The common law trust as a legal institution is a unique concept. The trust as a legal institution evolved in England, and quickly gained influence in Commonwealth countries. As a consequence, trust law is largely consistent and unified by its case law in North America, Australia, New Zealand, Hong Kong, etc. In civil law countries, by contrast, trust schemes have been introduced on-demand as civil law economies find the need, albeit with similar legislation and functionality as applied in common law countries. In civil law countries and states where English economic and political influence was strong, the regulation of trusts was inevitable. The trust has been instituted, however, with specific legislation in mixed civil legal environments, such as Louisiana

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Québec\textsuperscript{2}, South Africa\textsuperscript{3} and even in some Central and South American countries (Panama, Mexico, Chile, etc.).\textsuperscript{4} By comparison, legal systems in

\begin{itemize}
\item R.J. Alfarro, The Trust and the Civil law with Special Reference to Panama, in Journal of Comparative Legislation and International Law 33/3–4, 1951, p. 29; L. S.
Europe based on Roman law traditions have either conceived their own approach or completely rejected the institution of the trust as did Germany, Austria, Spain, Portugal etc. Some established customary practices without any legislative background of the fiduciary ownership transfer, such as Switzerland; some made use of private foundations, as in Austria and Belgium, while others, such as Liechtenstein, recognized the benefits of the trust and similar institutions, and established such systems in the early 20th century. Ultimately, the economic demand for trust systems is obvious, particularly on the basis of its functionalities and legal regulations. In Asia, fol-


ollowing in Japan’s footsteps, the People’s Republic of China, South Korea and Taiwan each established legal backgrounds for property management in the late 20th century. In the early 21st century, legislation in European civil law systems followed suit: France, Luxembourg, Russia, Lithuania, Geor-
gia, San Marino\textsuperscript{12}, Czech Republic, Romania, and Hungary all set up legal backgrounds for property management.\textsuperscript{13}

I would like to give a short introduction below to the legislation of the \textit{trust}-like legal devices applied in seven Eastern European countries: Russia, Ukraine, Lithuania, Georgia, Czech Republic, Romania and Hungary. The second part of the study provides a comparison of the most important features of regulation in these legal regimes.

The texts of the civil codes of the covered countries use different terminologies for property management and for the parties in the relationship. I will generally use Anglo-Saxon terms, such as \textit{trust}, settlor, \textit{trustee}, beneficiary and \textit{trust} property, but of course this does not mean that the examined legal institutions are equal to the \textit{trust}.

1. Russia.

The regulation concerning the \textit{trust} was promulgated on 24 December 1993.\textsuperscript{14} Pursuant to the regulation, a contract is concluded between


\textsuperscript{13} It is also common practice in some countries to use the fiduciary transfer of ownership for purposes like the \textit{trust}. For example, the institution of the \textit{fiducia} (\textit{powiernictwo}) exists in Poland. The establishment of the \textit{fiducia} consists of two stages: firstly, the transfer of legal title to the fiduciary (\textit{powiernik}), and secondly, the activity of the fiduciary, who acts in the capacity of owner, but fulfils the obligations arising from the contract vis-à-vis the transferor. The \textit{fiducia}'s scope of application is mainly related to investment companies, bank and financial activities. P. Stec, \textit{Fiducia in an Emerging Economy}, in E. Cooke (a cura di), \textit{Modern Studies in Property Law}, Vol. 1: \textit{Property 2000}, Hart Publishing, Oxford–Portland–Oregon, 2001, p. 47. The situation is very similar for example to the legal regulation in Greece as well. P.J. Kozyris, C. Deliyianni-Dimitrakou, A. Valtoudis, \textit{Commercial Trusts in Europe: The Greek Perspective}, in \textit{Revue hellénique de droit international} 60, 2007, p. 208 ss.

\textsuperscript{14} The term \textit{trust} (\textit{trast}) appeared in the Russian private banking sector in 1990, allowing banks to manage the investments and securities of their clients. See “On the banks and banking activities in the RSFSR”, Vedomosti RSFSR 1990 No. 27. item 327. On “Fiduciary Ownership (the \textit{trast})”, Sobranie aktov RF 1994 No.
the settlor of the trust (uchreditel’ trasta) and the trustee (doveritel’nyi sobstvennik); the settlor transfers the property to the trustee, who manages the property for the benefit of the beneficiary. Property transferred in this manner was granted protection in the event of the trustee’s insolvency. This arrangement was drafted specifically for privatisation purposes; the state was the settlor, and the federal state treasury was the beneficiary. The trustees were institutions, e.g. banks, investment funds and insurance companies, which managed the shares of the converted state-owned companies for a fee. The new Russian civil code substantially amended this legal instrument.

The first part of the Russian civil code entered into force on 1 January 1995. Pursuant to Art. 209(4), legal title may be transferred to someone else for the purpose of property management (doveritel’noe upravlenie). The second part of the Russian civil code entered into force on 1 March 1996. Chapter 53 regulates property management (doveritel’noe upravlenie). Pursuant to Art. 1012 of the Russian civil code, under the agreement between the parties, one party (settlor) transfers the property to the other party (trustee) for a fixed period, and the other party undertakes to manage the property for the benefit of the settlor or a beneficiary designated by him. The transfer of property does

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1. Pursuant to the preamble, the introduction of the trust was necessitated by new forms of business administration and institutional reform related to economic reform. E. Reid, The Law of Trusts in Russia, in Review of Central and East European Law 24, 1998, p. 45 ss.

15 The federal contracting agency, Roskontrakt, became the largest asset management organisation. E. Reid, op. cit. (The Law of Trusts in Russia), p. 47. The subsequent application of the trust is related to privatisation in Russia. In 1992, a presidential regulation ordered the conversion of state-owned companies into companies limited by shares; their shares were to be managed under a trust arrangement.

16 Sobranie zakonodatel’stva RF 1994 No. 32 item 3301.

17 The earlier term “trust owner” was replaced with “trust manager” (doveritel’nii upravliaushchii), which is associated with agency, representation. E. Reid, op. cit. (The Law of Trusts in Russia), p. 48.

18 Sobranie zakonodatel’stva RF 1996 No. 5 item 410. See also I. Gveliesiani, French “Fiducie” and Russian “ДОВЕРИТЕЛЬНОЕ УПРАВЛЕНИЕ ИМУЩЕСТВОМ” (Terminological Peculiarities), in European Scientific Journal, December 2013, Special edition, Vol. 4, p. 115 ss.
not extend to the transfer of legal title to the property. Thus, under the new regulation, the settlor retains legal title to the trust property, while the trustee only acquires the right to manage the property. The trustee carries out his duties for remuneration, but is not entitled to profits from the trust property.

This contractual arrangement does not quite reach the level of the Anglo-Saxon trust, but it is more than a simple agency or mandate. Although the settlor may terminate the contract at any time, the trustee holds exclusive rights to manage the property. On the other hand, the trustee requires the prior written consent of the settlor for important decisions concerning the property, such as the cessation of the business association through the exercise of voting rights attached to shares included in the property, modification of its capital, decision on the amendment to the deed of foundation. The trustee must manage the property separately from his own property, and keep it on a separate account. This arrangement is mainly applied in Russia for the operation of investment funds and pension funds.

