Implementation of a fiduciary fund as a quasi-trust: challenges of recodification of civil legislation of Ukraine

Implementación de un fondo fiduciario como cuasi-fideicomiso: retos de la recodificación de la legislación civil de Ucrania

Implementação de um fundo fiduciário como quase-trust: desafios da recodificação da legislação civil da Ucrânia

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Abstract

This article analyzes the prospects and key challenges of implementing the fiduciary fund institution as quasi-trust legal construct in the context of the ongoing recodification of the Civil Code of Ukraine. The main rationale for introducing statutory regulation of fiduciary funds lies in the economic necessity to retain and protect domestic investment, as some of the Ukrainian investors opt for foreign legal regimes - primarily due to the flexibility and asset protection offered by trust structures. The study demonstrates that harmonization with European and global legal standards is seen as imperative, yet specific trust types, such as «spendthrift» and massively discretionary trusts, reveal abusive practices that must be prevented under national law. Comparative analysis of Ukrainian joint investment institutions legislation reveals similarities with discretionary trusts but also highlights unique features and regulatory safeguards. The research emphasizes the necessity of conceptual clarity regarding fiduciary duties, as well as interaction with family and succession law. The conclusion states that carefully reformed institutions of joint investments, aligned with local and international standards, could enhance both economic activity and protection of stakeholders, while minimizing the risks of misuse and legal uncertainty.

Keywords: fiduciary duties, recodification of civil law, fiduciary fund, trust, property rights.

Resumen

Este artículo analiza las perspectivas y los principales retos de la implementación de la institución del fondo fiduciario como constructo jurídico cuasi fiduciario en el contexto de la actual recodificación del Código Civil de Ucrania. La principal razón para introducir la regulación legal de los fondos fiduciarios radica en la necesidad económica de retener y proteger la inversión nacional, ya que algunos de los inversores ucranianos optan por regímenes jurídicos extranjeros, principalmente debido a la flexibilidad y la protección de activos que ofrecen las estructuras fiduciarias. El estudio demuestra que la armonización con las normas jurídicas europeas y mundiales se considera imperativa, pero que determinados tipos de fideicomisos, como los fideicomisos «derrochadores» y los fideicomisos con amplia discrecionalidad, revelan prácticas abusivas que deben prevenirse en la legislación nacional. El análisis comparativo de la legislación ucraniana sobre instituciones de inversión colectiva revela similitudes con los fideicomisos discrecionales, pero también destaca características únicas y salvaguardias reglamentarias. La investigación hace hincapié en la necesidad de claridad conceptual en lo que respecta a las obligaciones fiduciarias, así como a la interacción con el derecho de familia y sucesorio. La conclusión afirma que una reforma cuidadosa de las instituciones de inversión colectiva, en consonancia con las normas locales e internacionales, podría mejorar tanto la actividad económica como la protección de las partes interesadas, al tiempo que se minimizan los riesgos de uso indebido y la incertidumbre jurídica.

Palabras clave: obligaciones fiduciarias, recodificación del derecho civil, fondo fiduciario, fideicomiso, derechos de propiedad.

Resumo

Este artigo analisa as perspetivas e os principais desafios da implementação da instituição do fundo fiduciário como uma construção jurídica quase fiduciária no contexto da recodificação em curso do Código Civil da Ucrânia. A principal razão para a introdução da regulamentação estatutária dos fundos fiduciários reside na necessidade económica de reter e proteger o investimento interno, uma vez que alguns dos investidores ucranianos optam por regimes jurídicos estrangeiros, principalmente devido à flexibilidade e à proteção de ativos oferecidas pelas estruturas fiduciárias. O estudo demonstra que a harmonização com as normas jurídicas europeias e globais é considerada imperativa, mas tipos específicos de trustes, como os «spendthrift» e os massivamente discricionários, revelam práticas abusivas que devem ser impedidas pela legislação nacional. A análise comparativa da legislação ucraniana relativa às instituições de investimento conjunto revela semelhanças com os trusts discricionários, mas também destaca características únicas e salvaguardas regulamentares. A investigação enfatiza a necessidade de clareza conceptual em relação aos deveres fiduciários, bem como a interação com o direito da família e sucessório. A conclusão afirma que uma reforma cuidadosa das instituições de investimento conjunto, alinhada com as normas locais e internacionais, poderia melhorar tanto a atividade económica como a proteção das partes interessadas, minimizando os riscos de uso indevido e incerteza jurídica.

