INFORMATION REGARDING FIDUCIARY CONTRACTS AND THEIR LEGAL SPECIFICITIES

Ciprian Raul ROMIȚAN*

Abstract

The sources of the fiducia are the law and the contract concluded in authentic form. Fiducia must be express and its running by an unilateral act or by judicial way is excluded. The fiduciary contract is an act conveyancing the ownership title, it is onerous, synallagmatic, commutative, intuitu personae and solemn.

The fiduciary contract is the contract by which a party (the settlor), transmits as a trust to the other party (the trustee) goods and rights for the exploitation thereof for a determined purpose. Therefore, according to the provisions of the Civil Code in force, the parties to the fiduciary contract are the settlor (settlors) and the trustee (trustees). As one shall notice during out study, the beneficiary(-ies), the third party mentioned in the legal text defining the notion of fiducia, is not regarded as a party to the fiduciary contract.

According to the author, the object of the fiducia supposes three successive stages of the complex contractual procedure: the transfer of patrimony rights from the settlor to the trustee, the actual management of the patrimony mass in the beneficiary's favor, the transfer of the profit to the beneficiary, once or in successive stages.

From the point of view of its legal nature, fiducia is a legal operation having as object the transfer of the property, receivable, security or other patrimony rights, whether existing or future, or a combination of such rights, to one or several trustees, exerting them in order to fulfill a determined purpose, in the favor or one or several beneficiaries. All these rights set up an patrimony mass distinct from the trustees' other patrimony rights and obligations.

As one could notice during the study, the fiduciary contract must comprise, under the sanction of absolute nullity, the following elements: real rights, receivable rights, guarantees and any other patrimonial rights transferred. In this regard, the transferred rights must be described in the fiduciary contract, by clearly indicating all identification elements; the period of the transfer, which cannot exceed 33 years as of the date of its conclusion;

the identity of the settlor or settlors; the identity of the trustee or trustees; the identity of the beneficiary or beneficiaries or at least the rules allowing the determination thereof; the purpose of the fiducia and the scope of the powers of administration and disposition of the trustee or of the trustees.

Keywords: *trust, trust agreement, grantor, trustee, right of ownership.*

1. Introduction

The article presents in a complex manner all the elements of the fiduciary contracts, as regards the definition, legal nature, the parties, the contents and termination.

Fiducia, this new Romanian law institution, was first regulated in the Civil Code enforced as of 1 October 2011[1] where a whole title is dedicated to it (Title IV - *Fiducia*), in Book 3, "*On Assets*"[2]. A number of 19 articles are *expressis verbis* dedicated to fiducia (art.773-791), inspired by the similar provisions in the French Civil Code adopted pursuant to the Law no. 2007-211 of 19 February 2007.

2. Content

2.1. Fiducia. Definition and Subject

The institution of fiducia is continental to that of trust[3] in the common law system and it "represents the actual application of the patrimony divisibility, being included amongst the assigned patrimonial assets listed under art. 31(3) of the Civil Code"[4]. In other author's

* Assistant Professor, PhD. Faculty of Law, "Romanian-American" University, Associate Lawyer "Roș și Asociații" Law Firm (e-mail: ciprian.romitan@rvsa.ro)

[1] Law no. 287/2009 regarding the New Civil Code, published with the Official Gazette of Romania, Part I, no. 511 of 24 July 2009. The Civil Code came into force on 1 October 2011, according to the Law no. 71/2011 regarding the enforcement of Law no. 287/2009 on the Civil Code, published with the Official Gazette of Romania, Part I, no. 409 of 10 June 2011 (hereinafter referred to as Official Gazette).

[2] Regulations regarding the choice of the material law regarding fiducia are also available in art.2659-2662 of Book VII (Private International Law Provisions), Title II (Conflicts of Laws), Chapter VIII (Fiducia).

[3] The trust is defined as "a legal entity established by a settlor, for designated beneficiaries, on the basis of the legal regulations and of a valid fiduciary instrument, the trustee holding the fiduciary duty to manage the assets and revenue representing the subject of the fiducia in the favor of the beneficiary" (Cătălin R. Tripon, Fiducia, result of the interference of the two large legal systems: the continental civil law and the Anglo-Saxon law. The concept, classification, evolution and validity prerequisites of fiducia, in "Romanian Private Law Magazine", issue 2/2010, p.168). For details, also see Luminița Tuleașcă, The concept of the trust in Romanian law, in "Romanian economic and business review", pp.150-160. For a review of the regulation of the trust in the other state's laws, also see Daniel Moreanu, Fiducia and Trust, "C.H.Beck" Printing House, Bucharest, 2017, pp.457-477.