The adoption of the Anglo-Saxon version of the trust was opposed by Russian jurists mainly on the grounds that it would have infringed the requirement of the indivisibility of ownership, and the law of equity (spravedlivost’) is similarly unknown in Russian law.

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20 E. Reid, op. cit. (The Law of Trusts in Russia), p. 54 ss.

21 Benevolenskaya notes that divided ownership had not been unknown in the context of Russia’s legal history. She mainly cites the work of Anatolij Vasilievich Venediktov, Gosudarstvennaya socialisticheskaia sobstvennost (Izdatel’stvo AN SSS, Moskva, Leningrad, 1948). Z.E. Benedolenskaya, Prospects for Trust in Russia: The Prospective as Seen from 2010 and 2011 Draft Amendments to Russian Civil Code, in Review of Central and Eastern European Law 37/1, 2012, p. 41 ss.
2. Ukraine.

The private law of Ukraine is traditionally based on Roman law, with a strong influence of the French civil code.\textsuperscript{22} The new civil code enacted on 1 January 2004 was strongly influenced by the German civil code (BGB). The new civil code regulates property management in Book V (The Right of Obligation), Section III (Separate Types of Obligations), Sub-section 1 (Contractual Obligations), Chapter 70 (Property Management).

According to the regulation, under the written property management agreement the settlor transfers the property to the manager (trustee) to be managed for a specific period of time. The trustee manages the property in the interest of the settler or a third person, a beneficiary.\textsuperscript{23} The trustee is entitled to remuneration for his activity. The property can be almost anything; there is a restriction only in case of monetary funds and certain securities, which are allowed only when the legal relationship is established by law. The trustee can only be an enterprise and the property management agreement must be registered by the state. The managed property must be handled separately from the assets of the trustee.

3. Lithuania.

In the earlier civil code of Lithuania, in force from 1964, property management was regulated in relation to public property. The new civil code was enacted on 17 May of 1994 and came into force on 1 January 2000\textsuperscript{24}; it introduced property trust law for the private sector as well. The regulation was essentially only renamed, but the substance of the legal arrangement remained the same.\textsuperscript{25} The property trust law is an in rem right which is regulated in Book Four (Material Law), Part I (Things), Chapter VI (Right of Trust) of the Lithuanian civil code.


\textsuperscript{23} Art. 1029(1) of the Ukrainian civil code.

\textsuperscript{24} Lietuvos Respublikos civilinis kodekss, LR CK.

\textsuperscript{25} S. Justas, Problematics of Property Trust Law in Lithuania, Mykolo Romerio Universitetas, Vilnius, 2011, p. 3.
The trustee right is an independent in rem right, with which the trustee is allowed to exercise practically the same rights as the owner.

4. Georgia.

Art. 724–729 of the Georgian civil code of 1997 regulate the legal institution that is similar to the trust (sakutrebis mindoba), which was shaped upon the influence of Anglo-Saxon law and the Roman law fiducia.26 Property management is established by a written trust contract (sakutrebis mindobis khelsbekruleba), under which the trustee (mindobili mesakutre) is obliged to manage the property for the benefit of the settlor (sakutrebis mimndobi); thus, this is not a tripartite relationship. The law allows the transfer of the legal title of the trust property, and pursuant to Art. 725(1), the trustee manages the property in his own name, at the cost and risk of the settlor. Profits from the property are also due to the settlor. As a general rule, the property management contract is gratuitous, but the parties may derogate from this rule. The trustee is liable toward third parties for duties relating to the trust property.27 Provisions relating to agency provide the legal framework for the property management contract.

5. Romania.

In Romania, civil code No 511/2009 (amended by No 71/2011.), Art. 773–791 introduced the fiducia, a property management arrangement similar to the trust. The Romanian concept of the fiducia shows notable similarities to the French law of the fiducie.28 The fiducia may be established by law.

28 In connection with the French regulation see F. Barrière, The French fiducie, or the chaotic awakening of a sleeping beauty, in L. Smith (a cura di), Re-imagining the trusts: trusts in civil law, Cambridge University Press, Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi, Mexico City, 2012,
or a notarised contract. Hence, it may not be established by testament. Pursuant to Art. 773 of the Romanian civil code, one or more settlors (constituitori) transfer legal title or other rights to one or more trustees (fiduciari), who manage it for a specific purpose or for the benefit of the beneficiaries (beneficiari). The trust property constitutes property separate from the trustee’s own property. Under Romanian regulations, the position of trustee may only be filled by a credit institution, investment company, insurance or reinsurance company, notary or lawyer. 29

The establishment of the fiducia must be reported to the competent tax authority within one month. The fiducia becomes effective vis-à-vis third parties once the deed of foundation has been registered (Electronic Archive of Security Interests in Personal Property). If the trust property includes real property, it must be registered in the land register. The maximum duration of the fiducia is 33 years.

6. Czech Republic.

The civil code of the Czech Republic (No. 89/2012.) in force as of 1 January 2014 also regulates property management. The regulation of the trust was introduced in a form of a trust fund (svěřenský fond). Legislators applied the concept of property without owner for drafting the regulation similar to the civil code of Québec. 30 Only trust funds set out in a Statute, which is a public instrument, are valid. The trust may be established by contract or testament. The trust may be declared for commercial, investment, private purposes or for public benefit.

Upon establishment of the trust, the settlor no longer holds legal title to the trust property, which will become property without owner, to be man-


29 See I. Gvelesiani, Romanian “Fiducia” and Georgian “Trust” (Major Terminological Similarities and Differences), in Challenges of Knowledge Society 2013/3, p. 286 ss.

30 In connection with the Québec rules of trust see Y. Caron, op. cit., p. 428; M.C. Cumyn, op. cit. (The Quebec Trust), p. 72.; Kenneth G.T. Reid, op. cit. (Patrimony not Equity), p. 27.
aged by the *trustee* for the benefit of the beneficiaries.\(^31\) Despite the fact that the property of the *trust* fund does not have a legal owner, the *trustee* is listed in some public registries. Accordingly, the purpose of the property and its status as a “*trust fund*” must be indicated in legal relationships relating to the property. Both the settlor and the beneficiary may exercise control over the *trust* property. In addition, the court may also order the *trustee* to take appropriate actions.

The *trustee* is appointed by the settlor, otherwise by the court. The *trustee* is required to accept the appointment, otherwise the *trust* cannot be established. The *trustee* can be a legal person only if it is an investment company operating according to Act No. 240/2013 on Investments Companies and Investment Funds. The settlor also designates the beneficiary, otherwise the settlor is deemed to be the beneficiary.


