THE FIDUCIARY MANAGEMENT AND ITS APPLICATIONS IN THE ROMANIAN LAW

PhD. student **Günay DUAGI**[1]

Abstract

The fiduciary management represents, together with the fiduciary guarantee, the most used type of fiduciary contracts. This modality of fiducia has become the preferred way of using this institution in practice, a fact proved by the registrations in the National Register of Mobile Publicity. Moreover, this branch of the fiducia is in fact the archetype of this institution. The benefits of the fiduciary management are numerous and were only partially discovered in practice in Romania and through this study we want to highlight other benefits. Among the benefits of this type of fiducia with important implications in the civil circuit we mention the possibility of entrusting a patrimonial mass to some professionals in order to manage these assets as efficiently as possible, maximizing the profit generated by the fiduciary mass without the impediments related to the formalities required for a mandate, overcoming the problems related to representation of the beneficiary in the context of corporate, capital market or transaction deals. As regards the practical applications of fiduciary management, these can come from various fields of civil law. Among the most used we list the following: shareholder management in a commercial company, real estate management, management of a trust consisting of financial assets, management of civil lawsuits, management of assets owned by foreign residents, business management, management of the assets of minors / incapable.

Keywords: *fiduciary management, fiduciary, fiduciary contract, fiduciary benefits, applications of the fiducia*

JEL Classification*:* K12, K15, K22

1. Introduction

The fiducia becomes a well-known institution in Romania, after the first years when it was analyzed only by the legal professionals. The proof of this evolution can be seen in the National Register of Mobile Publicity (NRMP) where a number of such operations are registered. As indicated by the provisions of the Civil Code[2] governing fiducia, there are two major types of fiduciary relations: fiduciary management and fiduciary guarantee.

Indeed, the Civil Code does not provide for any restriction on the purpose of using the fiduciary contract, except for the restriction of use of this contract for acts of indirect liberalities.

In this respect, the fiduciary contract may be used for various purposes, as long as the scope is expressly provided for in the agreement. However, based on the practice, two main types of goals, mentioned above, have developed over time.

Fiduciary management is still in its beginning in Romania, because this concept is not fully understood by the potential users. However, fiduciary management is and should be easier to understand and implemented in Romania, similar to other types of administration institutions such as: mandate, administration of another's assets, business management, company contract, etc.

The main difference of this institution from the other types of contracts is based on the fact that the property is transferred to the fiduciary. In this respect, the manager/trustee does not have the only the duty to fulfil the obligations of this mandate, but also has the right of ownership over the fiduciary assets and must also manage this aspect.

The importance of this analysis lies in the fact that one of the reasons why the fiduciary contract is not used to its true potential is that this institution is not fully understood by the beneficiaries. In this sense, the duty of the legal doctrine is to explain for easy understanding the complicated provisions of the Civil Code to the parties involved.

We also intend to provide answers to the following relevant questions arising from the legal attributes of fiduciary management: Why should fiduciary management be used in practice? What are the implications of using fiduciary management and its legal characteristics? What aspects should be

[1] Günay Duagi - Doctoral School of Law, Bucharest University of Economic Studies, Romania, gunayduagi@yahoo.com.

[2] Civil Code of 17 July 2009 (Law no. 287/2009 on Civil Code), published in the Official Gazette of Romania no. 511 of 24 July 2009.

considered when entering into a fiduciary management agreement? How can fiduciary management be used in Romania?

2. Legal elements of the fiduciary management

According to art. 773 of the Civil Code fiducia is defined as the legal operation by which one or more settlors transfer real rights, debt rights, guarantees or other patrimonial rights or a set of such rights, present or future, to one or more fiduciaries exercising them for a determined purpose, for the benefit of one or more beneficiaries.

