

Perminov Stanislav*Postgraduate student ISMA University of Applied Sciences*

ORCID ID: 0000-0002-9353-8365

Djakona Valentina*PhD, Vice-rector ISMA University of Applied Sciences*

ORCID ID: 0000-0002-9199-3559

Trust asset management: essence and features

Abstract

The article examines the essence of the concept of "trust asset management" in the banking system. The article examines the essence of the concept of "trust management" in the banking system. Various approaches to defining the essence of trust management in scientific and business literature are systematized, various nuances of its legal and economic interpretation are presented. The subjects and objects of trust management, the system of relationships between the main subjects are named and disclosed. The regulatory framework for the practice of trust management has its own characteristics at the national and international levels. The common couples and differences of different models of organization of trust activity are highlighted. The main approaches to the classification of trusts, the main types of trusts are revealed and their features are determined. The forms of trust management are very diverse and can differ in the purposes of creating trusts, methods of creation, depending on the role of the owner and trustee, depending on the financial instruments used. The purposes of the use of trust management, as well as certain risks of using the control system (legal uncertainty, presence of risk, imperfection of state regulation, etc.) are characterized. In world practice, this service is constantly developing and is increasingly becoming an important integral part of banking in different countries and regions.

Keywords

Trust, Wealth management, Private banking, Settlor, Trustee, Beneficiary

JEL: J24, F66, O15, P52

1 Relevance

Trust management (TM) of assets has long been an integral part of banking and financial activities. Alternative terms are often used: Wealth management, Private banking, which is explained by certain nuances in understanding the essence of this concept. The differences in the degree of development of the control system, its various forms of manifestation in the legal and economic spheres in different countries are also undoubted. It is these circumstances that determine the special relevance of the study of the essence, features of the use of credit control in the banking practice of different countries and regions. Opportunities, limits and prospects for the development of trust management services, taking into account local mental and socio-economic characteristics, are of obvious interest for each country and each bank.

The purpose of the article is to consider the essence and forms of manifestation of trust management in the banking system.

Research review. Trust management is defined in the scientific literature either through a relationship, or as a service, or as a form of management, or as an agreement, a contract. The systematization of existing approaches to understanding the content of trust management in scientific works and business literature allows us to draw a conclusion about the unified nature of this concept (Table 1).

In our opinion, trust management is defined as a form of relations for the transfer of rights to manage certain resources in order to preserve them and generate additional income. Moreover, these relations are necessarily governed by a contract or agreement.

Results. The trust management system is revealed through the characteristics of the objects and subjects of these relations. In the legal sense, various property can act as an object of the trust management process:

- securities transferred for management;
- financial resources transferred to

TABLE 1 Dynamics of the Number of Companies Verified in the GRI system

Smirnov I.	Trust management is a contractual relationship in which professionals, for a certain fee, manage someone else's property for profit. At the same time, the property does not change its owner, and the manager does not receive direct benefits from operations with the property [1].
Dictionary of banking terms	Trust management (TM) is a service provided by management companies or banks in the securities market [2].
Vorotylov A.	Private banking (PB) is not just private wealth management, but also investment and advisory services. The PB direction provides for the development of non-standard personal solutions for the preservation, effective use and growth of capital, ensuring the most comfortable and trusting conditions of service based on the principles of confidentiality and high-class service [3].
Financial Dictionary	A trust management is an agreement whereby property is transferred to a certain person or persons who manage it for the benefit of some other person or persons (beneficiaries). In this case, the trustee is the legal owner of the property, and the beneficiary has a fair share of the income from this property. A trust can arise either on the basis of a voluntary agreement of persons, or is established by law [4].
Business Glossary	Trust - an agreement whereby property is transferred to a person or persons who manage it for the benefit of some other person or persons (beneficiaries). In this case, the trustee is the legal owner of the property, and the beneficiary has a fair share of the income from this property. A trust can arise either on the basis of a voluntary agreement of persons, or is established by law [5].
Fedulova D.	A property trust agreement is an agreement under which one party (the founder of the management) transfers the property to the other party (the trust manager) for a certain period of time in trust, and the other party undertakes to manage this property in the interests of the founder of the management or the person specified by him (beneficiary) [6].v
BankForward	Trust management (property) is a modern and civilized form of transferring one's funds in order to generate income. The trustee temporarily manages the client's funds through a trust agreement, so that the investor still remains the owner of the transferred funds for the entire duration of the trust [7].
Kovalevich A.	The essence of trust management of property consists in the transfer by the owner of his property to a certain person - the trust manager - for the purpose of the latter managing this property in the interests of the owner or the person indicated by him (beneficiary). In this case, the ownership of the transferred property does not pass to the trustee [8].

management for the purchase of property or securities on the market;

- financial resources received by the ambassador of the sale of securities;
- securities proper and operations with them;
- movable property;
- real estate;
- valuables and gold;
- controlling stake;
- rights certified by securities;
- exclusive rights;
- enterprises and property complexes [9].

The key subjects of trust management can be defined:

- the founder of the management (settlor, the

owner of the property being transferred into trust);

- Asset manager (trustee, managing the property or assets transferred to trust, uses the founder's funds for trading or investments, earning profit, the reward is most often a commission);
- the beneficiary, in whose interests and towards whom the property or assets are managed, the founder and the beneficiary can be one and the same person.