The new Hungarian Civil Code regulates the fiduciary asset management contract in Chapter XLII, within the scope of agency-type contracts.\(^32\) The regulation was drawn up on the basis of the model of the *trust* in English law and that of the Treuhand in German law. The introduction of fiduciary asset management on a legislative level is warranted by contemporary, tangible demand in the economy. The Chief Codification Committee codified fiduciary property management under contract law, emphasising, however, its application of the legal instrument of the transfer of ownership, based on the *trust*-like model.\(^33\) Under the rules of the new Hungarian Civil Code,

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31 “The ownership of the assets of the *Trust* Fund shall be vested in its own name on account of the fund *trustee*, property in the *Trust* Fund is neither the property manager or property of the founder, or the property of the person to be filled from the *trust*”. Czech civil code, Art. 1448,§ paragraph (3).
the fiduciary asset management contract is an *in personam* legal instrument that implicitly carries substantial *in rem* effects. The new Hungarian Civil Code sets out a contractual arrangement; its validity is bound to a written contract. The regulation is of a general scope; details are regulated in two separate pieces of legislation: Act XV of 2014 on *Trustees* and the Regulation of Their Activity, and Government Decree No 87/2014 (III.20.) on certain rules concerning the financial security of fiduciary property management undertakings. As a general rule, regulation is dispositive; contracting is principally for consideration.

Under the fiduciary asset management contract, the *trustee* has the duty to manage the things, rights and claims transferred to his ownership by the settlor in his own name, for the benefit of the beneficiary, for which the settlor is obliged to pay a fee. If the settlor and trustee are one and the same person, fiduciary property management is established by the irrevocable unilateral declaration of the settlor set out in a public instrument. A legal relationship of property management settled by testament is established by the trustee’s acceptance of his appointment to such position, under the terms set out in the testament. Rules of the fiduciary asset management contract are applied as necessary to fiduciary property management estab-

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35 For further commentary on the rules of the new Hungarian Civil Code relating to fiduciary property management, see G. Wellmann (a cura di), *Az új Ptk. magyarázata VI/IV. Költemi jog, Harmadik, Negyedik, Ötödik és Hatodik Rész* (Explanations of the New Hungarian Civil Code VI/IV. Law of obligations, Part. Three, Four, Five and Six), in HVG-ORAC Lap- és Könyviadó Kft., Budapest, 2013, p. 790 ss.
lished by a unilateral legal act. Rules of the agency contract are applicable as necessary to fiduciary property management.

The rights of the settlor extend to the definition of the settled property and the appointment of the *trustee*. This, however, is a bilateral legal act, as it also requires the acceptance of appointment by the *trustee*. The settlor transfers ownership, rights and claims or other negotiable goods to the *trustee*, and the settlor issues a declaration as to the manner of the management of the property. In the legal relationship of property management, it is also possible to set out other conditions, such as its duration (maximum 50 years), terms, right of unilateral termination, remuneration of the *trustee*, appointment of additional *trustees*, regulation of the delegation of other agents, and the beneficiary’s right to transfer. The settlor reserves the right to remove the *trustee*, appoint a new *trustee*, replace the beneficiary, modify given parts of the settlor’s declaration, and to determine or modify the duration of property management.

The settlor and the beneficiary may monitor the activity of the *trustee* falling within the scope of property management, but the costs of such monitoring are incurred by the settlor. It is a mandatory rule that the settlor may not instruct the *trustee*.

Under the contract, the *trustee* may not be the sole beneficiary. The settlor and the *trustee*, however, may be one and the same person. The *trustee* has the duty to provide information, manage the property as instructed in the declaration of the settlor, avoid conflicts of interest and manage the property separately from his own.

If the *trustee* is authorised to designate the beneficiary under the contract, the *trustee* has the right to determine the share of the beneficiary.

Due to stricter requirements arising from the fiduciary nature of the legal relationship, the *trustee* has the duty to act in utmost consideration of the interests of the beneficiary. The *trustee* has the duty to protect the *trust* property against foreseeable risks in a commercially reasonable manner.

The management of the property includes the exercise of rights arising from ownership, other rights and claims transferred to the *trustee*, and the fulfilment of obligations arising therefrom. The *trustee* may dispose of the assets belonging to the *trust* property under the conditions and within the limits sets out in the contract. If the *trustee* breaches his above obligations and illicitly transfers assets belonging to the *trust* property to a third party, the settlor and beneficiary have the right to reclaim these for the benefit of the *trust* property, if the third party did not purchase the assets in good
faith or for consideration. This rule is applicable as necessary to the illicit encumbrance of the trust property.

The trustee is liable toward the settlor and beneficiary for the breach of his obligations in accordance with general rules of liability for damages. If the trustee carries out his duties gratuitously, rules of liability for damages are applicable to his breach of gratuitous contracts. The settlor and beneficiary may claim the management of any financial gain as part of the trust property, which was realised through the trustee’s breach of his obligations arising from property management.

The trustee is liable for the fulfilment of the undertaken obligations with the trust property. The trustee assumes unlimited liability with his own property for the satisfaction of claims arising from commitments charged to the trust property, if these cannot be satisfied from the trust property, and the other party was not and could not have been aware that the commitments of the trustee exceed the limits of the trust property.

If the settlor dies or ceases without a successor, and there are no other settlors to the trust property, the court may recall the trustee from his office upon request of the beneficiary, and simultaneously appoint another trustee if the trustee seriously breached the contract. Several beneficiaries may exercise such right jointly, provided any of them may request the court to terminate the appointment of the trustee and to appoint a new trustee. The court may not appoint a person as trustee, against whom all beneficiaries object.

Section 6:312 of the Civil Code sets out rules on the separation of property. The trust property constitutes property separate from the trustee’s own property and other property managed by him, which the trustee is obliged to register separately. The parties’ derogation from this rule is void. Assets registered as property managed separately from the trustee’s own property and other property managed by him are deemed to fall within the scope of trust property until proven otherwise. Any assets substituting the managed assets, insurance indemnities, damages or other value, and profits thereon, constitute part of the trust property, whether registered or not. Assets not registered by the trustee as comprising part of the trust property are deemed to be the private property of the trustee until proven otherwise.

The spouse, life partner, personal creditors of the trustee, and creditors

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of other properties managed by the *trustee* may not lay claim to the assets of the *trust* property. The *trust* property does not constitute part of the *trustee*’s inheritance. The beneficiary and the settlor may take action against the spouse, life partner, personal creditors of the *trustee*, and creditors of other properties managed by the *trustee*, to secure the separation of the *trust* property.

The beneficiary has the right to legally enforce the fulfilment of the *trustee*’s obligations. Within this context, it is necessary to examine rights exercised by the beneficiary against the obligor in the case of civil third party beneficiary contracts. The beneficiary has the right to claim the *trust* property and profits thereon, to receive information, while the *trustee* is entitled to remuneration and the reimbursement of his costs. Similarly to the settlor, the beneficiary does not have the right to instruct the *trustee*.