Palavras-chave: deveres fiduciários, recodificação do direito civil, fundo fiduciário, trust, direitos de propriedade.

Introduction

Since the establishment of the dedicated working group in 2019 (Kabinet Ministriv Ukrainy, 2019), Ukraine has undertaken a comprehensive process of recodifying and modernizing its civil legislation, aimed at harmonizing national legal norms with European standards, enhancing the consistency and effectiveness of private law institutions, and addressing the evolving demands of legal certainty and production of the sufficient background for the post-war recovery and European integration objectives. The duration and complexity of this reform process can be explained by the adoption of the principles of civil law monism as the basis of the updated civil legislation. On 28 August 2025, the Commercial Code of Ukraine (Hospodarskyi kodeks Ukrainy, 2003) ceased to be in force. This code had functioned as a special legislative act governing economic activity. Its repeal necessitated the incorporation into the Civil Code of Ukraine legal norms in the sphere of entrepreneurship, unified provisions in the field of corporate law, including reviewed and systematized types of organizational forms for legal entities. In addition, it introduces new property titles for the state and municipal sectors of the economy, replacing the outdated institutions of the right of economic management and the right of operational management. Furthermore, renews Civil Code of Ukraine shall entail the revision of other property and non-property relations on the basis of legal equality, free expression of will, and proprietary autonomy of participants.

The recodification of civil legislation also envisages the introduction of new legal institutions, notably the fiduciary fund. According to the Concept of Updating the Civil Code of Ukraine (Kontseptsiia onovlennia Tsyvilnoho kodeksu Ukrainy, 2020, pp. 26–27), a fiduciary fund is defined as a legal relationship in which “one or more settlors transfer their property to a trustee (trustees) who separate it from their property for management in favor of one or more beneficiaries, and, in case of their absence, for a specific socially useful purpose.” The said definition makes it clear that this refers to the introduction of a quasi-trust structure into Ukrainian private law, which is similar to the French *Fiducie* or German *Treuhand*.

Ukraine has not ratified the Convention on the Law Applicable to Trusts and their Recognition (Convention on the Law Applicable to Trusts and on their Recognition, 1985), and its private law does not yet contain general provisions on trusts. However, the concept of trust is not a new one for Ukrainian legislation: for instance, the term "trust" appears in the Law of Ukraine "On Prevention and Counteraction to Legalization (Laundering) of Proceeds of Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction" (Zakon Ukrainy "Pro zapobihannia ta protydiiu lehalizatsii", 2019), which defines a trust as a legal relationship created by the settlor in accordance with the legislation of the country of incorporation, either *inter vivos* or upon death, whereby assets are placed under the control of a trustee for one or more beneficiaries or for a specified purpose. The said legal arrangement is distinguished by certain features: the assets constitute a separate fund and are not part of the trustee's own property; the rights to the trust assets are registered in the name of the trustee or in the name of another person acting on behalf of the trustee; the trustee has powers and duties within which he / she is responsible and may manage, use, or dispose of the assets in accordance with the terms of the trust agreement, the special duties imposed on him/her by the legislation of the relevant state (paragraph 60 of part 1 of Article 1 of the Law).

Provisions of Article 46 of the Law of Ukraine "On Prevention of Corruption" (Zakon Ukrainy "Pro zapobihannia koruptsii", 2014) contain a reminder for civil servants to include information regarding trusts or equivalent legal constructs in their annual declarations.