A distinguishing sign of the *fiducia* is that the fiduciary rights constitute an autonomous patrimonial mass, distinct from the other rights and obligations in the patrimony of the fiduciaries. In the case of the fiduciary management, the special feature is that the fiduciary owns these assets to produce added value for the beneficiary, which may even be the settlor. However, reputable authors have indicated that " the patrimony is a true legal universality (*universum ius, universitari iuris*), and the patrimonial masses are only parts of the whole"[3]. We agree with the view that one observes the departure from the theory of patrimonial uniqueness developed by Charles Aubry and Frederic C. Rau, which has been applied in recent centuries, according to which the heritage is unique, unitary and indivisible[4].

Also, unlike other contracts in the Civil Code, the fiducia is highlighted by the fact that it involves three parties: the settlor, the fiduciary and the beneficiary. As we will show below, the settlor and the beneficiary can be any natural or legal person having exercise capacity. However, the fiduciary-manager must have a specific qualification as mentioned below.

Fiduciary management inherits the general attributes of *fiducia*. However, the fiduciary management has certain legal characteristics that make it unique in the legal landscape of Romania.

The fiduciary management assumes that the fiduciary has the skills and experience in managing the assets in question. Art. 776 para. 2 of the Civil Code expressly provides that "Only credit institutions, investment and investment management companies, financial investment services companies, legally established insurance and reinsurance companies may have the quality of fiduciary in this contract". In addition, the same article in par. 3 also provides that "It may also have the status of fiduciary the notaries public and lawyers, regardless of the form of exercise of the profession".

Although the law stipulates the potential fiduciaries, we consider that in the case of fiduciary management it is necessary that the persons indicated above must have adequate experience in the management of fiduciary assets. Thus, to receive the remuneration due to the fiduciary it is not sufficient to hold one of the above licenses. For example, financial investment services companies (SSIFs) can certainly be fiduciaries for the management of listed shares. Thus, the activity of managing a mass of shares is perfectly circumscribed to the basic activity carried out by a SSIF. In support of the above, FSA Regulation no. 5/2019[5] expressly provides that an SSIF may perform fiduciary activities. Moreover, only fiduciary assets consisting of shares issued by companies admitted to trading are covered.

In addition to the fiduciary's experience in managing fiduciary assets, there are also certain special legal characteristics and obligations that it must comply with. For example, in the case of the fiduciary over the shares administered by an SSIF, the law provides that the fiduciary is registered as a shareholder from the date of the transfer of the shares in his securities account assigned to the fiduciary opened to the central depository. Moreover, in art. 118 of Regulation no. 5/2019 it is stipulated that "The fiduciary has the rights and obligations related to the actions in his account of securities affected by the fiducia, which he exercises in compliance with the provisions of the fiducia contract, as well as the other incidental legal provisions". At the same time, it is also stipulated in the

[3] Valeriu Stoica, *Drept civil. Drepturile reale principale.* 2nd ed. C.H. Beck Publishing House, Bucharest, 2013, p. 9.
[4] Aubry Charles, Charles Frédéric Rau, *Cours de droit civil francais*, 5eme ed., Tome 9, Imprimerie et librairie générale de jurisprudence Marchal et Billard, Paris, 1917, p. 573-574.
[5] FSA Regulation no. 5/2019 on regulation of provisions regarding investment services and activities according to Law no. 126/2018 on markets of financial instruments, published in the Official Gazette of Romania, Part I, no. 496 and 496 bis of 19.06.2019.

same article that "The voting right related to the shares registered in its securities account affected by the fiducia is exercised by the fiduciary or, as the case may be, by the person empowered by it. By way of derogation from the provisions of art. 200 paragraph (6) of Regulation FSA no. 5/2018, the trustee has the opportunity to express for the shares in the securities account assigned to the fiducia different votes to those related to the actions existing in other securities accounts and which are part of his own patrimonial mass, in order to exercise this right, the central depository presents to the issuer separately the shares held by the trustee in the securities account assigned to the fiducia".

As mentioned above, the SSIF has certain obligations specific to a fiduciary manager, such as: to mention expressly, at least in its own records, the transactions in which it has the quality of fiduciary; not to take into account the capital requirements of the fiduciary assets; not to make transactions as a market maker with assets from the fiduciary assets.