In terms of liability, the new Hungarian Civil Code does not allow the creditors of the settlor and *trustee* to assert claims for the *trust* property. The creditors of the beneficiary, however, may apply for execution of the property, notwithstanding that the distribution of the managed assets and profits thereon to the beneficiary is not due yet. This rule is modified by Act XV of 2014 to the extent that the creditors of the settlor may terminate the property management contract if the execution procedure launched against the settlor is unsuccessful, or does not produce any results within a foreseeable time. I wish to note that this rule is already drawing heavy criticism in Hungarian legal literature, as it ignores differences in time between the exercise of the right of termination and the insolvency of the settlor.

As a general rule, the *trustee* is liable with the *trust* property for the fulfilment of his obligations. However, the *trustee* assumes unlimited liability with his own property toward third parties if their claims cannot be satisfied from the *trust* property, and the third parties were not and could not have been aware that the commitments of the *trustee* exceed the limits of the *trust* property.

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37 Under the rules of common law, in the case of third party beneficiary contracts, the beneficiary has no legal device to enforce the provision of the service set out in the contract. This rule has been regularly broken, for example, in the United States to grant increasingly more rights to the beneficiary. H. HANSMANN, U. MATTEI, *The Functions of Trust Law: A Comparative Legal and Economic Analysis*, in 73 *New York University Law Review*, 1998, p. 451.
8. Comparison.

The most important features of the trust have been chosen for comparison. These viewpoints do not cover all the elements of trust regulation, but give a comprehensive picture of the similarities and differences in the rules of the researched countries.

8.1. Legal structure.

The legal structure of the trust-like devices in the seven reviewed countries is quite different. In Russia and Ukraine, this legal arrangement can be characterised as a mandate or agency contract.\(^38\) In Georgia it is similar to an agency contract, but the trustee holds the property in his own name.\(^39\) In Ukraine the agreement creates a contractual relationship, according to which the trustee is obliged to manage the property. In the Czech Republic the regulation resembles a separate and independent ownership of property, like the regulation in Québec\(^40\). The trust property is neither the property of the settlor, nor that of the trustee; the trust property must be vested in its own name on account (must be designated as a “Trust Fund”). The trust can be private or public. In Romania the French fiducie served as the model, therefore it is a contractual relationship with some property features because the trustee becomes owner of the managed assets.\(^41\) In Lithuania the right of trust is an in rem right, which is quite peculiar because this right can exist alongside ownership.\(^42\) In Hungary the German Treuhand served as the main model for legislators, but strong property rights were also in-

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\(^{38}\) Art. 1012 of the Russian civil code. We should note that the Russian civil code regulates the right of economic management, where the manager can be a state or municipal enterprise (Art. 294), and also the right of operation management (Art. 296.), which is possible for institutes, but these are non-profit legal entities (Art. 120). These rights are in rem rights, but the establishment of these is restricted to the public and non-profit sector. Art. 1029(1) of the Ukrainian civil code.

\(^{39}\) Art. 725 of the Georgian civil code.

\(^{40}\) Art. 1448(3) of the Czech civil code.

\(^{41}\) Art. 773 of the Romanian civil code.

\(^{42}\) Art. 4.106 of the Lithuanian civil code.
tegrated into the fiduciary asset management contract. Two legal acts are required: firstly, a contract, and secondly, the transfer of property.\footnote{Art. 6:310 of the Hungarian civil code.} But we have to emphasise that the Hungarian model has additional rules in connection with asset partitioning and tracing.

On the basis of the comparison, we may conclude that none of these countries adapted the Anglo-Saxon trust. In Russia the structure basically rests on the contract of mandate and agency. In Georgia it is also based on a contract, but the trustee becomes owner of the managed property, while in Ukraine, the settlor remains the owner. Romania followed the French regulation, and the Czech Republic adopted the Québec model. The Hungarian regulation is also based on contract law but property law regulations are also applied. The Lithuanian solution is unique because the right of trust is an in rem right.

8.2. Establishment.

Fiduciary property management in Russia requires a written trust contract, similarly to the Georgian law.\footnote{Art. 1017 of the Russian civil code; Art. 727 of the Georgian civil code.} In Ukraine a written agreement is also needed for property management.\footnote{Art. 1031(1) – (2) of the Ukrainian civil code.} In the Czech Republic a testament or a contract in the form of a public instrument needed for the establishment of the trust relationship.\footnote{Art. 1452(3) of the Czech civil code.} In Romania a public instrument is also required, but there, the trust may be established by law.\footnote{Art. 774(1) – (2) of the Romanian civil code.} In Hungary a contract, a testament or a unilateral declaration may result a the fiduciary asset management legal relationship. A contract and a testament can only be made in written form, while the unilateral act is bound to a document authorized by a notary.\footnote{Art. 6:310(2) – 6:329(1) of the Hungarian civil code.} In Lithuania the right of trust may be established by law, administrative act, contract, will or court judgment.\footnote{Art. 4.108 of the Lithuanian civil code.}

Upon comparison we may conclude that the written form is a requirement in all countries. The Russian, Ukrainian, Georgian and Romanian
regulation allows only a contractual form, while the Czech, Lithuanian and Hungarian one permits a testament as well. The Hungarian regulation is unique in that the trust can be formed by a unilateral act as well. A public instrument is generally required in Romania, Ukraine and in the Czech Republic, but only in the case of the unilateral act under Hungarian law. The Russian and Georgian regulation does not have special requirements beyond the written form. Of course, in all countries there can be specific formal requirements if the transfer of the trust property must be registered with a public registry. Lithuania provides the widest ranging options to establish the right of trust not only in the form of a contract or a will, but this legal arrangement may be established by law, administrative act or court judgment as well.

### 8.3. Registration of the trust.

In Russia, Georgia and the Czech Republic, there are no special regulations relating to the registration of the trust. In Romania the trust agreement must be registered by the tax authority competent at the seat of the trustee within one month after its conclusion, and also with the national registry of the fiduciary management. Registration is important for fiscal reasons and for validity as well. In Ukraine the property management agreement is also required to be registered. In Hungary, regulation is twofold. In the case of a profit-orientated fiduciary management company, the trustee must be licensed and registered by the National Bank of Hungary. In the case of a non-profit-orientated (ad hoc) trust, the contract must be registered by the National Bank of Hungary. We have to emphasise that the omission of the registration of the trust contract does not affect the legal validity of the contract, but it may cause fiscal disadvantages.

We may observe that the registration of the trustee and/or the trust deed is becoming a strengthening trend, usually in connection with the transfer of ownership. This may be a reason why registration is not required at all in Russia and Georgia, while some kind of registration is needed in Ukraine, Romania and in Hungary. In Romania the omission of registration results

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50 Art. 780 – 781 of the Romanian civil code.
51 Art. 1031(2) of the Ukrainian civil code.
52 Art. 11(1) – 19 of Act XV of 2014 on Trustees and the Regulation of Their Activity.
in the nullity of the trust. In Hungary this does not affect the validity of the trust, but has other legal consequences, although the trustee and the beneficiary must pay the relevant tax and stamp duty for the transfer.