For taxation purposes, a person is deemed to hold an interest in another legal entity if such person is a founder of a trust, an owner of a share in the assets of a fund, institution, or other formation without the status of a legal entity whose assets include the specified share, or is a participant (partner with full or limited liability) in a partnership whose assets include a share in a legal entity. In addition, the relevant provision of the Tax Code of Ukraine stipulates that the settlor of a trust is not considered to hold a share in a legal entity if certain conditions—commonly identified in legal scholarship as characteristics of a discretionary irrevocable trust—are satisfied. Specifically, this applies when the individual does not have the right, either directly or indirectly, to issue instructions regarding the distribution of trust profits or income in his/her favor; is not entitled to dispose of such profits or income; lacks any entitlement to reclaim property forming part of the trust assets; and cannot, individually or jointly with other beneficiaries, terminate the trust, including, but not limited to, by the liquidation or cessation of the trust agreement (Podatkovyi kodeks Ukrainy, 2010, Art. 39-2).

The above-named examples clearly demonstrate a substantive understanding of the legal structure of trusts within the framework of specialized Ukrainian legislation, including those concerning anti-corruption and taxation. However, the introduction of the fiduciary fund as a legal institution may give rise to significant conflicts with existing legislative acts, thereby presenting a considerable risk of generating more unresolved questions than concrete solutions to the challenges that the fiduciary fund concept is intended to address.

The principal objective of this article is to analyze the challenges associated with the introduction of the quasi-trust legal construct, specifically the fiduciary fund, into the revised Civil Code of Ukraine, with a view to identifying potential legislative conflicts and proposing mechanisms for their resolution. An illustrative example of incorporating quasi-trust mechanisms into Ukrainian private law is trust ownership, which was designed to secure obligations under loan agreements (Tsyvilnyi kodeks Ukrainy, 2003, Art. 597-1). Nevertheless, this instrument has failed to gain practical traction among financial institutions, being supplanted by traditional security instruments such as mortgages and pledges. The relevance of this study is underscored by the current reform of Ukraine's civil legislation and by the imperative to devise solutions that, unlike the underutilized provisions on trust ownership, would enable the legal construct of a fiduciary fund to function as an effective regulator of civil legal relations, or to facilitate the development of viable alternatives.

Methodology

Research design. This study adopts a comparative legal methodology, integrating formal logical and system-structural approaches to analyze the implementation of trust-like institutions within Ukrainian law. The research involved doctrinal analysis of primary and secondary legal sources, encompassing national and foreign legislation and judicial practice to elucidate the evolution and challenges of fiduciary fund implementation.

Time frame. The review covers developments from 2010, the date of the adoption of the Tax Code of Ukraine, which contains references to the trusts, up to September 2025, and incorporates the main phases of drafting, adoption, and discussion of legislative reforms and proposed transformations in the regulatory framework..

Specific sources consulted. The study draws upon statutory acts (Civil Code of Ukraine, Tax Code of Ukraine), the Concept for Updating the Civil Code of Ukraine, sectoral Ukrainian legislation governing investment finance, anti-corruption, and bankruptcy, relevant EU draft directives and reports, Ukrainian Supreme Court case law, sources of soft law, particularly the Draft Common Frame of Reference, doctrinal monographs, and official statistics produced by the UAIB.

Analysis process. The analytical approach comprised classification of relevant norms and institutions, cross-jurisdictional comparison of legal regimes, systematic resolution of conflicting provisions, and a doctrinal assessment of legislative outcomes following the introduction of fiduciary funds. The research includes comparative evaluation of the Ukrainian fiduciary framework *vis-à-vis* classical trusts, scenario-based simulations of enforcement practice, and conceptual as well as regulatory barrier mapping.

Selection criteria. Selection was strictly limited to regulatory sources, judicial decisions, international legal instruments, doctrinal materials, and examples that directly or indirectly affect fiduciary funds or illustrate cross-sectoral legal interaction.

Validation methods. Findings were verified through retrospective legal analysis, comparative review of Supreme Court jurisprudence and European law sources, and interdisciplinary doctrinal validation to ensure the accuracy and relevance of conclusions.