Similarly, we consider that each of the types of fiduciaries mentioned above has a specific area of assets that it can manage as a fiduciary. For example, credit institutions can easily manage amounts of money and securities, and investment companies can manage financial instruments. On the other hand, as the NRMP records show, lawyers can successfully manage litigation rights, real estate assets or holdings in limited liability companies.

In the context of the management of fiduciary assets, the powers of the fiduciary may be limited but, this may not lead to adverse effects to a fiduciary relationship, as shown in international doctrine[6]. Also, a critical aspect in ensuring that the powers that the fiduciary actually possesses is not violated[7] is that they are well determined in the contract.

Another legal character of the fiduciary management is the transfer of the property right to the fiduciary. In this sense, the Romanian authors indicated that "from the patrimony of the settlor, the property leaves intact, plenary, absolute"[8]. The transfer of the ownership right does not depend on the occurrence of an event, as in the case of the fiduciary guarantee (e.g. the non-payment of the term). From this point of view, fiduciary management is a contract in which the transfer of ownership of the assets subject to the trust is performed without opposite positions between the parties.

Two other legal features of the fiduciary management represent the proper management of the assets subject to the fiducia, and in return the payment of a fee. Regarding the fee, the Civil Code only provides that in the absence of express provisions in the fiduciary contract, the rules from the contract for the administration of the assets of another will apply. Thus art. 784 of the Civil Code provides that "The fiduciary shall be remunerated according to the understanding of the parties, and in his absence, according to the rules governing the administration of the assets of another." We consider that the situations in which the fiduciary's fee is not indicated will be extremely limited, given the quality of the professional fiduciary who works for a fee, and the fiduciary management will not be an exception. On the contrary, given that the purpose of the fiducia will be to create value for the beneficiary of the fiducia, we do not exclude that part of the fiduciary's fee be a success fee or a percentage of the profits generated by the fiduciary assets.

At the end of the contractual period, the fiduciary-manager is obliged to return the administered asset and on this occasion we consider that he must also transmit any documents or information that will be necessary to continue the proper management of the asset such as property or certificates.

According to the provisions of the Civil Code, under the sanction of absolute nullity, the contract of fiducia must be registered at the request of the fiduciary, within one month from the date of their conclusion, to the competent fiscal body to administer the amounts owed by the fiduciary to the general consolidated budget of the state. Moreover, when the fiduciary estate includes real estate rights, they are registered, under the conditions provided by law, under the same sanction, in the specialized compartment of the competent local public administration authority within the radius of

---

[6] James Douglas, *Trusts and their equivalents in civil law systems: Why did the French introduce the fiducie into the Civil Code in 2007? What might its effects be?* QUT Law Review, Volume no. 13, no. 1/2013, Brisbane, 2013, p. 22.
[7] R.C. Nolan, *Controlling fiduciary power*, "Cambridge Law Journal", July 2009, Cambridge, 2009, p. 293.
[8] Sergiu Golub, *Fiducia. Efectele contractului de fiducie*, "Revista Română de Drept al Afacerilor" no. 4/2017, Bucharest, 2017, p. 78.

which the building is located, the land book provisions remaining applicable.

Finally, another essential legal character of fiduciary management (more important than in the case of fiduciary-guarantee) is the reporting obligation. In this respect, the law stipulates that in the contract of fiducia the conditions under which the fiduciary gives the report with regard to the fulfilment of its obligations must be mentioned, and the fiduciary must give account, at specified intervals in the contract of fiducia, to the beneficiary and the representative of the settlor, at their request.

3. The benefits of the fiduciary management

The fiduciary benefits, in general, are many and in case of fiduciary management these benefits are highlighted quite easy. A first benefit of fiduciary-management is the ability of the fiduciary to better manage the assets subject to the fiducia, given its experience and qualification. Thus, the specialized help that the fiduciary offers can be essential to make the most of a particular good or business. On the other hand, in France the fiduciary management is also used to temporarily manage a business in difficult or even insolvent situations.

