

LAW NO. 43 OF 1 MARCH 2010

FIDUCIARY AGREEMENT

UNOFFICIAL TEXT

NOTICE

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Section 1
General Provisions

Art. 1
(Definition and form)

1. A fiduciary agreement is an agreement by which a settlor and a trustee agree on the program that assigns some assets and their yields for the benefit of one or more beneficiaries, whether or not parties to the agreement, within a time limit not exceeding 90 years.
2. Assets can be present or future, determined or determinable, transferred by the settlor or third parties to the trustee or tied up by the latter.
3. A fiduciary agreement should be made without consideration.
4. The agreement, under penalty of nullity, shall:
 - a) be in written form;
 - b) be accompanied by the advice of a San Marino notary public, who shall certify its validity.
5. The agreement shall not be subject to cancellation, unless its performance is no longer possible.

Art. 2
(Settlor)

1. The settlor shall temporarily hold the sole position of trustee when one or more beneficiaries are parties to the agreement.
2. Unless otherwise provided by the agreement, the rights and powers of the settlor cannot be exercised by his heirs, nor shall they succeed to his obligations.

Art. 3
(Entrusted property)

1. The assets transferred to the trustee or tied up by the trustee to implement the allocation program shall constitute the entrusted property. Neither the transfer nor the lien shall require the issuance of deeds and documents without consideration and lodgement of a claim.
2. The entrusted property:
 - a) shall be temporarily owned by the trustee, who shall exercise any dominical right over that property, within the limits established by the agreement;
 - b) shall be distinct and separate from the personal property of the trustee; it shall not form part of the matrimonial property of the trustee nor part of the trustee's estate upon his death; and it shall not be subject to the concurrence of the trustee's creditors;
 - c) cannot be subject to enforcement, except for obligations relating to the implementation of the allocation program.
- 3) When there are several trustees, a joint tenancy regime shall be established among them.
- 4) In the agreement the entrusted property may be named.
- 5) Assets belonging to the entrusted property shall be kept by the trustee separate from his personal property and be separately identifiable; registrations and publicity procedures shall mention the inclusion of such assets in the entrusted property.

Art. 4
(Beneficiaries)

1. The agreement shall:
 - a) specify the beneficiaries and how they are identified;
 - b) establish the rights of the beneficiaries on the entrusted property and its yields;
 - c) establish under which circumstances the rights of a beneficiary are null and void or can become null and void.
2. The settlor shall subsequently identify and specify the beneficiaries, provided that at least a beneficiary is specified in the agreement.
3. The trustee or a third party shall:
 - a) specify the beneficiaries among certain people or people belonging to particular families or groups of people;
 - b) establish the rights of the beneficiaries, provided that they are different from the person establishing such rights.
4. Descendants of a specific person who was alive when the agreement was concluded, though not yet conceived, may be beneficiaries.
5. A settlor may be a beneficiary. A trustee may be one of the beneficiaries.

Art. 5

(Implementation of the allocation program)

1. The agreement shall establish under which circumstances:
 - a) the prior consent of the settlor or the parties designated by him is requested for the valid performance of an act by the trustee;
 - b) the trustee may replace or add other persons to him in the relations resulting from the agreement;
 - c) the settlor or the parties designated by him are authorised to transfer the relations resulting from the agreement to a different person, through a release by the trustee, and to perform real actions and acts with real effects on the entrusted property, by way of derogation from the provisions of *ius commune*;
 - d) the trustee may act in conflict of interest.
2. Although the agreement makes no reference or provides otherwise:
 - a) in case of non-compliance of the trustee, the settlor and the parties designated by him shall be vested with the powers referred to in paragraph 1, letter c, subject to the requirements for damages to be fulfilled by the trustee;
 - b) the powers referred to in paragraph 1, letter c, shall be exercised by the parties who shall be vested with the aforesaid powers:
 - i) if the trustee dies or becomes incapable and there is not another trustee;
 - ii) if the trustee requests to be released from his obligations.
3. If the allocation program cannot be implemented since there are no beneficiaries and it is not possible that they exist within the period of the agreement, the entrusted property and its yields shall be owned by the settlor from the moment at which the impossibility occurred.
4. If the rights of the beneficiaries are not extended to the entire entrusted property, exceeding assets and their yields shall be due to the settlor from the moment at which said excess occurred and as long as it continues.

Art. 6

(Trustee's obligations)

1. The trustee shall act in good faith and fair dealing.
2. In fulfilling his obligations, the trustee shall:
 - a) act as a fiduciary required to exclusively satisfy the interests of others;
 - b) use the same due diligence that a shrewd person would use in relation to his own assets under the same circumstances;
 - c) act with the competence that is reasonably expected of a professional, if he performs professionally the activity of trustee.
3. The trustee shall be required to report on his activity and performance to the parties specified in the agreement and, in any case, to the beneficiaries on the basis of their own interest, according to the appropriate periodicity based on the circumstances. Prior waiver shall have no effect.
4. The trustee may replace himself with others in the relations resulting from the agreement, freely or with prior consent of the settlor or the parties designated by him.

Art. 7

(Clauses of exemption from liability)

1. The trustee shall be liable for the conduct of the proxies, advisors, managers and agents appointed by him, despite any agreement made by him with them which provides for exemption from liability or limits it, unless he has chosen and kept them in those positions with the same due diligence that a shrewd person would have used in relation to his own assets under the same circumstances and neither wilful misconduct, nor gross negligence or bad faith can be ascribed to such people.
2. Any agreement exempting or limiting in advance the trustee's liability for wilful misconduct, gross negligence or bad faith or, in general, for acts committed in conflict of interest and not authorised by the agreement, shall be null and void.