8.4. Requirements of the settlor.

In Russia and Ukraine, the settlor or principal can only be the owner of the property.53 There are exceptions in Russian law; in the case of guardianship, the guardian, in the case of inheritance, the testamentary executor can also dispose of others’ property by establishing a trust.54 In Lithuania the trustor can also be the owner of the property to be managed, or any other person who is vested with such right.55 In Georgia, the Czech Republic, Romania and Hungary there are no specific regulations in connection with the settlor. Of course, these pieces of legislation apply general rules, and according to the nemo plus iuris principle, the transfer of the property will is not successful, unless the settlor is owner or at least has the right to dispose of the property.56

8.5. Ownership (title).

In Russia and Ukraine, the legal title remains with the settlor, which is a mandatory rule, and the trustee only has the right to manage the property.57 In Georgia the settlor transfers the title of the trust property to the trustee, and manages the property in his/her own name, but the settlor remains the

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53 Art. 1032(1) of the Ukrainian civil code. As an exception, when the property owner is a juvenile, an incapacitated person, minor, has limited civil capacity or his residence is unknown, the custodian or the guardianship authorities can be settlors as well. See Art. 1032(2) – (5) of the Ukrainian civil code.
54 Art. 32 – 40 – 1026 of the Russian civil code. We should note that other grounds specified by law may also arise.
55 Art. 6.957 of the Lithuanian civil code.
56 Nemo plus iuris ad alium tranferre potest, quam ipse habet (D. 13, 7, 18, 2) or alternatively: nemo dat goud non habet. See A. FÖLDI, G. HAMZA, A római jog története és institúciói, in History and Institutions of the Roman Law, Nemzedékek Tudása Kiadó, Budapest, 201419, p. 319.
57 Art. 1012(1) of the Russian civil code; Art. 1029(1) of the Ukrainian civil code.
ultimate beneficial owner. In the Czech Republic neither the settlor, nor the trustee or the beneficiary are owners of the property; the property does not have an owner. If registration of the property is needed, it is registered in the name of the trustee, but as trust property. In Romania the trustee becomes the owner, but must keep the property separate. In Lithuania ownership remains with the trustor and the trustee acquires a special in rem right, the right of trust. In Hungary the trustee must acquire full ownership, title – this is a mandatory rule.

With regard to this aspect of regulation, four different structures exist in Eastern Europe. In Russia and Ukraine the settlor remains the legal owner of the trust property. These models resemble the simple contractual legal relationship more than the English trust. In Lithuania a special in rem right is established in relation to property management, where the trustor remains the owner. This regulation is very similar to the structure of the Dutch bewind, but in this case, the owner is the trustee, not the beneficiary. The Czech regulation follows the Québec model, which means that the trustee formally holds the legal title, but the trust property is an independent property without owner. In Georgia, Hungary and Romania the trustee is legally the owner of the property, but this property is separated from his/her own property – it is like a sub-property.

8.6. Requirements of the trustee.

In Georgia no special requirements apply to the trustee. In Russia, according to law, the trustee (trust administrator) can only be a businessman or commercial company, and only exceptionally may it not be a businessman or non-profit making organization. A state body or local government

58 The English translation mentions that “the trustor transfers property to the trustee, who holds and manages it in accordance with the interest of the trustor” (Art. 724) and “the trustee shall be bound to manage the property held in trust in his own name, but at the risk of the trustor” (Art. 725).
59 Art. 1450(1) of the Czech civil code.
60 Art. 773 of the Romanian civil code.
61 Art. 6.953(2) of the Lithuanian civil code.
62 Art. 6:310(1) of the Hungarian civil code.
63 If the trustee can be someone else under law, even in this case an institution is not allowed to be the trustee. Art. 1015 (1) – (2) of the Russian civil code.
or a sole enterprise unitarian enterprise are not allowed to be a trustee. The position of a trustee may only be filled by a businessman (*predprinimatel’*) or a commercial company. Natural persons may manage property only in the case of trusts established by law (e.g. guardianship, custodianship). The trustee is required to indicate his legal status, e.g. with the abbreviation “D U”, on contracts relating to the trust property. In Ukraine the trustee can only be an enterprise. A state body and local government body can be a manager only if so stipulated by law. The beneficiary is not permitted to be the sole manager.\(^6^4\) In Lithuania the trustee may be a natural or a legal person as well, and special legal regulation may be enacted to exclude persons from the position of trustee. The trustee may not be the sole beneficiary at the same time.\(^6^5\) In the Czech Republic the trustee can be a natural person. The civil code stipulates that a legal person can be the trustee only if it is permitted by law. We are aware of such law only in connection with investment companies. The trustee may also be appointed by the court. The settlor may also be a trustee, but not the sole one.\(^6^6\) In Romania only financial institutions, investment companies, financial investment companies, insurance companies, notaries and lawyers can be trustees.\(^6^7\) In Hungary specific conditions must be met if the trustee is a profit-orientated business. If the trust relationship is not profit-orientated, any private person of legal age and any legal person can be a trustee. The act drafted in connection with the enforcement of rules set out in the new Hungarian Civil Code distinguish professional and ad hoc property management. Property management is defined as the professional use, possession and enjoyment of the property of someone else for remuneration, which serves the preservation of value and the generation of profit, where reasonably practicable. Thus, the trustee is defined as a business association dealing with the utilisation of someone else’s property either on a professional or on an ad hoc basis.

An undertaking contracting on a regular basis for fiduciary property management at least twice annually, or for a property management fee in excess of one per cent of the value of the trust property on the date of the contract, or for any other financial gain\(^6^8\), may carry out fiduciary property

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64 Art. 1033(1) – (3) of the Ukrainian civil code.
65 Art. 6.958(1) – (3) of the Lithuanian civil code.
66 Art. 1453(1) – (2) of the Czech civil code.
67 Art. 776(1) – (3) of the Romanian civil code.
68 Art. 3(1) of Act XV of 2014 on *Trustees* and the Regulation of Their Activity.
management in possession of the licence issued by the National Bank of Hungary prior to the start of such activity, such undertaking deemed to be a transparent organisation within the meaning of the Act on National Assets. The undertaking must be a limited liability company or private limited company with a registered office in the territory of Hungary, or the branch – registered in Hungary – of an undertaking based in another contracting state of the Agreement on the European Economic Area.

The fiduciary property management undertaking may not carry out activity other than property management, and its name must make reference to property management. The trustee must hold the licenses required for such activity. The fiduciary property management undertaking is required to fulfil strict staff and equipment requirements to receive the license of the National Bank of Hungary.\(^{69}\)

The fiduciary property management undertaking has the burden of proving that it duly performed its fiduciary property management contracts in accordance with the statutory requirements, for the utmost benefit of its client, in particular.

The fiduciary property management undertaking is obliged to inform the future party to the contract of the risks defined by law prior to the conclusion of the property management contract. In addition, the fiduciary property management undertaking has the duty to provide information in writing, on a monthly basis. If no changes are made to the original information, it is sufficient to make reference to such fact in subsequent information. The fiduciary property management undertaking is required to maintain records on the fiduciary property management relationships to support the traceability of fiduciary property management, administrative controls and administrative assessments of property.\(^{70}\)

We may observe that it is a trend to regulate the office of the trustee and require the fulfilment of special conditions to fulfil this position. It is especially important in cases where the trust management activity aims to be conducted on a business basis.