Findings and Discussions

One of the key issues concerns the rationale for incorporating provisions on fiduciary funds into the Civil Code of Ukraine. According to Roman Maydanyk, a member of the working group on recodification of the Ukrainian Civil Code, the impetus for introducing fiduciary funds at the legislative level is predominantly economic: he observes that some Ukrainian investors opt for the legal jurisdictions of other countries because the legal structure of trusts offers them better legal and economic solutions (Maydanyk, 2021, p. 38). In a monographic study devoted to the recodification of civil legislation, Hanna Buyadji notes that the introduction of the legal institution of a fiduciary fund is a response to Europe-wide and global trends towards the harmonization of legal regimes, as isolated changes cannot produce the desired effect, and therefore it is necessary to create a single legal device that would comprehensively regulate trust relations (Kuznetsova, 2021, p. 283).

While it is acknowledged, following Professor Maydanyk, that certain Ukrainian investors opt for foreign legal frameworks and utilize trust structures, the predominant motivating factors in such cases are typically tax optimization strategies. These strategies are frequently associated with practices intended to legalize illicitly obtained assets, facilitate unlawful avoidance of antitrust regulations, or alter jurisdiction for asset-related legal disputes. Thus, the deployment of trusts by Ukrainian investors is often situated at the intersection of cross-jurisdictional exploitation of regulatory differences and the pursuit of legal insulation for assets (in some cases, by not entirely legal means).

Professor Irit Samet references legal cases that exemplify the lawful yet morally contentious usage of trust structures. In the high-profile American decision of *Scheffel v. Krueger* (2001), the perpetrator of a serious assault on a child remained shielded from liability, even though his grandmother had transferred a substantial sum to him through a *spendthrift* trust. The core feature of a spendthrift trust is the settlor's express prohibition against the voluntary or involuntary transfer of the beneficiary's interest in the trust to the third parties; moreover, creditors of the beneficiary are barred from reaching the trust assets by attachment or enforcement proceedings. Trustees under such arrangements are only permitted to disburse payments directly to third parties who satisfy the beneficiary's needs (for maintenance, support, or education), while expressly excluding any distributions that could be appropriated to satisfy the beneficiary's existing debts. The said case demonstrates that spendthrift clauses can effectively prevent even criminal tort creditors from recovering judgments, thereby reinforcing the trust's protective, but at times problematic, function (Samet, 2024, p. 162).

Another example is the usage of massively discretionary trusts, also known as "black hole" trusts. The essence of this type of trust is that trustees are granted the right to distribute the trust's assets to members of a large group of individuals or organizations, as well as to change their scope. Usually, in such trusts, the sole beneficiary, determined at the outset, is a charitable organization, which is not even informed of being a trust beneficiary, since the chance that it would ever receive any trust distributions is virtually zero. In practice, the extensive discretionary powers commonly attributed to certain trust arrangements often exist more in form than in substance. Typically, the settlor retains a clear intention regarding the true beneficiaries and communicates this to the trustees through informal instruments such as a "letter of wishes," which, while not legally binding, are generally observed in practice. The governance gap left by the absence of a legally recognized beneficiary empowered to demand accountability for the management and proper execution of the trust deed is frequently addressed by appointing a trust "protector." This individual is vested with significant powers, which may include the authority to issue binding directions to trustees or to restrict the exercise of certain trustee discretions, thereby exerting substantive control over the trust's administration and safeguarding the settlor's intentions (Samet, 2024, p. 163).

The catalogue of unfair practices can be expanded with so-called "revocable" trusts, i.e., the ones that allow the settlor to return the trust assets at any time (in such cases, the trust is used as a vehicle to dispose of the assets whenever it is convenient for the settlor) or provisions of the "decanting" trusts that allow the transfer of trust assets from one trust to another one to achieve certain goals. For example, the second, "decanted" trust, may empower the trustee to sell trust assets, whereas the original trust did not include such powers (Knobe, 2017, pp. 32-34).

Ongoing processes of European integration have required Ukraine to pay increasing attention to the legislative framework of the European Union, which by no means encourages the usage the trusts. This is substantiated by the Report from the Commission to the European Parliament and the Council assessing whether Member States have duly identified and made subject to the obligations of Directive (EU) 2015/849 (the Anti-Money Laundering Directive) all trusts and similar legal arrangements governed under their laws (European Commission, 2020). The report states that "in the aftermath of the Panama Papers and Lux Leaks, the European Union has taken steps to ensure the transparency of beneficial ownership of legal entities and arrangements, including legal arrangements governed under Member States' law or custom that have a structure or functions similar to trusts." The said document further provides a comprehensive overview of all trust and quasi-trust legal structures enacted within the legal frameworks of EU Member States.

