

## **Law of 27<sup>th</sup> July 2003**

- **ratifying the Den Hague Convention of 1<sup>st</sup> July 1985 relating to the law applicable to the trust and its recognition;**
- **providing for a new regulation of fiduciary contracts and**
- **amending the law of 25<sup>th</sup> September 1905 on the transcription of rights on immoveable property.**

### **Title I**

#### **The law applicable to the trust and its recognition**

##### **Art. 1. Ratification of the Den Hague Convention of 1<sup>st</sup> July 1985**

The Convention relating to the law applicable to the trust and its recognition signed in Den Hague on 1<sup>st</sup> July 1985 is ratified.

##### **Art. 2. General position of the trustee**

(1) For the operation of the Convention relating to the law applicable to the trust and its recognition in respect of assets which are the subject of a trust and which are situated in Luxembourg, the position of the trustee is determined by reference to that of an owner.

(2) The reference to the position of an owner is without prejudice to the principle of segregation between the property formed by the assets of the trust and the property made up by the personal assets of the trustee in accordance with article 11 of the Convention of 1<sup>st</sup> July 1985.

##### **Art. 3. Declaration and reservations**

Concurrent with the deposit of the ratification instruments, the Grand Duchy of Luxembourg will make the following declarations and reservations:

The Luxembourg Government declares in accordance with article 16 paragraph 3 of the Convention, that Luxembourg will not apply article 16 paragraph 2 thereof.

The Luxembourg Government declares, in accordance with article 20 of the Convention, that the provisions thereof are extended to a trust created by court order.

### **Title II**

#### **Fiduciary contracts**

##### **Art. 4. Scope of application**

*(Law of 22<sup>nd</sup> March, 2004)*

« This title only applies to fiduciary contracts where the fiduciary is a credit institution, an investment firm, an investment company with variable or fixed share capital, a securitisation company, a fiduciary representative acting in the context of a securitisation

transaction, a management company of common funds or of securitisation funds, a pension fund, an insurance or reinsurance undertaking or a national or international public body operating in the financial sector. »

#### **Art. 5. Definition**

A fiduciary contract within the meaning of the present title is a contract by which a person, the *fiduciant*, agrees with another person, the fiduciary, that, subject to the obligations determined by the parties, the fiduciary becomes the owner of assets which shall form a fiduciary property.

#### **Art. 6. Segregation of property**

(1) The fiduciary property is segregated from the personal property of the fiduciary as well as from any other fiduciary property. The assets which make up such fiduciary property can only be attached by those creditors whose rights have arisen in connection with the fiduciary property. They do not form part of the personal property of the fiduciary in case of the fiduciary's liquidation or bankruptcy or in any other situation of the fiduciary generally affecting the rights of its creditors.

(2) In its accounts, the fiduciary must record the fiduciary property separately from its personal property and other fiduciary properties.

#### **Art. 7. Relationship between *fiduciant* and fiduciary**

(1) The rules governing mandates, in so far as they are not based on representation, are applicable to the relationship between the *fiduciant* and the fiduciary, to the extent the present title or the parties do not derogate therefrom.

(2) Neither the *fiduciant*, nor any third parties, even if they have knowledge of the fiduciary contract, can prevail themselves thereof in order to create a direct relationship between themselves.

(3) Contractual limitations of the powers of the fiduciary are valid vis-à-vis third parties who have knowledge thereof, without prejudice to the rules governing validity vis-à-vis third parties which are applicable inter alia by reason of the kind of assets forming part of the fiduciary property.

(4) The *fiduciant* may waive its right to give instructions to the fiduciary.

(5) Subject to contrary agreement by the parties, neither the *fiduciant* nor the fiduciary may unilaterally terminate a fiduciary contract entered into for a fixed duration.

(6) The provisional or final replacement of the fiduciary or the early extinction of the fiduciary contract can, in case of serious grounds, be ordered in court on the application of the *fiduciant*, the fiduciary or a third party beneficiary under the fiduciary contract.

## **Art. 8. Fiduciary arrangement entered into for collateral purposes**

(1) The fiduciary contract can be entered into to secure existing or future obligations. The parties may agree that the fiduciary property will increase or decrease in accordance with the evolution of the guaranteed obligations or other factors of their choice.