Romanian entrepreneurs could consider this possibility of "outsourcing" certain goods or assets in order to entrust them to a fiduciary-manager, who can manage them better, in order to obtain a greater profit.

The major difference between entering into a fiduciary contract and hiring an administrator or director is that in the first case, the ownership of the fiduciary assets is transferred, which represents a major advantage in the business world. Thus, the fiduciary, being the owner of these assets can properly manage the fiduciary assets, without being constrained by certain disadvantages of a mandate, for example. In addition, the incentive offered by the settlor will be directly proportional to the success of the management and the final profit to be received by the beneficiary.

Another advantage held by the fiduciary-management is that through this institution, not only stand-alone businesses (e.g. production line) can be put into administration, but also individual goods that can be exploited by the fiduciary for profit. (e.g. machinery, cars, buildings). It is the only institution that allows such an operation.

In addition, another advantage of the trust-management is that the settlor can allocate the benefits obtained from the management to both his own patrimony and to a third party. Thus, although in practice most of the times the settlor also is the beneficiary, however the essence of the fiducia is that these operations are performed for a third beneficiary. At the same time, we mention the provisions of the Civil Code regarding the prohibition of indirect liberalities. Thus, art. 775 of the Civil Code provides: "The fiduciary contract is struck by absolute nullity if through it an indirect liberalization is made for the benefit of the beneficiary".

It, thus, becomes extremely clear that the settlor is not allowed to exercise direct or indirect liberality through a fiduciary management. Given the above, a question may arise: Why would a settlor enter into a relationship of a fiduciary management for the benefit of a third-party beneficiary, if he cannot make free acts for the third-party benefit? We think the answer is quite simple. In order to justify the allocation of income within the fiducia to a beneficiary, it is necessary that there is a patrimonial relationship between the settlor and the beneficiary prior to the fiduciary contract or an agreement that also includes the fiducia mechanism as a means of payment, for example. Another example would be the existence of a debt that could be paid out of the income generated by the fiduciary contract.

Among the benefits of the fiduciary management we mention the management of some assets without the constraints given by the lack of the property right. As a full owner the fiduciary will be able to allocate all the resources to exploit and manage the fiduciary assets.

In addition, by registering the trust in the NRMP, the Land Book and the tax authorities, the fiduciary will be able to oppose any third party the quality it holds without the risk of generating litigation or claims from third parties.

Another advantage of fiduciary management is that it is temporary. The transfer of the

property right is not made definitively, under the conditions in which the fiduciary contract cannot be concluded for an unlimited period. Thus, art. 779 of the Civil Code stipulates in the section regulating the content of the fiduciary contract that "the duration of the transfer (...) may not exceed 33 years from the date of its conclusion". This limitation of the fiduciary contract originates from the French Civil Code, but at a different level.

The French Civil Code contains a similar provision, the only notable difference being that in the French Civil Code the duration of the transfer is of maximum 99 years[9]. In agreement with the opinion of another author[10] we do not know what was the reason for the Romanian legislator to choose this period (apart from the fact that he wanted to make the Romanian trust more restrictive and less attractive even than the fiducia in France). To overcome this deadlock, the parties can extend the period of 33 years with another period of 33 years, but given the extremely long period at that time, many aspects can be changed and even the initial contractors will no longer be in life. Although the extension is a solution, however, it does not exempt the parts of important shortcomings, leaving in fact many question marks and leaving the law in Romania with a perfectible institution as fiducia that should have allowed the life administration of some goods.

In case of misunderstandings regarding the management process, we consider that the settlor may request termination of the fiduciary management contract, paying the services of the fiduciary up to that moment. In view of the quality of supervised institutions, the fiduciaries could not resist such a request without a relevant argument.

Another advantage of the fiducia is the fact that it is the best method for managing a patrimony by a specialist supervised and monitored by the National Bank of Romania, the Financial Supervisory Authority, the Bar or the Chamber of Notaries such as credit institutions, investment companies and of investment management, financial investment services companies, legally established insurance and reinsurance companies, notaries public and lawyers.

