



AVOCAT FIDUCIAIRE



ABOUT FIDUCIE

The fiducie is the equivalent of the legal institution of trust in English law. It arises out of the Law No 2007-211 of 19 February 2007 and is governed by articles 2011 et seq. of the French Civil Code. Fiducie is defined by article 2011 as « an arrangement by which one or more settlors (constituants) transfer assets, rights or security interests, or a group of assets, rights or security interests, existing or future, to one or more trustees (fiduciaries), who hold them separate from their own property and act in accordance with a defined purpose for the benefit of one or more beneficiaries (bénéficiaires) ».

Since the law to modernise the economy of 4 August 2008, the activity of fiducie has been extended to lawyers. This activity is governed by article 2015 of the French Civil code and article 6.5 of the National Regulations of the lawyers' profession.

This arrangement takes the form of a written contract, or fiducie agreement, governed by articles 2011 et seq. of the French Civil Code, involving:

- ▶ **THE SETTLOR:** individual or legal entity, party to the contract, who owns the rights and/or assets that he/it transfers to the trustee;
- ▶ **A TRUSTEE:** professional, party to the contract, to whom the settlor's assets or rights are transferred, and who discharges duties of management and/or protection, which have been defined beforehand. Only credit institutions, investment companies, insurance companies and lawyers may be trustees;
- ▶ **A BENEFICIARY:** individual or legal entity to whom the assets or rights are transferred under the fiducie agreement. As a general rule, the beneficiary is also the settlor;
- ▶ **A PROTECTOR:** person that may be appointed by the settlor to oversee the discharge of the trustee's duties.

Under this contract, the settlor transfers all or part of his/its assets or rights to the trustee, who is tasked to act in accordance with a specified purpose for the benefit of the beneficiary. The lawyer acts here in the capacity of trustee. Ownership of the assets transfers to the trustee.

FIDUCIES CAN BE ONE OF TWO FORMS:

- ▶ **MANAGEMENT TRUSTS:** contractual arrangement by which a settlor transfers assets or rights to a fiducie managed by a trustee in the interests of the settlor or beneficiary, in accordance with tasks set out in a fiducie agreement entered into by the settlor and trustee.
- ▶ **LA FIDUCIE AS SECURITY:** contractual arrangement under which ownership of assets or rights is transferred to the trustee to provide protection against credit risk. These assets or rights are security for the repayment of any sum of money borrowed by the settlor.

IMPLEMENTATION

- ▶ A fiducie agreement must include the following mandatory particulars:
 - indication of the assets or rights transferred;
 - identity of the settlor(s) and trustee(s);
 - designation of the beneficiaries or the rules for their designation;
 - mandate of the trustee and the scope of its/his powers;
 - term of the fiducie, limited to 99 years.

The contract, or fiducie agreement, must be registered by the settlor with the tax office and national fiducies register.

- ▶ The fiducie lawyer must effect liability insurance covering all risks which may arise out of the performance of their obligations under the fiducie agreement and inform the Bar association with which they are registered.
- ▶ Effect specific insurance to cover the return of the assets, rights or security interests for which the lawyer has been appointed trustee.



S&F

AVOCAT FIDUCIAIRE