Art. 8

(Compensation to the settlor and the beneficiaries)

1. Without prejudice to the right to compensation to be exercised by any settlor and beneficiaries having being directly damaged, the trustee shall be required to reinstate the entrusted property to the condition it would have had if he had complied with his obligations.
2. The trustee shall be required to transfer any advantage unlawfully obtained through his position of trustee into the entrusted property, even if beneficiaries have not been damaged.

Art. 9

(Relationships of the trustee with third parties; trustee's liability)

1. A third party contracting with the trustee may always require that the trustee justifies his powers and provides him with a copy, signed by the trustee, of the relevant provisions of the fiduciary agreement.
2. The limits of the trustee's powers may be invoked against third parties who were aware of them or have ignored them due to their fault.
3. The trustee shall be answerable for the fulfilment of his obligations, whether legal, contractual or extra-contractual, with the sole entrusted property. However, he shall also be answerable with his personal property, with the right of recourse against the entrusted property, if he made no mention to his position before undertaking a requirement.

Art. 10

(Nullity of the acts of the trustee; effects on third parties)

1. Nullity shall apply to any act of the trustee reducing the entrusted property and any management action taken by the trustee when one of the following conditions apply:
 - a) the act is without consideration and it is carried out neither to fulfil an obligation, nor to exercise a power of the trustee;
 - b) the act goes beyond the limits of the trustee's powers that may be invoked against third parties;
 - c) the act requires the payment of a sum which is considerably different from the current value of the asset or service to the detriment of the entrusted property;
 - d) the act is carried out in a position of conflict of interest not authorised by the agreement.
2. Nullity of a disposal of assets belonging to the entrusted property shall entail nullity of subsequent disposals of the same assets and those replacing them with no limits. However it shall be not detrimental to the rights acquired with consideration by third parties in good faith, who ignored the cause of nullity without being at fault, without prejudice to the effects of the transcription of the document instituting the proceedings.
3. The validation of a void act shall require the consent of all beneficiaries, provided that other beneficiaries may not appear.

Section II
Special provisions

Art. 11

(Fiduciary management for the benefit of weak parties)

1. A disposal for the benefit of beneficiaries who are disabled, or older than 75 years, or interdicted or disqualified, or drug or alcohol-addicts, or affected by serious chronic diseases shall not constitute a donation, if:
 - a) the assets of the entrusted property which are disposed have been transferred or tied up by the beneficiary's spouse or a relative within the third degree of consanguinity or an affine within the second degree; and
 - b) the assets do not expressly go beyond the needs of the beneficiary, since the excess is considered to be a donation.

Art. 12

(Protection of forced heirs)

1. If the agreement envisages a donation and it is in force:
 - a) forced heirs shall only be responsible for the determination and restitution of the relevant portion, and
 - b) the action to protect forced heirs shall be taken against the trustee and the beneficiaries of the donation, if they exist and are known.
2. Anyone benefiting from the disposals referred to in Article 11 may act for the restitution of their portion as a forced heir only if the assets of the entrusted property, transferred or tied up by anybody, are not expressly sufficient to cover their needs.

Art. 13

(Protection of creditors)

1. The revocatory action against acts transferring assets to the trustee or constituting constraints on them shall be taken, if the agreement is effective, against the trustee and the beneficiaries holding rights on the transferred assets, if they exist and are known, as if the act had been directly performed for their benefit.
2. It shall be sufficient that the conditions for the action occur vis-à-vis the trustee or one of the aforesaid beneficiaries.
3. The action shall be taken within a period of five years.

Art. 14

(Testamentary transfer)

1. If the fiduciary transfer is established by will, thus being borne by an heir or legatee, or requiring to be implemented by the testamentary executor, the rules of this Law, if applicable, shall be complied with.

Art. 15

(Limitation period)

1. The rights of a beneficiary against a trustee shall lapse upon expiration of a period of ten years from the date on which he was informed of the facts his claim is based on.

Art. 16

(Competence of the Judicial Authority)

1. By issuing a reasoned order in relation to the appeal of any interested party and after having collected, where necessary, brief information, the Judicial Authority may:
 - a) adopt measures corresponding to the exercise of the powers referred to in paragraph 1, letter c of Article 5, if the settlor and the parties designated by him are absent or in case of their inactivity.
 - b) give orders and instructions to the trustee;
 - c) supplement the agreement by introducing new provisions, or amend or eliminate provisions of the agreement, if convenient for a better implementation of the allocation program.

Art. 17

(Witness evidence)

1. Witness evidence based on statements or verbal agreements subsequent to the conclusion of the agreement or, in the case of a testamentary transfer, the death of the testator shall always be allowed.

Art. 18

(Criminal provisions)

1. A trustee who, violating the obligations imposed on him by this law or the agreement, uses assets of the entrusted property to his own or other advantage, or delays to transfer them to the persons entitled, shall be punished with second-degree imprisonment and second-degree disqualification from the office of trustee, if the fact does not constitute a more serious offence.

Art. 19

(Entry into force)

1. This Law shall enter into force on the 5th day following that of its legal publication.

Done at Our Residence, on 1 March 2010/1709 since the Foundation of the Republic

THE CAPTAINS REGENT
Francesco Mussoni – Stefano Palmieri

THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS
Valeria Ciavatta