[4] Gabriel Boroi, Carla Alexandra Anghelescu, Bogdan Nazat, Civil Law Course. Key Property Rights, 2nd issue, revisited and supplemented, "Hamangiu" Printing House, Bucharest, 2013, p.163.

opinion[5], the regulation of this legal institution by the Civil Code is dissatisfactory and it is characterized by excessive, counter-productive and unjustified formalism, even though, as already mentioned, the Romanian legislator took inspiration from the French Civil Code.

Art.773 of the Civil Code defines *fiducia* as "the legal operation through which one or several settlors transfer property rights, receivable rights, securities or other patrimony rights or a combination of such existing or future rights to one or several trustees exerting them with a determined purpose, in the favor of one or several beneficiaries. These rights set up an autonomous patrimony mass, distinct from the other rights and obligations in the trustees' patrimonies." This definition was not, however, exempt from criticism in the specialized literature[6] and attempt were actually made to propose a new definition[7].

With regards to the *subject of fiducia*, the reading of the definition above shows that, even though the law text only concerns the transfer of the property and receivable rights, without any reference to the assets these rights are related to, we appreciate, similarly to other authors[8], that "*upon the transfer of the rights, the transfer of the assets these rights concern should also be considered*"[9]. Pursuant to the review of the definition of fiducia as stipulated in art. 773 of the Civil Code, it further follows that fixed or any other, tangible or intangible, assets may be subjected to the transfer (receivables, intellectual property rights, goodwill, etc.), whether present or future. It should be mentioned that if fiducia concerns goodwill, it is in the interest of the parties to indicate the structure of the goodwill, to describe the assigned elements, including clients, a key element of goodwill[10].

Moreover, certain key property rights may represent the subject of fiducia, such as: the ownership title, the superficies rights, the beneficial right and the right of servitude. Concerning the beneficial right, we should mention that it can represent the subject of the fiducia since, according to art.714 of the Civil Code, the beneficial right may be assigned, and the right of servitude may only become the subject of the fiducia alongside the master fund. With regards to the right of use and habitation, whereas the provisions in art.752 of the Civil Code forbid their assignment, these rights may not be transferred through the fiduciary operation either[11].

Finally, pursuant to the review of the provisions in art.773 of the Civil Code, it may be stated that the securities listed under the category of the property rights in art.551 of the Civil Code, i.e., the security interests, which as ancillary property rights regulated by the Civil Code, i.e.: fidejussion [art.2480-2320 Civil Code], mortgage [art. 2343-2479 Civil Code] and pledge [art. 2480-2494 Civil Code][12].

We should further mention, as actually shown by other authors, as well[13], that "*regardless of its subject, fiducia may not represent the means through which indirect liberation is achieved in the beneficiaries' favor, the fiduciary contract being stricken by absolute nullity in the case of the failure to observe this provision*" (art. 775 Civil Code).

2.2. Legal Nature and Sources of Fiducia

Pursuant to the definition of fiducia, as mentioned din art.773 of the Civil Code, it follows that, from the point of view of its legal nature, fiducia is a legal operation having as object the transfer of the property, receivable, security or other patrimony rights, whether existing or future, or a combination of such rights, to one or several trustees, exerting them in order to fulfil a determined purpose, in the favor or one or several beneficiaries. These rights set up a patrimony mass distinct from the trustees' other patrimony rights and obligations[14].

According to art.774 (1) of the Civil Code, fiducia may be established by law or contract, which must take the authenticated form *ad validitatem*. *Per a contrario*, it follows that fiducia may not derive from testament or court order.

The aforementioned law text further orders that fiducia should be explicit, which means that the

[5] For details, see Gheorghe Buta Conflicts of Laws in the Field of Fiducia, in "Legal Studies and Researches", issue 4, October-December/2015, pp.501-524. Also see a summary of the article signed by Reinhart Dammann, Fiducia-guarantee and conflict of laws in France, translated by Alexandru F. Măgureanu, in "Romanian Pandects", issue 6/2013, pp.121-130.