\(^{69}\) Art. 3(2) – (5) of Act XV of 2014 on Trustees and the Regulation of Their Activity.

\(^{70}\) Art. 36 – 38 of Act XV of 2014 on Trustees and the Regulation of Their Activity.
8.7. The beneficiary.

In Russia and in Ukraine the trustee may not be the beneficiary, but there are no other special regulations relating to this topic. In Lithuania the trustee may not be the sole beneficiary. It is possible to establish the trust for personal purposes, and for private or public good as well. In Georgia there are no specific regulations applicable to the position of the beneficiary. In the Czech Republic anybody can be a beneficiary, but nobody is allowed to appoint a beneficiary for his/her own profit. It is possible to establish a trust for private purposes and also for public charitable purposes. In Romania the settlor, the trustee or third person may all be beneficiaries. In Hungary the trustee may not be the sole beneficiary, and the purpose trust is not regulated.

Based on the above comparison, we may conclude the following. It is noteworthy that Czech regulations allow the establishment of a purpose trust, even a private purpose trust. In Russia the trustee may not be the beneficiary because of his contractual position. The Hungarian, Romanian, Georgian and Czech regulations are quite liberal in this regard because the trustee can be a beneficiary, but not the only one.

8.8. Managed property.

In Georgia, the Czech Republic, Romania, Hungary and Lithuania, there are no specific regulations applicable to the definition of the trust property; it can be movables, immovables, rights, claims and securities. In

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71 Art. 1015(3) of the Russian civil code; Art. 1033(3) – 1034(2) of the Ukrainian civil code.
72 Art. 6.958 of the Lithuanian civil code.
73 Art. 4.106(2) of the Lithuanian civil code.
74 Art. 1458(2) of the Czech civil code.
75 Art. 1449(2) – 1473(1) of the Czech civil code.
76 Art. 777 of the Romanian civil code.
77 Art. 6:311(4) of the Hungarian civil code.
78 Art. 724 of the Georgian civil code; Art. 1448(1) of the Czech civil code; Art. 773 of the Romanian civil code; Art. 6:310(1) of the Hungarian civil code; Art. 6.956(1) of the Lithuanian civil code.
Russia the trust property can be assets, securities, any other rights or property, but not cash only and property under economic or operative management. In the case of securities, these can be pooled by several settlors.\(^79\) In Ukraine monetary funds and some types of securities are excluded from the trust property.\(^80\)

It is quite common that all kinds of rights can be objects of the trust property. Exceptions are regulated in Russian and Ukrainian regulation.

8.9. Asset partitioning.

In Russia the trustee must separate the managed property from his own property in legal relationships. According to the trust property, he must use the mark “D U” (dovertel’nyi upravliahushchii, trust manager) to indicate to third parties that the transaction is connected to trust property. At the same time, the trustee must keep the trust property on a separate account.\(^81\) In Ukraine the trust property must be separated from the settlor’s and trustee’s property. The managed property must be registered with the manager’s separate bank, and is subject to separate accounting.\(^82\) In Georgia the managed property is in the ownership of the trustee, and the trustee enjoys the owner’s position in relation to third persons. Furthermore, the trustee can be liable toward third persons.\(^83\) In the Czech Republic the managed assets are absolutely separate from the property of the settlor, the trustee and the beneficiary.\(^84\) In Romania, Hungary and Lithuania the trustee must also manage the managed property separately.\(^85\)

As we can see, asset partitioning is resolved by law in all the studied regulations, except Georgia. On the other hand, the extent of asset partitioning can be judged upon the creditors’ rights.

\(^{79}\) Art. 1013(1) – (3) of the Russian civil code.
\(^{80}\) Art. 1030(2) – 1045 of the Ukrainian civil code.
\(^{81}\) Art. 1012(3) – 1018(1) – 1018(2) of the Russian civil code.
\(^{82}\) Art. 1030(3) of the Ukrainian civil code.
\(^{83}\) Art. 725(2) – 728 of the Georgian civil code.
\(^{84}\) Art. 1448(3) of the Czech civil code.
\(^{85}\) Art. 786(2) of the Romanian civil code; Art. 6:312 of the Hungarian civil code; Art. 6.961 of the Lithuanian civil code.
8.10. Rights and obligations of the trustee.

In Russia the trustee is required to manage the trust asset, provide information, and is entitled to receive remuneration. 86 In Ukraine the trustee is entitled to manage, alienate and mortgage the trust property, but the latter two rights can be exercised only with the consent of the settlor. The trustee is entitled to remuneration. The trustee must act in person, except if a deputy can be entrusted under the management agreement or in urgent cases. The trustee is obliged to notify third persons that he is acting as property manager and not as an owner. 87 In Georgia the trustee must manage the property in good faith, as if he were managing his own affairs. 88 In the Czech Republic there is no specific regulation pertaining to the duties and rights of the trustee. The settlor, the beneficiary, an appointed third person (protector), or a public authority appointed by law may supervise the activity of the trustee. The settlor may at any time terminate the trust or remove the trustee and appoint another. The settlor may issue a letter of wishes, but may not directly instruct the trustee. 89 In Romania the trustee must inform the settlor. The settlor may appoint a third person (protector) to supervise his rights, and he is entitled to remuneration. The settlor may at any time initiate the removal of the trustee in court. Between the time of removal and the appointment of a new trustee, the court may appoint a temporary supervisor. 90 In Hungary the trustee is entitled to remuneration, if not otherwise stipulated. The settlor and the beneficiary only hold a right to information; they are not allowed to instruct the trustee. The settlor may at any time remove the trustee, and the beneficiary may apply for his removal in court. 91 In Lithuania, under the trust, the trustee exercises owner’s rights over the trust property. The trustee must exercise his right in person, if not stipulated otherwise in the agreement. The trustee is entitled to protect the trust right

86 Art. 1020 of the Russian civil code.
87 Art. 1037 – 1038 – 1041 – 1042 of the Ukrainian civil code.
88 Art. 725 of the Georgian civil code.
89 Art. 1463 – 1466 of the Czech civil code.
90 Art. 783 – 784 – 788 of the Romanian civil code.
91 Art. 6:317 – 320 of the civil code. Furthermore, there are several special requirements applicable to the trustee regulated in Act XV of 2014 on Trustees and the Regulation of Their Activity.
as in the case of the right of ownership. The *trustee* must report his activities to the *settlor* and the beneficiary at least once a year.  

It is quite common for the general rule to entitle the *trustee* to remuneration in all the examined legislations, except in Georgia. The *trustee* is generally obliged to inform the settlor and the beneficiary. The settlor may remove the *trustee*; under Romanian regulation, a court decision is needed for this. The Hungarian regulation also allows the beneficiary to remove the *trustee* by court decision. In countries, where the *trust* is based on a contractual relationship (Russia, Georgia), the settlor is allowed to instruct the *trustee*. This is forbidden in other jurisdictions; only a letter of wishes may be issued.

