for the subsequent obligations with his own property.

Sixth, the relationship "entrusting property management" includes two types of objects: 1) the practical and legal actions of the person entrusted with property management; 2) the property itself entrusted to trust management.

Seventh, the "property management trust" relationship will be mutually beneficial. Losses caused during the management of the property can be compensated by the profit obtained through this property. In addition, it is possible to agree in the contract that the person entrusted with the management of the property will be rewarded.

Based on the above analysis, the following definition of authorship can be formulated in relation to the trust management agreement:

According to the trust management contract, one party (the founder of the management) undertakes to transfer to the other party (the trustee) his property, including property rights, for a certain period of time and to give appropriate instructions, and the other party undertakes to transfer this property, including undertakes to manage property rights for a fee in the interests of the founder of management or the person designated by him (beneficiary).