[6] For details, see Bujorel Florea, Civil Law. Key Property Rights, "Universul Juridic" Printing House, Bucharest, 2011, pp.216-217; Bujorel Florea, Certain Considerations on the Fiduciary Contract as Regulated in the New Civil Code, in "Law" magazine, issue 8/2013, pp. 62-64; Cristian Jora, Civil Law. Property Rights in the New Civil Code, "Universul Juridic" Printing House, Bucharest, 2012, p.37.

[7] See Bujorel Florea, op.cit., (2013), p.64.

[8] Gabriel Boroi, Carla Alexandra Anghelescu, Bogdan Nazat, op.cit., p.163.

[9] For a review of the fiducia regulations, see Rodica Constantinovici, in "New Civil Code. Comments per articles" (coordinators Flavius Antoniu Baias, Eugen Chelaru, Rodica Constantinovici, Ioan Macovei), "C.H.Beck" Printing House, Bucharest, 2012, pp.822-836; Cătălin R. Tripon, op.cit., pp.162-199; Nicoleta Diaconu, Law Applicable to the Fiducia with a Foreign Element According to the Civil Code, in "Dreptul", issue 9/2012, pp.85-95; Daniel Moreanu, Fiducia and Trust. Definition, Practical Uses and Main Differences, in "Legal Studies and Researches", issue 2, April-June/2014, pp.150-160; Luminița Gheorghe, Fiducia in the New Civil Code: An Example of the Activation of the Relation Between the Romanian Law and the Common Law by the International Business Law, in "Judiciary Courier", issue 3/20115, pp.129-133; Sergiu Golub, Fiducia. Legal Definition Review. Genus Proximum, in "Romanian Business Law Magazine", issue 11/2016, pp.31-58; David-Domițian Bolduț, Fiducia-Unusual Romanian Law Legal Operation (I), in "Romanian Business Law Magazine", issue 9/2014, pp.98-119.

[10] Ioan Popa, Fiduciary Contract Regulated by the New Civil Code, in "Romanian Private Law Magazine", issue 2/2011, p.225.

[11] Gabriel Boroi, Carla Alexandra Anghelescu, Bogdan Nazat, *op.cit.*, p.164.

[12] Sergiu Golub, *Fiducia. Legal Definition Review. Specific Difference,* in "Romanian Legal Science Magazine", issue 1/2016, pp.24-30.

[13] Gabriel Boroi, Carla Alexandra Anghelescu, Bogdan Nazat, *op.cit.*, p.164.

[14] For details, see Liviu Marius Harosa, *Brief Considerations on Fiducia as Regulated by the New Civil Code*, in "Romanian Business Law Magazine", issue 9/2013, pp.40-42.

intention to establish a fiducia may not be presumed and that it must be clearly and unequivocally expressed. If fiducia is established under the law, the provisions in the Civil Code are supplemented by the legal provisions, if not contrary to the same [art.774 (2) of the Civil Code][15]. Starting from the two sources of fiducia, the specialized literature[16] has appreciated that fiducia is of two types: *legal fiducia*, deriving from the law, and *conventional* or *contractual fiducia,* deriving from the consent of the parties to the fiduciary contract.

2.3. Fiduciary Contract

Specialized literature defines fiduciary contract as "the contract based on which one or several settlors transfer property, receivable, security or other patrimony rights or a combination of such rights, whether present or future, to one or several trustees who exert them for a determined purpose, in favor or one or several beneficiaries"[17] or "the contract pursuant to which, one of the parties, referred to as settlor, assigns rights and obligations, as fiducia, to the other party, referred to as trustee, in order to use them for a determined purpose"[18].

2.3.1. Parties to the Fiduciary Contract

According to art.776 in the Civil Code, the parties to the fiduciary contract are the *settlor*(s) and the *trustee*(s). As it may be noticed, the *beneficiary* (-ies), the third party mentioned in art.773 of the Civil Code defining the notion of fiducia, is not regarded as a party to the fiduciary agreement.

Settlor

Art.776 (1) of the Civil Code stipulates that any natural or legal entity may hold the capacity of settlor. However, in order for a natural or legal entity to hold the capacity as settlor under a fiduciary contract, it must be the holder of the rights representing the subject of the transfer[19].

With regards to the representation of the settlor's interest, as also stipulated in art.778 of the Civil Code, "Unless stipulated otherwise, the settlor may, at all times, appoint a third party to represent his interests in the enforcement of the contract and to exert his rights arising from the fiduciary contract"[20].