### 8.11. Liability of the *trustee*.

In Russia the *trustee* is not liable to third parties in the capacity of *trust* manager, but if he omits to give notification to them, he will be liable with his own property. Finally, the settlor must provide compensation for damages caused to third parties by the management of the *trust* property. The *trustee* is liable towards the beneficiary, except in the event of force majeure or losses caused by the beneficiary. In Ukraine the manager must act with due diligence and compensate the damages of the settlor and the beneficiary if he fails to do so. The *trustee* is liable toward third parties with his own property in limited cases, which will be discussed in connection with the creditors’ position.  

In Georgia the *trustee* is liable to the settlor and also to third persons; the settlor, however, must bear all costs and risks associated with the *trust* property. In the Czech Republic there is no special rule regarding the liability of the *trustee*, but general rules are applied. In Romania it must be assumed that the *trustee* is fully competent to dispose of the property to third parties. The *trustee* is liable to third parties only with the *trust* property. In Hungary the *trustee* must act as a prudent and reasonable businessman. The *trustee* is liable towards the settlor and the beneficiary in case of breaching his/her duties. In Lithuania the *trustee* must act in the interests of the *settlor* and the beneficiary, and he is liable for all

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92 Art. 6.963 – 6.964 of the Lithuanian civil code.
93 Art. 1043(1) of the Ukrainian civil code.
the damages caused by the breach of his obligations. If the trustee oversteps his powers, he is personally liable for the caused damages.

Where the trust is operated under a mandate contract (Russia, Georgia), general rules are applied to the liability of the trustee. It is common that the trustee is liable to the settlor and the beneficiary. The liability of the trustee is more severe in Hungarian regulation.

8.12. Duration.

The trust relationship may last for maximum 5 years in Russia and Ukraine, except where the law permits a longer duration; in Lithuania it is maximum 20 years, also except where the law permits a longer duration; in Romania it is maximum 33 years, maximum 50 years in Hungary, maximum 100 years in the Czech Republic in the case of a private purpose trust, while in Georgia there is no time limitation.94

It is common that there is a time limitation to the trust relationship (with the exception of Georgia). We may observe that these time limitations are quite short in Russia, Lithuania, Romania and even in Hungary, compared with the international trends. If we consider that the trust very often functions as asset planning for longer periods of time, then the Russian and Ukrainian models are not suitable to achieve this purpose.


In connection with the creditors’ position we have to take into consideration four different cases: the creditors of the settlor, the trustee, the beneficiary and the trust property itself. We have to take into account that there is no special regulation in Georgia pertaining to the position of the creditors.

94 Art. 1016(2) of the Russian civil code; Art. 1036(1) of the Ukrainian civil code; Art. 6.959(2) of the Lithuanian civil code; Art. 779b) of the Romanian civil code; Art. 6:326(3) of the Hungarian civil code; Art. 1460(1) of the Czech civil code.
a) Creditors of the settlor

In Russia, in case of the bankruptcy of the settlor, the trust contract must be terminated and the trust property is deemed to be part of the bankrupt settlor’s property.\(^9\) In Ukraine the creditors of the settlor may lay claims to the trust property only in two cases, even though the settlor remains the owner of the property. If the settlor goes bankrupt, the management agreement must be terminated and, here too, the trust property is deemed to be part of the settlor’s property. In another case, the managed property is mortgaged before the property management relationship comes into being.\(^9\)

There is no definite regulation in connection with the rights of the settlor’s creditors in the Czech civil code. In Lithuania, if the creditors of the settlor file a bankruptcy procedure against the settlor, the trust agreement is terminated and the managed property will be subject to the creditors’ claims.\(^9\)

In Romania, creditors of the settlor may claim the trust property if they have guarantees in things or their claim originates before the establishment of the trust and the settlor is insolvent; in this case, the trust contract is terminated.\(^9\)

In Hungary the creditors of the settlor may claim the trust property if the settlor is under execution and his property does not cover his debts. In this case the creditor may terminate the trust relationship.

All the regulations provide some kind of immunity for the managed property and separate it from the settlor’s assets. Furthermore, the creditors of the settlor may claim the trust property if the settlor is insolvent.

b) Creditors of the trustee

In Russia the wording of the civil code confirms that the creditors of the trustee are not allowed to lay claims against the trust property because it is separated from the trustee’s own assets.\(^9\)

Based on the fact that the trustee is not granted ownership, the creditors of the trustee may not demand compensation from the managed property under Ukrainian law. This aspect of regulation is very similar to the one in Lithuanian law. In Czech law, the sit-

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\(^9\) Art. 1018(2) of the Russian civil code.
\(^9\) Art. 1040 of the Ukrainian civil code.
\(^9\) Art. 6.961(2) of the Lithuanian civil code.
\(^9\) Art. 786(1) of the Romanian civil code.
\(^9\) Art. 1018(1) of the Russian civil code.
Different Types of Trust. Like Regulations in Eastern Europe

valuation is the same, although for different reasons, because the trustee does not have ownership of the trust property, either. In Romania, even though the trustee is owner, his creditors are not allowed to take action against the trust property.\(^{100}\) In Hungary it is also clear that the creditors, spouse or partner of the trustee may not lay claim against the trust property.\(^{101}\)

Overall we may establish that the creditors of the trustee may generally not lay claims against the trust property.

c) Creditors of the beneficiary

There are no specific regulations in connection with the rights of beneficiaries’ creditors to trust property in Russia, Ukraine and Lithuania. I think the reason is related to the fact that in these countries the philosophy of the regulation presupposes that the settlor is the beneficiary himself. In the Czech and Romanian regulations we cannot find any special rules on this. In Hungary the creditors of the beneficiary may claim the trust property only when the transfer of it or part of it is due to the beneficiary.\(^{102}\)

In my opinion, lacking regulation of the position of beneficiaries’ creditors may cause problems in practice. The Hungarian regulation is favourable from this point of view; it does not reveal deficiencies in this field. On the other hand, it is also advantageous if a discretionary trust is established.

d) Creditors of the trust property

We may assume that on the basis of a general rule regulated in all the examined legal regimes, the obligations arising in connection with the trust property have to be handled alone, independently from the parties’ property. But there are different subsidiary rules as well. In Russia, if the trust property does not cover the debts, the trustee and the settlor are liable to third parties in the first and second stages, respectively. If the trustee transgresses his powers, first the trustee, then the settlor will be held liable to third parties, provided the trustee compensates the settlor for all the caused damages.\(^{103}\) The Ukrainian and Lithuanian regulation is quite the same; the

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100 Art. 785 of the Romanian civil code.
101 Art. 6:313 of the Hungarian civil code.
102 Art. 6:314 of the Hungarian civil code.
103 Art. 1022(2) – (3) of the Russian civil code.
trustee assumes secondary liability to third parties for debts exceeding the value of the trust property, and if he acts beyond the limits of his power, he must also provide compensation to the settlor for the damages. In the Czech Republic the creditors of the trust property may sue for the trust property only if there is no special regulation relating to secondary liability. In Romania, in case of claims against the trust property, the settlor’s or the trustee’s property may be litigated only if it is regulated in the trust contract. In Hungary the creditors of the trust property may only lay claim to the trust property, unless the trustee transgresses his powers and the third persons did not know about it and with due diligence they did not have to know about it, either. In this case the trustee will be liable for claims by third parties with all of his property.