This review is conducted pursuant to EU Directive No. 2015/849. Under this framework, trustees and individuals responsible for equivalent legal structures must obtain and maintain adequate, accurate, and current records of beneficial ownership. They are also required to disclose this information to obliged entities in a timely manner and to submit beneficial ownership data to the central register of the Member State where the trustee is established or resides. Beneficial ownership information regarding trust arrangements also shall be submitted to the central register maintained by the Member State in which the trustee is established or resident; alternatively, if the trustee is based outside the EU, the information must be registered in the Member State where the arrangement initiates a business relationship or acquires real estate. Nonetheless, as demonstrated by the example of massively discretionary trust arrangements described above, even the extensive EU rules governing the disclosure of ultimate beneficial ownership may be inadequate for ensuring effective regulatory oversight and transparency of such complex legal instruments as trusts.

The purpose of introducing a fiduciary fund is not to facilitate the creation of trusts as described above or to enable beneficiaries to evade their obligations. This conclusion is supported by the widespread application of the doctrine of fraudulent transactions in Ukraine. The Grand Chamber of the Supreme Court, in its resolution of 7 September 2022 in case No. 910/16579/20 (Supreme Court of Ukraine, Grand Chamber, 2022), clarified that "fraudulent transactions in civil law doctrine are transactions that are committed by the parties in violation of the principles of good faith and with the aim of concealing the debtor's assets from enforcement by particular creditors for the debtor's obligations, thereby causing damage to that creditor. The Civil Code of Ukraine does not contain a separate definition of fraudulent transactions; they are identified through the application of the principles (general principles) of civil law and the limits of the exercise of civil rights. A common feature of such transactions is the parties' actions to transfer the debtor's property to third parties to make it impossible for the debtor to fulfill its obligations to creditors and in violation of the principle of good faith in civil legal relations."

The resolution of the Commercial Court of Cassation of the Supreme Court dated 15 May 2024 in case No. 911/2548/17 further clarifies that fraudulent transactions (understood as transactions executed by a debtor harming creditors) are addressed in Ukrainian law exclusively within certain domains, notably bankruptcy, bank insolvency, and enforcement proceedings. As a result, the prospective implementation of a fiduciary fund regime would necessitate substantial conceptual revisions of the Code of Ukraine on Bankruptcy Procedures. This step is particularly pertinent, as a central characteristic of trusts is the shielding of property and assets transferred to the trust from claims by the settlor's creditors.

The resolution of the Commercial Court of Cassation of the Supreme Court dated 15 May 2024 in case No. 911/2548/17 (Supreme Court of Ukraine, Commercial Court of Cassation, 2024) also states that fraudulent transactions (transactions committed by the debtor harming creditors) are regulated in Ukrainian law only in certain fields, in particular in bankruptcy, in the event of bank insolvency, and in enforcement proceedings. Thus, the implementation of a fiduciary fund, in addition to amendments to the Civil Code of Ukraine, will require conceptual changes to the Code of Ukraine on Bankruptcy Procedures, since one of the features of a trust is the protection of property and assets transferred to the trust from the claims of the settlor's creditors.

It is essential to emphasize that a fiduciary fund, which is designed to protect the assets of a settlor, shall not be utilized as an instrument to circumvent sanctions or hinder the recovery of assets belonging to individuals or legal entities whose actions pose a significant threat to Ukraine's national security, sovereignty, or territorial integrity, or who have materially contributed (including through financing) to such threats or acts committed by others. In these instances, asset recovery in favor of the State must proceed in accordance with the procedure established by the Law of Ukraine

"On Sanctions" (Zakon Ukrainy "Pro sanktsii", 2014). The operation of fiduciary funds should therefore be strictly regulated to ensure full compliance with Ukraine's sanction regime and the national public interest.

