TRUST FUNDS

From 1 January 2014, the new Civil Code will introduce, into Czech civil law, an entirely new legal concept of the ‘trust fund’.

A trust fund is an arrangement separating a certain part of property from the ownership of the fund founder for a specific purpose. A trust fund can be set up by concluding an agreement or upon the founder’s death. This separated property ceases to be in the ownership of the person creating the fund (a founder) and becomes anonymous property held and managed by an appointed person (trust manager or trustee) in favor of a beneficiary or beneficiaries.

The trust fund is an established, long-standing, Anglo-Saxon legal institute. However, it has been adopted by other continental legal systems, e.g. in the civil code of the Canadian province of Quebec.

Interested Parties:

Trust funds involve three parties – the founder, the trustee and the beneficiary. A founder is a person who sets up the trust; it can be either a natural person or a legal entity. Trusts are an important estate planning tool, allowing a natural or legal person to specify how and when beneficiaries can access certain assets.

Upon transferring the property to the trust fund, the founder loses all ownership rights in the transferred property.

The trustee becomes responsible for managing the assets and investments within the trust. The trustee is appointed by the founder, or in some cases by a court. The founder can only become one of the managers in cases where the trust fund is managed by multiple managers. The appointed trustee always has to accept their function.

The beneficiary is the person appointed by trust deed to benefit from the trust fund and must meet specified conditions.

Trust Deed:

It is obligatory to issue a trust deed in the form of ‘public deed’. The trust deed has to satisfy all obligatory statutory requirements.

If the trust deed does not specify a beneficiary, trust property shall pass to the founder after termination of management of the trust fund. If there is no founder, the property shall pass to the state.

Specification of Purpose:

A trust fund can be created for the furtherance of a commercial interest (investment), private interest (for benefit or in memory of some person), or publicly beneficial purpose (social, medical and sports funding).

Disbursements from Trust Funds:
The beneficiary has the right to obtain payments from the trust fund from the moment they meet all necessary conditions stated by the trust deed. Typical conditions in foreign countries are reaching a certain age, to provide care for older parents, and completing studies.

Any other person can invest money into the trust fund after its foundation but such a person shall not become the founder or co-founder.

**Supervision of the Management of the Trust Fund:**

The founder, or beneficiary (or under specific circumstances a third person or public authority) can exercise a supervisory function over the trust fund. For example, via checking documents concerning the trust fund including requirements for submission of financial statements, reports or any other information. A claim for criminal or financial liability could be even raised against the trustee. The trustee can be ordered to do/not do certain actions by a court. The founder and the beneficiary can be criminally liable as well in cases of unlawfully influencing the management of the trust fund.

**Advantages of Establishing a Trust Fund:**

Since the assets in a trust form part of a distinct autonomous ownership, no one has any real ownership rights towards it. Certain ownership interests of the trust fund have to be registered in an appropriate register, for example real estate in the real estate cadaster. The trustee's name and function (as trustee) also have to be included in the register. The identity of the founder is therefore hidden. The ownership rights pass onto the trust fund itself although it has no legal identity (i.e. a trust is not considered a legal entity). This separated capital is therefore protected from potential legal actions and claims, for example claims brought by creditors.

Another advantage for the founder is the reduction of their taxable income and, therefore, taxes. This is because the trust fund allows the splitting of trust income to the beneficiaries. By setting up a trust fund, a founder can ensure proper control over the capital and income paid out to the beneficiaries.

If the trust fund is established under disposition of property upon death, the parties shall avoid lengthy succession proceedings and payment of succession tax.

**Termination:**

Trusts are terminated by expiration, fulfillment of conditions, attainment of purpose or by impossibility of attaining those conditions. Trusts are also terminated by the renunciation or lapse of the right of all beneficiaries.

A strong tradition of trust funds in foreign countries is proof of the suitability and usefulness of this structure and its introduction into Czech law seems, clearly, to be the right step forward.
Talk to Us:

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