Under the fiduciary contract, the settlor undertakes two main obligations: the obligation to transfer the fiduciary patrimony mass to the trustee and the obligation to pay to the trustee the remuneration corresponding to the services it provided under the fiduciary contract[21].

Trustee

With regards to the trustee capacity, pursuant to the provisions in art. 776(2) of the Civil Code, this capacity may only be held by six exhaustively listed categories of persons, which the legislator regarded as holding the professional capacities to exert the rights acquired from the settlor, i.e.: credit institutions, investment and management companies, financial investment services companies, legally established insurance and reinsurance companies[22]. Considering these provisions that restrict the categories of persons that may hold the capacity of trustee, it may be stated that the trustee is a qualified lawful subject of the fiduciary contract[23].

In certain author's[24] opinion, such a limitative listing should be eliminated and other categories of persons should also be allowed to acquire the capacity as trustee, provided that they observe the requirements regarding solvency and trustworthiness.

According to art. 776(3) of the Civil Code, notaries public and lawyers may hold the capacity as trustees, regardless of the manner in which they exert their profession[25]. Concerning this right granted to lawyers under the law to act as trustees, it may be stated that it is not a novelty. In this regard, Law no. 51/1995 regarding the organization and practice of the lawyer profession[26] stipulated, prior to the amendments brought by Law no.71/2011 on the enforcement of Law no.287/2009 regarding the Civil Code, the possibility of this category of professionals to carry out "fiduciary activities"[27], but a review of art. 3(1) (g) of the Law no.51/1995 illustrates that the fiduciary activities the lawyer was entitled to perform were expressly and exhaustively listed.

Currently, pursuant to all amendments made, the Law no.51/1995 stipulates, in art.3 (1) (g), that "the attorney's activity is carried out through fiduciary activities carried out according to the Civil Code", provisions that were somewhat extended through the

[15] For details on the subject, we recommend that you see Daniel Moreanu, *op.cit.* pp. 180-187.
[16] Vasile Nemeș, *Fiduciary Contract, according to the New Civil Code*, in "Judiciary Courier", issue 10/2011, p.518.
[17] Iosif Robi Urs, Petruța Elena Ispas, *Civil Law. Theory of Property Rights*, 2nd issue, revisited and supplemented, "Hamangiu" Printing House, Bucharest, 2015, p. 272.
[18] Dan Adrian Doțiu, *Enforceability of the Fiduciary Contract*, in "Romanian Forced Execution Magazine", issue 4/2016, p.22.
[19] Mona Lisa Belu – Magdo & Co, *New Civil Code. Remarks, Doctrine and Case law,* vol. I-III, "Hamangiu" Printing House, Bucharest, 2012, p.1094.
[20] Also see Gheorghe Buta, *Fiducia and Management of Another Party's Assets*, "Universul Juridic" Printing House, Bucharest, 2017, p.49.
[21] For details, see Iosif Robi Urs, Petruța Elena Ispas, *op.cit.* pp. 283-284; Daniel Moreanu, *op.cit.* pp. 269-270; Vasile Nemeș, *op.cit.* p.521.
[22] For details regarding these categories of persons, see Iosif Robi Urs, Petruța Elena Ispas, *op.cit.* pp. 278-281.
[23] Similarly, see Vasile Nemeș, *op.cit*. p. 518.
[24] Cătălin R. Tripon, *op.cit.* p. 196.
[25] For details, please see Gheorghe Buta, *The Lawyer and the Notary Public as Trustees,* in "Romanian Case Law Magazine", issue 4/2016, pp.135-143; Rodica Constantinovici, in Flavius Antoniu Baias, Eugen Chelaru, Rodica Constantinovici, Ioan Macovei (coordinators), *op.cit*., p. 825.
[26] Published with the Official Gazette of Romania no. 116 of 9 June 1995.
[27] According to art. 3(1) (g), the lawyer's activity was carried out through "fiduciary activities consisting of the receipt in custody, in the name and on behalf of the client, of fiduciary funds and assets, resulting from the sale or implementation of enforceable titles, after the conclusion of the inheritance procedure or of the liquidation, as well as the placement and sale thereof, in the name and on behalf of the client, activities for the management of the funds or assets they were placed in".

provisions in the Status of the Lawyer Profession[28] [Chapter III (*Lawyer's Professional Activity*), Section I (*Content of the Professional Activity*), Sub-section 4 (*Fiduciary Activities*)].

In other author's opinion[29], the wording in art.3 (1) (g) is "very wide, but the reference to the Civil Code provisions limits and clarifies its scope".