The security, professionalism and guarantees offered by these entities cannot be matched, and the settlors and beneficiaries can reliably convey the trust to these persons for proper management.

From the above, arises another advantage, namely that this operation does not imply major risks considering who the fiduciaries are, but also the obligations of these entities. Furthermore, given the separation of fiduciary assets, the risk of bankruptcy of the fiduciary is eliminated. In this sense, art. 785 Civil Code expressly provides that "the opening of the insolvency proceedings against the fiduciary does not affect the trust assets".

In addition, the fiduciary management creates an autonomous patrimonial mass (in Anglo-Saxon law this process is called "ring-fencing"), which will be immune to the requests of the creditors of the settlor. Therefore, fiduciary management is also a means of protecting certain assets from the patrimony of the settlor. In a different opinion some authors state: "the fiduciary agreement cannot erase the past of the rights that they carry between the settlor's patrimony and the fiduciary assets"[11]. In this sense, art. 786 Civil Code stipulates that the assets in the fiduciary mass may be pursued, according to the law, by the creditors born in connection with these assets or by those creditors of the settlor who have a real guarantee on its assets and whose opposability is acquired, according to the law, prior to the establishment of the fiducia and the right of follow-up can be exercised also by the other creditors of the settlor, but only under the definitive court decision to admit the action by which the contract was cancelled or became inapplicable, in any way, with retroactive effect.

The fiduciary management is a perfect tool for foreign residents who own or want to own assets in Romania. Thus, by entering into a contract of fiducia, these foreign persons will no longer be placed in the situation of selling or renting the goods or doing multiple formalities in order to verify the status of some assets. Also, in the case of shares, by conclusion of a fiduciary contract, the right to vote and the other rights and obligations of a shareholder may be exercised through the fiduciary. The same rules also apply to shares admitted to trading, in which case the SSIF may be

[9] Gheorghe Buta, *Fiducia si administrarea bunurilor altuia,* Universul Juridic Publishing House, Bucharest, 2017, p. 73.
[10] Ibid., p. 74.
[11] Mihai David, *Experimentul european al fiduciei – realități și perspective,* „Caietele Juridice ale Băncii Naționale a României", Year II, No. 3, Bucharest, 2012, p. 17.

designated as fiduciary, as shown above.

4. The applications of the fiduciary management in the Romanian law

Among the possible applications of the fiduciary management we mention the management of assets owned by foreign residents in Romania (especially those that require to be present in Romania), the management of listed or unlisted actions, the management of pending litigations, the management of real estate in Romania in order to obtain income, the management of a business, the management of assets such as hotels, pensions, car parks, the management of the assets of minors/disabled persons at least until they have acquired the full capacity of exercise, the management of movable assets through the specialized help of the fiduciaries taking into account their experience and qualification.

The fiduciary-management can be used even in the case of a syndicated loan, through a contract that will allow the organization of the relations between the participating banks and the role of each one[12].

Also, fiducia can be used for cooperation between companies. In this sense, in French doctrine, there is an example of companies that pool resources to develop a technology, and for this purpose designates a fiduciary who can contract the supply companies and manage the production process, and finally transfer the patent to the beneficiary jointly designated[13].

Another example that can be considered in Romania is the case of a merger, which would require the approval of the competition authority of an economic concentration[14]. Thus, the fiduciary contract can be used to manage the activity by an independent agent of the transferor and acquirer until the decision is issued by the authority, and this agent will hand over the management of the business to the acquirer or transferor depending on the given solution[15].

In banking practice, the fiduciary relations can be used for fiduciary accounts, protecting the funds deposited in this account by the creditors of the settlor, to transfer them to a third party beneficiary (e.g. the funds received from a client as an advance payment for an order whose purpose is to guarantee the return in case of non-compliance with the delivery obligation, the funds received from a bank that would benefit third parties, or the return to the bank in case the project fails)[16].