If a fiduciary fund is established exclusively for the purpose of promoting business activity, its structure and functional design correspond closely to the concept proposed in the draft EU Directive on Protected Funds. In 2009, a group of scholars associated with the International Working Group on European Trust Law at the Centre for Business and Law Studies of the University of Nijmegen published an unofficial draft of the Directive on Protected Funds. According to the authors, a protected fund should be established solely for commercial objectives, during the lifetime of the originator and exclusively for the beneficiaries. Consequently, such a mechanism is not intended for managing family property or pursuing charitable, religious, or political goals.

Although the draft directive does not explicitly define the term "commercial purposes," it provides several illustrative examples, including pension financing, operation of collective investment schemes, collective debt management, and the transfer of ownership of specific property to an administrator as collateral. Rather than adopting the terminology of trust law, the draft directive provided substitute terms: "protected fund," "administrator," "assets of the protected fund," and "originator," opposing "trust," "trustee,", and "assets of the trust" accordingly. The conceptual idea of the protected fund was to regard it as a "trust-like mechanism." The proposal did not seek to harmonize existing trust or fiduciary regimes but instead introduced a novel unified legal instrument enabling the segregation of assets for specific purposes within the European Union framework.

The draft directive envisages the involvement of both an originator, who establishes the protected fund, and an administrator, who holds and manages its assets for the beneficiaries. The assets of such a fund constitute a distinct patrimony that may only be administered by qualified professionals—such as notaries, lawyers, accountants, or bailiffs if they meet prescribed competence standards. The relationships between the originator and administrator, and between the administrator and beneficiary, are defined as non-contractual in nature. The originator is precluded from compelling the administrator to perform specific duties, while the protection afforded to the beneficiary exceeds that available under contractual remedies.

The administrator is considered the legal owner of the fund's assets but is subject to fiduciary obligations enforceable by beneficiaries or appointed enforcers. The beneficiary's rights are insulated from the administrator's insolvency, as the fund's property is excluded from the administrator's liquidation estate. However, unlike a traditional trust, beneficiaries lack direct recourse against third parties in cases of unlawful appropriation of the fund's assets. Additionally, the authors of the draft emphasized robust protection for *bona fide* third parties who, lacking actual knowledge of any breach of duty, acquire rights in good faith. The proposed directive was designed to be implemented by way of transposition into national legislation of each EU member state (Braun, 2013).

Consistent terminology is employed by members of the working group on the recodification of civil legislation. Ganna Buyadzhi defines the concept of a fiduciary fund as "targeted property (i.e., property designated for a specific purpose) transferred to the trust ownership of a manager or to the management of another person" (Buyadzhi, 2021, p. 61). Roman Maydanyk emphasizes the necessity of introducing professional fiduciary management companies, whose exclusive activity would be property management under a licensing regime administered by the National Bank of Ukraine (Maydanyk, 2021).

However, it is noteworthy that the quasi-trust structure outlined above, which is functionally similar to the protected fund concept, has formally existed within Ukrainian legislation since 2012, following the adoption by the Verkhovna Rada of Ukraine of the Law of Ukraine "On Joint Investment Institutions" (Zakon Ukrainy "Pro instytuty spilnoho investuvannia," 2012). This legislative framework established mechanisms for collective investment and asset management that reflect trust-like principles of segregated ownership and fiduciary administration.

Under the Law of Ukraine "On Joint Investment Institutions," collective investment vehicles (hereinafter, JIIs) encompass both corporate and mutual funds, financed by individuals or legal entities through acquisition of specialized book-entry securities: shares of a corporate investment fund or investment certificates of a mutual fund. A corporate fund is structured as a joint-stock company whose sole function is joint investment activity.

By contrast, the mutual fund more closely resembles a quasi-trust arrangement; it constitutes a pool of assets jointly owned by participants and managed by an asset management company (hereinafter AMC). Unlike corporate funds, mutual funds don't have separate legal entity status, and, in the event of AMC insolvency, JII assets are excluded from the AMC's liquidation estate. Mutual funds are established by AMC decision, with asset registration in the AMC's name. Each mutual fund operates pursuant to its regulation, governing net asset valuation, investment certificate pricing, AMC remuneration, dividend payouts, redemption mechanics for certificates, and other operational policies.