With regards to the possibility of notaries public to hold the capacity as trustees, Law no.36/1995 of the notaries public and the notary activity[30] expressly stipulates, in art. 12(l) that the notary public carried out "fiduciary activities, according to the law"[31].

The Civil Code also regulates the trustee substitution institution. In case the trustee fails to fulfil its obligations or endangers the interests entrusted to it pursuant to art.788 (1) of the Civil Code, the settlor, its representative or the beneficiary may request the settlor's replacement in court[32]. As it also follows from art.788 of the Civil Code, the trustee has certain duties that it undertakes on the fiduciary contract conclusion date. One of the trustee's main obligations deriving from the very art.773 of the Civil Code is the patrimony mass management obligation, followed by other obligations, such as: the obligation to disclose the relation to third parties in the capacity in which it operates, the obligation to register the fiduciary contract for tax purposes, the obligation to be held accountable for the services and activities carried out for the fulfilment of the fiduciary contract, the obligation to remedy the prejudice cause pursuant to the fiduciary mass conservation management acts and, last but not least, the obligation to return the fiduciary patrimony mass[33].

Beneficiary

According to art.777 of the Civil Code, "the beneficiary of the fiducia may be the settlor, the trustee or a third party". Pursuant to the review of this text, we believe two different situations may be distinguished, i.e.: the first situation in which the beneficiary is the settlor and/or the trustee and the second one in which the beneficiary is another person. Hence, if in the first of the two situations, the beneficiary is a party to the fiduciary contract, in the second one, it does not hold the capacity as party to the fiduciary contract.

Even though in the beneficiary's case, the Civil Code does not impose any special conditions, art.779 (e), marginally entitled "*Content of the Fiduciary Contract*", does comprise a general remark: "The fiduciary contract must mention, under the sanction of complete nullity, the identity of the beneficiaries or, at least, the rules allowing for the determination thereof". Hence, the fiduciary contract where the beneficiary was not determined as on the conclusion date is valid only if the parties set sufficient elements to determine it upon the execution of the contract.

2.4. Contents of the Fiduciary Contract

According to art.779 of the Civil Code, the fiduciary contract must mention, under the sanction of complete nullity, the following elements:

- the property rights, the receivable rights, the securities and any other patrimony rights transferred. In this regard, the transferred rights must be described in the fiduciary contract, by clearly indicating all identification elements;
- the transfer term, which may not exceed 33 years as of its conclusion date. The legislator has not stipulated the possibility of extending this type of contract beyond the term stipulated in art.779(1)(b) of the Civil Code, but it should, however, be mentioned that the fiduciary term may also be subjected to early termination within the set term. For instance, the fiduciary contract may be terminated in case it is found that the purpose for which it was concluded was achieved;
- the settlor(s)' identity;
- the trustee(s)' identity;
- the identity of the beneficiary (-ies)' or, at least, the rules allowing for the determination thereof;
- the purpose of the fiducia and the extent of the trustee(s)' management powers. In this case, we appreciate that the provisions in art. 775 of the Civil Code should be taken into account. According to these provisions, the fiduciary contract is stricken by complete nullity if it provides for indirect liberation in the beneficiary's favor.

2.5. Legal Features of the Fiduciary Contract

The legal features of the fiduciary contract are: it is a designated, synallagmatic, official, commutative or random onerous or free-of-charge contract and *intuitu-personae.*

It is a *designate* contract because it is expressly included in the Civil Code (art.773-791).

The *synallagmatic* (*bilateral*) nature resides in the fact that it generates mutual rights and obligations between the parties to the contract[34]. In this regard, the trustee holds, *inter alia,* the obligation to assign him

[28] Adopted through the Decision no. 64/2011 of the Council of the Romanian National Bar Association, published with the Official Gazette no. 898 of 19 December 2011.

[29] Daniel Moreanu, *op.cit*. p. 204.

[30] Republished in the Official Gazette no. 72 of 4 February 2013.

[31] For details, see Gheorghe Buta, *op. cit*., (2016), pp.141-143.

[32] According to art.788 (2) of the Civil Code, "Up to the settlement of the replacement request, the settlor, and its representative or, in the absence thereof, the beneficiary, shall appoint a provisional fiduciary mass manager. In case the settlor, its representative or the beneficiary simultaneously appoint a provisional manager, the settlor's or its legal representative's appointment shall prevail".