In the context of the applications of the fiducia, we also mention that, without affecting the applicability and usefulness of the institution of the fiduciary from a patrimonial point of view, an author shows that "the Romanian legislator remained tributary to the classical theory of the heritage, using the concept of the patrimonial mass of fiduciary affectation to illustrate that the patrimony of the fiduciary it remains unique, but divided into several masses of goods used to meet different purposes"[17].

We also want to make a remark related to certain conditions for the implementation of a fiduciary management. In the doctrine a problem was raised in relation to the provisions of art. 780 paragraph 4 Civil Code which shows the following: "If for the transmission of rights, it is necessary to fulfil special requirements of form, a separate act will be concluded with respect to the legal requirements. In these cases, the lack of fiscal registration entails the application of administrative sanctions provided by law".

One author points out the uselessness and inapplicability of this provision in practice, claiming that these provisions have no practical applicability and "the provisions of art. 780 paragraph (4) Civil Code have the potential of provisions that can raise serious question marks regarding the applicability of the rest of the provisions of the respective article (…), provided that the vigorous sanction of the absolute nullity imposed by the first three articles is practically cancelled by the provisions of para.

[12] Bruno Gouthière, Claude Lopater, Anne-Lyse Blandin, *La Fiducie, Mode d'emploi,* Francis Lefebvre Publishing House, Paris, 2009, p. 19.
[13] Ibid., p. 20.
[14] Idem.
[15] Idem.
[16] Idem.
[17] Daniel Moreanu, *Fiducia și Trust-ul,* C.H. Beck Publishing House, Bucharest, 2017, p. 176.

(4) second thesis" [18].

However, we find these provisions applicable (even if not welcomed) in the general context set out above. As a first remark we consider that by special conditions of form, the legislator is not limited only to immovable property and to the authentic form but this rule extends its applicability to a wider area of requirements. Thus the "special requirements of form" necessary for the transfer of some goods are numerous in our civil law both general and financial, especially commercial. Thus, the vehicles have a special regime for the transfer of the property. Also, the transfer of shares must meet certain conditions. In addition, for the transfer of financial assets such as listed shares and bonds it is necessary to fulfil certain similar requirements.

In the doctrine several practical uses were issued that found some adherence to Romania. Thus, an author mentions "(i) the development of distinct businesses by a company without the need to set up a separate company/companies; (ii) solving potential incompatibility cases at company level by appointing a fiduciary; (iii) the appointment of a fiduciary in the case of a trial as an alternative to the application of the seizure procedure; (iv) the administration of a property in the property of a minor; (v) the temporary withdrawal of an associate/shareholder from a company and the transfer of the shares/shares to a fiduciary"[19].

All of the above are possible applications of the trust.

Finally, we also mention that the comparison between fiduciary management and trust is important. Currently, although the trust has a greater applicability in practice, due to the positive relationship between the advantages and disadvantages it offers, in the future we consider that, at least in civil law systems, fiducia, in general and fiducia-management in particular will be used more and more as its benefits and applications are discovered. An essentially different element between fiducia and trust remains the duality of ownership as an essential feature of the trust[20].

Also, we consider that although it seems that the trust currently has an ascendant over the fiducia at international law level, the simple fact that it is not regulated in the national law, while the fiducia benefits from an express regulation (quite extended in the Civil Code), is an extremely good reason to use it more extensively in practice than at present. Thus, the answer to the question raised at the beginning of this study on how fiduciary management in Romania can be used, can only be a generous one with many ramifications.

5. Conclusions

The fiduciary management certainly deserves a special place among the contracts in Romania. In France the fiducia was called a "legal revolution because it introduced in French law an exception from the principle of the uniqueness of heritage"[21], among others.

The legal features of the fiduciary management make this type of fiducia an unique contract. The purpose of the fiduciary management, and the type of parties involved in the contract, the specialization, competence and qualification of the fiduciary-managers, as well as the *modus operandi* in this type of contract, all add to the completion of the legal picture of this contract.

In addition, by transmitting the property right to the fiduciary, who manages the fiduciary assets using their specific expertise, in order to generate added value for the beneficiary, the differences between fiduciary management and other types of contract and even other types of fiduciary relations are highlighted (such as fiduciary guarantee).