AMC are organized as joint-stock companies or limited liability companies. These companies are licensed by the National Securities and Stock Market Commission, and the law imposes extensive business activity restrictions: prohibitions on transactions beyond the scope of the investment declaration, certain contracts with related parties, extending loans or credits using JII assets, gratuitous dispositions, and other controls. Annual independent auditing of financial statements is mandatory.

Significantly, mutual fund participants lack the right to directly influence AMC operations, reinforcing similarity to trust arrangements—assets are managed professionally without participant control. Ultimately, mutual funds replicate core features of the discretionary trust model: the AMC acts as trustee, holding and administering a separate property pool, with managerial powers constrained by law and the fund's regulations. Key differences persist: (1) asset formation relies exclusively on monetary funds from investment certificate sales; (2) while fund assets are shielded from participant creditors, investment certificates may be subject to enforcement; (3) third-party beneficiaries cannot be designated; and (4) no fiduciary relationship arises between participants and the AMC. This regulatory framework is evidence that AMC operations are governed primarily by administrative supervision from the National Securities and Stock Market Commission rather than by traditional private law fiduciary enforcement.

Nevertheless, the relevance of fiduciary duties within the proposed fiduciary fund framework remains crucial. Roman Maydanyk, analyzing the duties of a fiduciary fund manager, contends that the manager shall act with utmost regard for the beneficiary's interests, avoid conflicts of interest, ensure full disclosure and transparent property management in accordance with the founder's instructions, preserve confidentiality of all related information, and diligently fulfill responsibilities in the administration of fund property (Maydanyk, 2021, p. 43-44). Collectively, these obligations are functionally equivalent to the fiduciary duties of care and loyalty as developed in classical trust law.

It is notable in the scholarship on fiduciary principles in trust law that the fiduciary duties incumbent upon trustees are substantially more stringent than analogous obligations imposed on corporate directors. In the trust context, the duty of loyalty is elevated to an exclusive duty—referred to as the sole interest rule or undivided loyalty—and reinforced by the "no further inquiry" doctrine: trust law as a matter of default prefers to eliminate the possibility of conflicted decision-making rather than to police fiduciary conduct *ex post* through remedial sanctions when a breach occurs. The trustee's responsibilities encompass the distribution of trust assets among beneficiaries, prudent investment, accounting, and management of property, ensuring impartiality when conflicts arise between multiple beneficiaries, and the performance of other specialized duties (Sitkoff, 2019). Notably, in common law jurisdictions, these obligations have evolved through both statutory instruments and judicial precedent. Consequently, the implementation of fiduciary fund law in Ukraine shall be accompanied by careful elaboration of the substantive content of these fiduciary rules, many of which represent novel legal concepts for Ukrainian civil law. A relevant model may be found in Chapter 6, "Obligations and rights of trustees and trust auxiliaries," of Book X of the Draft Common Frame of Reference, which catalogues and structures fiduciary duties in a comparative European context (Study Group on a European Civil Code & Research Group on EC Private Law, 2009).

The interaction of fiduciary funds with such branches of private law as inheritance and family law requires separate, in-depth examination, as these dimensions remain underdeveloped within the current framework for recodifying Ukraine's civil legislation. Importantly, these spheres may determine the principal legal consequences of fiduciary fund operation, including potential avenues for abuse or circumvention of the law.

In the field of family law, specific attention should be directed toward resolving the potential conflicts between the terms of a marriage contract and the provisions of an existing fiduciary fund. For instance, determining whether inconsistencies between these legal instruments could result in the invalidation of either the marriage contract or the fiduciary fund agreement. Similarly, in the event of dissolution of marriage, the legal mechanisms for the termination of the fund and distribution of its assets remain undefined.

In inheritance law, unresolved questions likewise persist concerning the legal status of property transferred to a fiduciary fund upon the settlor's death: whether such property should revert to the estate for succession or remain outside of it. The absence of a clear doctrinal and statutory framework addressing these matters creates risks of conflicting judicial interpretations and legal uncertainty within the framework of implementation of quasi-trust structures in Ukraine's legal system.