[33] For details, see Roxana Mariana Popescu, Evelina Oprina, *Fiducia and its Legal Consequences on Forced Executions*, in "Romanian Forced Execution Magazine", issue 4/2011, pp.76-78; Iosif Robi Urs, Petruța Elena Ispas, *op.cit*., p. 284; Daniel Moreanu, *op.cit*., pp.271-274; Vasile Nemeș, *op.cit*., p.521.

[34] According to art.1171 of the Civil Code, "The contract is synallagmatic if the obligations it generates are mutual and interdependent. If not, the contract is unilateral, even if its execution triggers obligations for both parties."

property rights, the receivable rights, the securities and any other patrimony rights agreed upon, and the fiduciary is bound to exert them according to the legal purpose agreed upon between the parties.

The fiduciary contract is an *official* contract because its enforcement requires the observance of a certain form, which is the authenticated and express one [art.774 (1) of the Civil Code].

It is a *commutative* contract because the parties are clearly aware of their rights and obligations, starting the very fiduciary contract conclusion date[35].

In certain situations, the fiduciary contract may be *random*. For instance, even though the duration of the fiduciary contract may not exceed 33 years as of its conclusion date [art.779(b) of the Civil Code], an undesirable event may occur, such as the beneficiary's decease.

It is an *onerous* contract because, in general, each party to the contract desires to obtain a patrimony interest, i.e. to receive a benefit in exchange for the service it undertakes to provide[36].

Finally, the *intuitu-personae* nature of the fiduciary contract follows from the fact that the conclusion thereof relies on the trustee's skills or professional training. In other words, the trustee's qualities in exerting the rights assigned as fiducia are of essence in the conclusion of the fiduciary contract.

2.6. Termination of the Fiduciary Contract

According to art. 790 of the Civil Code, the fiduciary contract may be terminated as follows:

- through the elapse of the term, which, according to art.779(b) of the Civil Code, may not exceed 33 years as of its conclusion;
- through the achievement of the envisaged purpose, in case it occurs prior to the elapse of the term;
- through the waiver of the fiducia by all beneficiaries, unless the contract stipulates how it is that the fiduciary relations are to be continued in such as situation. All beneficiaries must issue waivers and all such statements must be subjected to the same registration formalities as the fiduciary contract. The termination shall come into force as of the completion date of the registration forms for the last waiver;
- pursuant to the opening of the insolvency procedure against the fiduciary or in the case of the legal entity's reorganization.

3. Conclusions

Now that we have reached the end of our brief review, it may be stated, as it actually also follows from the reading of the definition of fiducia in art.773 of the Civil Code, that its subject supposes three successive stages of the complex contractual procedure: the transfer of patrimony rights from the settlor to the trustee, the actual management of the patrimony mass in the beneficiary's favor, the transfer of the profit to the beneficiary, once or in successive stages.

Moreover, it should be mentioned that, under the sanction of full nullity, the fiduciary contract and the amendments thereto must be registered, upon the trustee's request, within one month as of its conclusion date, with the tax body holding jurisdiction over the management of the amounts due by the trustee to the general consolidated state budget [art. 780(1) of the Civil Code]. At the same time, according to the provisions in art. 780(2) of the Civil Code, in case the fiduciary patrimony mass comprises real estate property rights, they are to be registered, under the same sanction, with the specialized department of the local public administration holding jurisdiction over the management of the amounts due to the local budgets of the administrative and territorial where the building is located.

Finally, it should also be retained that, according to art. 780(4) of the Civil Coe, if the assignment of other rights requires the fulfilment of other special form requirements, a separate document shall be concluded, in compliance with the legal requirements. In these cases, the failure to register the contract for tax purposes shall trigger the application of the administrative sanctions stipulated under the law.

References

- Mona Lisa Belu – Magdo & Co, New Civil Code. Remarks, Doctrine and Case law, vol. I-III, "Hamangiu" Printing House, Bucharest, 2012
- David-Domițian Bolduț, Fiducia-Unusual Romanian Law Legal Operation (I), in "Romanian Business Law Magazine", issue 9/2014
- Gabriel Boroi, Carla Alexandra Anghelescu, Bogdan Nazat, Civil Law Course. Key Property Rights, 2nd issue, revisited and supplemented, "Hamangiu" Printing House, Bucharest, 2013
- Gheorghe Buta, Fiducia and Management of Another Party's Assets, "Universul Juridic" Printing House, Bucharest, 2017

[35] According to art.1173 (1) of the Civil Code, "The commutative contract is the one where the existence of the rights and obligations of the parties is certain, and the extent thereof is determined or determinable, as on the conclusion date".