The benefits of this type of contract are more than obvious, and they will become clearer as they will be used more often and more widely by the beneficiaries in Romania. The benefits of fiduciary-management have been successfully tested in other, more advanced jurisdictions such as France.

---

[18] Ibid., p. 256 and the following.
[19] Ibid., p. 396.
[20] Robert Pearce, Warren Barr, *Trusts and Equitable Obligations*, 6th ed., Oxford University Press, New York, 2015, p. 13.
[21] José Lefebvre, *Lecons de droit des biens – mises a jour*, Paris, 2012, p. 3, the document is available online at the address: https://www.editions-ellipses.fr/PDF/9782729851064_MAJ_2.pdf, (last visited on 31.10.2019).

At the same time, in direct competition with the Anglo-Saxon trust, although the latter currently has an advantage, in the future we hope that fiducia, in general and fiduciary management in particular, will reduce the gap in terms of implementation and success, in practice.

Without trying to exhaustively show what all these benefits are, let us mention which are the most important. Thus, we mention the generation of revenues through the use of a qualified fiduciary and supervised by authorities such as the National Bank of Romania, the Financial Supervisory Authority, the Bar or the Chamber of notaries public. The trust generated by these types of fiduciary, guarantees to the beneficiaries that these activities will be carried out without impediments or issues. Regarding the applications of the fiduciary management, these are numerous and are limited only by the imagination of the constituents, and less by the legal provisions.

Among these applications we list the management of assets owned by foreign residents in Romania, the management of listed or unlisted shares, the management of disputes, the management of real estate, the management of a business, the management of assets such as hotels, pensions, car parks, the management of the assets of minors/disabled persons at least up to acquiring full exercise capacity, managing movable assets, offering a syndicated loan, cooperation between companies, mergers.

Finally, we consider that fiduciary management represents a major innovation of the law in Romania, and its legal elements, advantages and practical applications should turn it into a tool successfully used by individuals and companies in Romania in the future.

Bibliography

1. Aubry Charles, Charles Frédéric Rau, *Cours de droit civil francais*, 5eme ed., Tome 9, Imprimerie et librairie générale de jurisprudence Marchal et Billard, Paris, 1917.
2. Bruno Gouthière, Claude Lopater, Anne-Lyse Blandin, *La Fiducie, Mode d'emploi,* Francis Lefebvre Publishing House, Paris, 2009.
3. Daniel Moreanu, *Fiducia și Trust-ul,* C.H. Beck Publishing House, Bucharest, 2017.
4. Gheorghe Buta, *Fiducia si administrarea bunurilor altuia*, Universul Juridic Publishing House, Bucharest, 2017.
5. James Douglas, *Trusts and their equivalents in civil law systems: Why did the French introduce the fiducie into the Civil Code in 2007? What might its effects be?,* „QUT Law Review", Volume no. 13, no. 1/2013, Brisbane.
6. José Lefebvre, *Lecons de droit des biens – mises a jour,* Paris, 2012, the document is available online at the address: https://www.editions-ellipses.fr/PDF/9782729851064_MAJ_2.pdf, (last visited on 31.10.2019).
7. Mihai David, *Experimentul european al fiduciei – realități și perspective,* „Caietele Juridice ale Băncii Naționale a României", Year II, No. 3, Bucharest, 2012.
8. R.C. Nolan, *Controlling fiduciary power,* "Cambridge Law Journal", July 2009, Cambridge, 2009.
9. Robert Pearce, Warren Barr, *Trusts and Equitable Obligations*, 6th ed., Oxford University Press, New York, 2015.
10. Sergiu Golub, *Fiducia. Efectele contractului de fiducie*, „Revista Română de Drept al Afacerilor" no. 4/2017, Bucharest.
11. Valeriu Stoica, *Drept civil. Drepturile reale principale,* 2nd ed., C.H. Beck Publishing House, Bucharest, 2013.