These lacunae highlight the need for systematic incorporation of fiduciary fund regulation into family and inheritance law, ensuring consistency with existing principles of ownership, succession, and public policy while safeguarding against the misuse of fiduciary mechanisms for avoidance of mandatory legal obligations or evasion of heirs' rights.

From the perspective of private international law, the creation, and operation of fiduciary funds may raise complex conflict-of-law issues. As Roman Maydanyk notes, fiduciary funds in Ukraine would be regulated under Book Three "Property Rights" of the Civil Code of Ukraine (Maydanyk, 2021, p. 40), meaning that in cases involving a foreign element—such as foreign ownership, cross-border transactions, or location of the property abroad—the provisions of the Law of Ukraine "On Private International Law" concerning property rights would apply.

Under the general rule, proprietary rights are governed by the law of the state where the property is situated at the time these rights arise. However, the parties may agree to apply foreign law to their relationship, including agreements establishing fiduciary funds, provided that such a choice does not infringe upon the rights of third parties or public policy. This restriction prevents the introduction of foreign trust clauses such as flee (the obligation of the trustee to change the address of the trust, the law to which it is subject, or the trustee itself upon receiving the relevant instruction), duress (prohibition of the trust from performing certain actions on the instructions of the settlor or beneficiary if such instructions were given under duress, for example, to comply with a foreign court decision), or forfeiture (automatic revocation of the status of a trust beneficiary in cases where the beneficiary attempts to transfer their share in the trust, or when the beneficiary's creditors attempt to enforce the trust's assets) clauses common in jurisdictions like the Cook Islands, one of the most client-friendly trust jurisdictions (Knobel, 2017), but may simultaneously complicate judicial interpretation in potential settlor —trustee (fiduciary fund manager)— beneficiary disputes in Ukrainian jurisdiction.

Hence, within the framework of the working group on the recodification of Ukrainian civil legislation, and subsequently before the national legislature, a critical conceptual challenge emerges: how to incorporate the legal construct of fiduciary funds into the Ukrainian private law system. The foremost issue concerns defining the place of this institution among existing legal constructs. Should the model draw inspiration from the "classic" trust, the task becomes complex, requiring not only substantial amendments to the Civil Code of Ukraine but also alignment with related legal areas such as inheritance, family, corporate, and financial law.

Additionally, effective mechanisms must be introduced to prevent the misuse of fiduciary fund arrangements by settlors seeking to conceal assets from creditors. In this regard, doctrines such as "sham" and "alter ego," which are widely used in common law jurisdictions to challenge the validity of trust agreements, would be essential to adopt (Peart, 2019, p. 570). Furthermore, Ukrainian courts have already developed the doctrine of fraudulent transactions to counter abuses of this nature.

If the primary aim of fiduciary funds is to facilitate business operations, their establishment might be more efficiently implemented through the existing legal framework governing joint investment institutions (JIIs). This could be achieved by modest reform: broadening the range of potential asset managers to include qualified professionals such as lawyers, accountants, and auditors, who would obtain appropriate licenses; reallocating the regulatory oversight of the National Securities and Stock Market Commission; and expanding permissible assets to be able to include not only monetary funds, but also tangible property. Replacing the investment declaration with a flexible contractual arrangement between the fund settlor and manager (trustee) and allowing management in favor of a third-party beneficiary would further enhance this model. Introducing fiduciary duties for fund managers would ensure private law protection for settlors and beneficiaries once direct state regulation is reduced.

Conclusion

The classic trust is a multifaceted legal institution, interacting with family, inheritance, corporate, and financial law and potentially generating tensions with core private law principles; it also necessitates intensified scrutiny from anti-money laundering authorities. For Ukraine, as a country with a strong tradition of civil law, it is almost impossible to integrate the concept of a quasi-trust fund without disrupting the existing balance with other areas of law. Rather than establishing a wholly new framework from the ground up, a more pragmatic solution would be to leverage the existing infrastructure for asset management and to reform the JII legal framework. Notably, recent data confirm that despite the wartime and associated economic adversity, 270 licensed asset management companies were active in Ukraine in the second quarter of 2025, managing 1,857 joint investment institutions that met statutory asset minimums (Ukrainian Association of Investment Business, 2025).

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