It is worth mentioning that in Russia, Ukraine, Lithuania the creditors of the managed assets are in very favourable position because they can lay claims against the settlor and the trustee as well. In Hungary, regulation provides this possibility only against the trustee and only in case the third party acts with due diligence. In Romania and in the Czech Republic, such kind of mandatory rule does not exist, which can be quite disadvantageous for the creditors.


There are no special rules relating to tracing in Russian, Ukrainian, Lithuanian, Czech and Romanian trust laws. In Hungary both the settlor and the beneficiary have a right to demand third parties to restore the trust property in case the transaction from the trust property was not a purchase made in good faith. In Lithuania and Russia the settlor remains the owner of the trust property, therefore the settlor has the right to reclaim, vindicate the property any time.

Among the compared jurisdictions, only the Hungarian law regulates the possibility of tracing for the benefit of the settlor and the beneficiary.

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104 Art. 1043(2) – (3) of the Ukrainian civil code; Art. 6.965(3) – (4) of the Lithuanian civil code.
105 Art. 786(2) of the Romanian civil code.
106 Art. 6:318(3) of the Hungarian civil code.
107 Art. 6:318(2) of the Hungarian civil code.
This rule is the special adaptation of the English regulation. Under this rule we may argue that the settlor and the beneficiary both have some kind of *in rem* right to the *trust* property.

### 8.15. Termination.

In Russia the *trust* relationship ceases in case of the death or liquidation of the beneficiary, refusal of the beneficiary to receive from the *trust* estate, the death or liquidation of the *trustee*, refusal of the *trustee* to manage the *trust* because of impossibility, termination by the settlor or with the settlor’s bankruptcy. Termination must be bound to three months’ notice. The *trust* property must be returned to the settlor, if not stipulated otherwise in the contract.\(^{108}\) In Ukraine the property management agreement is terminated if all of the *trust* property is distributed, if any of the parties terminates it or the fixed period expires, or in case of the death or refusal by the beneficiary. The legal relationship also ceases if the *trustee* becomes legally incapacitated, missing or his legal capacity is restricted or the settlor goes bankrupt.\(^ {109}\)

In Georgia, on the basis of the mandate contract, each party may terminate the contract according to the rules of mandate.\(^ {110}\) In the Czech Republic the *trust* ceases when the given period expires, if the purpose of the *trust* is fulfilled, or if the fulfilment of the purpose is impossible, it will be terminated by the court, but the court may replace it with other similar purposes; or it is terminated by the court. The settlor may at any time terminate it or appoint a new *trustee*.\(^ {111}\) In Romania, after the *trustee* accepted his office, the settlor is not allowed to modify or terminate the contract, except with the consent of the beneficiary or the court. The *trust* contract is terminated by expiration or the fulfilment of its purpose. The beneficiary may also waive his rights, which terminates the contract. The insolvency procedure or liquidation of the settlor also terminates the contract. After termination, the *trust* property must be transferred to the beneficiary, otherwise to the settlor.\(^ {112}\) In Lithuania the *trust* ceases in case of the death or liquidation of the

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\(^ {108}\) Art. 1024 of the Russian civil code.

\(^ {109}\) Art. 1044(1) of the Ukrainian civil code.

\(^ {110}\) Art. 729 of the Georgian civil code.

\(^ {111}\) Art. 1471 – 1473 of the Czech civil code.

\(^ {112}\) Art. 789 – 790 of the Romanian civil code.
beneficiary, or when the beneficiary waives the benefit received under the trust agreement. In the trust agreement the parties may derogate from these two rules. The trust also ceases if the trustee dies, becomes legally incapacitated, his legal capacity is limited or is untraceable or liquidated. The trust is also terminated if bankruptcy proceedings are launched against the trustor. The parties may withdraw the agreement if the trustee is not in the position to fulfil the agreement himself. The trustor may terminate the agreement at any time if he pays the remuneration of the trustee. In Hungary, fiduciary property management is terminated if no trust property is left; three months after resignation, if the trustee resigns from his position; on the termination date of the trustee’s engagement, if there is no trustee to manage the trust property for over three months; on the date of the settlor’s death, if he was the sole beneficiary.\footnote{Art. 6:326 of the Hungarian civil code.}

Where the trust is based only on a contractual relationship, the death or liquidation of the trustee terminates the relationship (Russia, Georgia). In jurisdictions where the trust relationship contains more property elements, the trusteeship is an office, and if the trustee dies, this does not terminate the trust. It is quite common that the settlor may terminate the trust relationship (except under Romanian law). It is also quite common that the beneficiary may not terminate the trust (Saunders v Vautier rule is not applicable), except in Romania and in Hungary.


Several conclusions can be drawn on the basis of the comparison. Generally, I would point out that in all the above mentioned countries, asset management is based on a contractual relationship between the parties. From this point of view, the Russian, Ukrainian, Georgian models remain on the level of a contract, while the Lithuanian regulation creates an independent in rem right for the trustee. Under the Romanian and Hungarian solutions, the trustee is granted ownership, but asset partitioning is ensured as well, while the Czech law regulates the trust property as if it were an independent entity without owner. In my opinion, Hungarian regulation resembles the English trust the strongest, particularly if we take into account the
possibility to establish it by last will and unilateral act, and item the settlor’s and beneficiary’s right of tracing.

If we think of the function of the trust as an instrument of asset planning, the short duration of the legal relationship can be a relevant obstacle. In Russia and Ukraine, and even in Lithuania, the permitted duration of the legal relationship does not seem to be adequate, while the Czech solution is most aligned to the international trends.

The other very important advantage of the English trust is its flexibility. In all the examined countries a written document required for the establishment of the legal relationship, which may limit willingness to establish fiduciary management. On the other hand, this is understandable in connection with a new legal instrument for documentation reasons and to ensure the protection of creditors. The elasticity of regulations can be criticized in countries, where rigorous requirements are applied to the trustee’s person, or the registration of the trust agreement is prescribed. In my opinion, this can be explained with the caution of the legislators, who would like to avoid the possibility of starting a new legal institution with abuses and scandals. I think that once this type of property management becomes a living component of these legal systems, together with the related experience, then these restrictions can be rethought.

In connection with the position of the parties’ creditors, I think that most of the regulations are providing appropriate protection, maybe more than is desirable in some countries.

I hope that these trust-like devices will play an important role in the economies and societies of Eastern European countries and can fulfil the advantageous functions of the English trust.