(2) Any provision, the subject or effect of which is to dispense the fiduciary to pay to the *fiduciant* or the third party beneficiary the net balance resulting from the difference between the value, at the day of realisation, of the assets constituting the collateral and the amount of the guaranteed obligations, is null and void.

## **Art. 9. Evidence and validity vis-à-vis third parties**

(1) The fiduciary contract must be evidenced in writing.

(2) Subject to the rules governing formalities and validity vis-à-vis third parties which are applicable inter alia by reason of the kind of assets transferred, and subject to the provisions of article 7 paragraph 3 above, the fiduciary contract is valid vis-à-vis third parties as from the time it is entered into.

(3) The fiduciary transfer of receivables is valid vis-à-vis third parties as from the time it is entered into. However the debtor validly pays into the hands of the *fiduciant* as long as he has no knowledge of the transfer.

## **Title III**

### **Supplementary, tax and abrogating provisions**

## **Art.10. Amendment of the law of 25<sup>th</sup> September 1905 on the transcription of rights on immovable property**

The following paragraph is added after the last paragraph of article 1 of the law of 25<sup>th</sup> September 1905 on the transcription of rights on immovable property:

“In case a deed transfers the ownership in, or creates, transfers, modifies or extinguishes a right which must be transcribed on, immovable property included in a fiduciary property or in a trust subject to the Convention relating to the law applicable to the trust and its recognition signed in Den Hague on 1<sup>st</sup> July 1985 or which is intended to become part of such a fiduciary property or trust, the transcription also bears the mention of respectively “*fiduciaire*” or “trustee”.”

## **Art. 11. Inscription**

In any public register in which the capacity of owner is inscribed, irrespective of the reason or circumstance, the fiduciary and the trustee must require that the capacity in which they act be mentioned after the indication as owner.

## **Art.12. Registration and inheritance tax**

(1) The entry into and the amendment of a fiduciary contract as well as the deeds creating or amending a trust subject to the Convention relating to the law applicable to the trust and its recognition signed in Den Hague on 1<sup>st</sup> July 1985 are not subject to the registration formalities even if use of them is made by public deed, before the courts or before any other Luxembourg authority, provided they do not concern immovable property located in Luxembourg, airplanes, ships or boats for circulation on internal waterways registered in Luxembourg or rights on such an asset which must be transcribed, recorded or registered. They may however be voluntarily presented to the registration formalities.

(2) The registration, for the purpose of transcription, of deeds transferring to a trustee the ownership of immovable property located in Luxembourg or of deeds creating, transferring or amending for the benefit of a trustee a right which is required to be transcribed on such immovable property is not subject to any deadline, in case these deeds have been entered into before the coming into force of this law. The same applies to the registration, for the purpose of recording, of deeds transferring to a trustee the ownership of a plane, a ship or a boat for circulation on internal waterways or of deeds constituting, transferring or amending for its benefit a property right on such an asset.

(3) The entry into and the amendment of a fiduciary contract as well as the deeds constituting or modifying a trust which concern assets or rights which the fiduciary or the trustee must not hold for more than thirty years are subject to a fixed tax rate when they are presented to the registration formality. The same applies to deeds carrying out the return of the assets or rights to the *fiduciant* or to the settlor within that period.

In case the fiduciary contract or the trust have been registered at the fixed tax rate, the final attribution to the fiduciary or to the trustee during or at the end of the fiduciary contract or trust of the assets or rights which have been transferred to them must be registered, on the application of the fiduciary or the trustee, under the conditions applicable under general law.

(4) In case of a gratuitous transfer of an asset or a right by a fiduciary or a trustee to a third party beneficiary, donation tax will be due depending on the degree of kinship between the beneficiary and the *fiduciant* or the settlor. The same applies for the calculation of inheritance tax and tax due on transfers by reason of death.

## **Art. 13. Abrogation of the grand-ducal regulation of 19<sup>th</sup> July 1983**

The grand-ducal regulation of 19<sup>th</sup> July 1983 concerning fiduciary contracts is abrogated.

## **Art. 14. Name of this law**

References to this law can be made in an abridged form by using the terms of “law of 27<sup>th</sup> July 2003 concerning the trust and fiduciary contracts”.

## **Art. 15. Transitory provision**

Unless the parties shall have agreed differently in writing within six months from the date of publication of this law in the *Mémorial*, this law shall apply to the future effects of

fiduciary contracts entered into before its entry into force under the grand-ducal regulation of 19<sup>th</sup> July 1983.