[36] See art. 784 of the Civil Code, according to which "the trustee shall be remunerated according to the agreement between the parties, and in the absence of such an agreement, according to the rules applicable to the management of another party's assets", and the provisions in art. 793(1) of the Civil Code, "unless, according to the law, the incorporation deed or the subsequent agreement between the parties or to the concrete circumstances, the management is provided free-of-charge, the manager shall be entitled to a remuneration established through the incorporation deed or the subsequent agreement between the parties, under the law or, in the absence of such provisions, through a court order. In this latter case, the common practice and, in the absence of such a criterion, the counter value of the services provided by the manager shall also be taken into account."

- Gheorghe Buta Conflicts of Laws in the Field of Fiducia, in “Legal Studies and Researches”, issue 4, October-December/2015
- Gheorghe Buta, The Lawyer and the Notary Public as Trustee, in “Romanian Case Law Magazine”, issue 4/2016
- Rodica Constantinovici, in “New Civil Code. Comments per Articles” (coordinators Flavius Antoniu Baias, Eugen Chelaru, Rodica Constantinovici, Ioan Macovei), “C.H.Beck” Printing House, Bucharest, 2012
- Reinhart Dammann, Fiducia-guarantee and conflict of laws in France, translated by Alexandru F. Măgureanu, in “Romanian Pandects”, issue 6/2013
- Nicoleta Diaconu, Law Applicable to Foreign Element Fiducia According to the Civil Law, in “Law” magazine, issue 9/2012
- Dan Adrian Doțiu, Enforceability of the Fiduciary Contract, in “Romanian Forced Execution Magazine”, issue 4/2016
- Bujorel Florea, Civil Law. Key Property Rights, “Universul Juridic” Printing House, Bucharest, 2011
- Bujorel Florea, Certain Considerations Regarding the Fiduciary Contract as Regulated under the New Civil Code, in “Law” magazine, issue 8/2013
- Luminița Gheorghe, Fiducia in the New Civil Code: Fiducia in the New Civil Code: An Example of the Activation of the Relation between the Romanian Law and the Common Law by the International Business Law, in “Judiciary Courier”, issue 3/20115
- Sergiu Golub, Fiducia. Legal Definition Review. Genus Proximum, in “Romanian Law Magazine”, issue 11/2016
- Sergiu Golub, Fiducia. Legal Definition Review. Specific Difference, in “Romanian Business Law Magazine”, issue 12/2016.
- Liviu Marius Harosa, Brief Considerations on Fiducia as Regulated by the New Civil Code, in “Romanian Business Law Magazine”, issue 9/2013
- Cristian Jora, Civil Law. Property Rights in the New Civil Code, “Universul Juridic” Printing House, Bucharest, 2012
- Daniel Moreanu, Fiducia and Trust, “C.H.Beck” Printing House, Bucharest, 2017
- Daniel Moreanu, Fiducia and Trust. Definitions, Practical Uses and Key Differences, in “Legal Studies and Researches”, issue 2, April-June/2014
- Vasile Nemeș, Fiduciary Contract, according to the New Civil Code, in “Judiciary Courier”, issue 10/2011
- Ioan Popa, Fiduciary Contract Regulated by the New Civil Code, in “Romanian Private Law Magazine”, issue 2/2011
- Roxana Mariana Popescu, Evelina Oprina, Fiducia and its Legal Consequences on Forced Executions, in “Romanian Forced Execution Magazine”, issue 4/2011
- Cătălin R. Tripon, Fiducia, Result of the Interference of the Two Large Law Systems: Continental Civil Law and Anglo-Saxon Law. The concept, classification, evolution and validity prerequisites of fiducia, in “Romanian Private Law Magazine”, issue 2/2010
- Luminița Tuleașcă, The concept of the trust in Romanian law, in “Romanian economic and business review”
- Iosif Robi Urs, Petruța Elena Ispas, Civil Law. Theory of Property Rights, 2nd issue, revisited and supplemented, “Hamangiu” Printing House, Bucharest, 2015
- Romanian Civil Code
- Law no. 51/1995 on the organization and practice of the lawyer profession
- Law no.36/1995 on notaries public and notary activities
- Status of the Lawyer Profession