In general, the relationship within a trust management or trust can be displayed as follows (Figure 1):

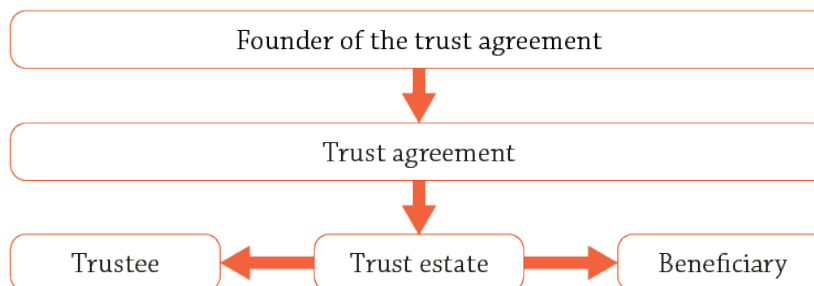


Figure 1 Trust management system

In world practice, trust takes the form of a trust, in which ample opportunities are formed to dispose of the founder's property both during the life of the founder and in the event of his death or transfer of property to third parties. In some cases, another party takes part in the trust management system - the protector, who has the authority to make decisions that are binding on the trustee, to have the authority to issue sanctions for certain actions of the trust, to be able to change the composition or number of beneficiaries, or even change the terms of the trust agreement itself.

In the system of trust relations, participants of both one country and international participants can participate. It should be noted that the participation of international actors can lead to conflicts caused by inconsistencies in legislation and understanding of this kind of relationship in a particular country, which can lead to an increase in the cost of transactions or property management. The formation of a trust often denotes and presupposes that the settlor relinquishes control of the assets transferred into trust [10].

There are several types of trust management:

- 1) Trust management in Forex.
- 2) Trust management in the stock market (financial assets or securities).
- 3) Trust management mutual funds or within mutual funds [11].

Trust management in the markets involves the purchase or play on the currency and securities market, that is, the founder transfers the opportunity to control, at the same time, the manager, using the funds, at his own discretion buys and sells other assets (securities, derivatives, precious metals, futures, options, bonds, ETF shares, etc.). Mutual funds as a separate type are the management of the collective assets of several investors, the formation of such packages of assets occurs as a result of the sum of small investments of individual investors. In this case, mutual fund managers work according to the same principles as individual fund managers, but the profit is distributed in proportion to investments in such a mutual fund. [11].

It should be noted that the legislative regulation of trust management is formed at two key levels: international and national. In international law, this form of relationship is regulated primarily through the recognition of such trusts, which was done as a result of the adoption of the Hague Convention "On the Law Applicable to Trusts and Their Recognition" (Hague, 1.VII.1985).

The participation of international actors in trust management complicates the relationship and presupposes the development of specific forms of communication to minimize the risks of such relationships. So, for example, in the Anglo-Saxon legal system (as opposed to the continental one)

there is the concept of "split ownership", within which the ownership of property or assets is divided between several subjects of law. An alternative concept is "a contract in favor of a third party" [12].

In Russia, the possibility of trust management is regulated by the Decree "On trust (trust)" (12.24.1993, No. 2296), however, legislative regulation is rather undeveloped and confusing [13].

There are several types of accounts that can serve trust operations:

- 1) Cash register, created for the purpose of accounting for funds, as well as their exchange.
- 2) Current, on which the funds received in trust are located.
- 3) For securities, which reflects the value of assets in trust (in fact, the value of the package of securities held in trust).
- 4) For precious stones and metals, the functioning of which is similar to a securities account, but expressing the value of precious stones and metals as a specific type of financial assets.
- 5) Credit, financial resources of which are calculated as credit.
- 6) For accounting of funds that are in trust [14].

In general, a trusting relationship is formed as a result of several key stages:

- 1) At the first stage, the owner of the property checks the professional qualities of the manager, business reputation, personal qualities and management prospects, on the basis of which a specific manager is selected.
- 2) At the second stage, there are interpersonal contacts associated with the need to manage the object of management. The manager acting in the interests of the beneficiary determines the degree of possible risk in the management of the object and the scope of its admissibility, since the ownership of the object of management remains with the founder of the trust.
- 3) The final stage associated with the termination of the trust management. It may be as a result of loss of trust, moral or property damage, and as a result of the founder's loss of interest in this type of economic activity or the need to transfer funds to other projects or assets. It should be noted that the damage caused as a result of the illiterate management of the entrusted property must be compensated to the founder or beneficiary [9].

It is worth noting that the trustee, despite the lack of ownership rights to the property, acts on

his own behalf, and not as a trustee or representative of the beneficiary, which should be indicated in the documents (most often, the mark "TM" is made), while the trustee himself also has the right to terminate the transaction due to the impossibility of its implementation or impossibility to personally manage it. The transaction can be closed as a result of its expiration, however, it can be extended at the

request of the property owner.

In general, historical practice indicates the existence of two key approaches to the formation and understanding of trust management: the Anglo-American and the continental models. Despite the generality of the idea of trust management, there are significant differences in these models (Table 2):

TABLE 2 Comparative analysis of models of organization of trust activity [15]

Anglo-American model	Continental model
The reasons and purpose of the formation of a system of relations	
The historical prerequisite for the formation was the impossibility for individuals to register ownership, difficulties with the formation of a legal entity, which led to the need to acquire property in the name of another person. Also, this form of relationship made it possible to avoid registration of a legal entity and simplify economic relations.	Historically, it took the form of a "right to other people's things", which gave the holder of such a right fairly broad opportunities for property management and gave the trustee the features of a beneficiary, since in this context these subjects were actually mixed. The formation of emphyteusis was not in the interests of third parties.
Features of the model	
The owner was legally considered the person in whose favor the management of the property was established, the founder of the trust loses ownership of the property or assets	In fact, the trustee acquires the features of the property owner

Historically, in the early stages of the emergence of trust relations, one of the key tasks was to protect the rights of individual owners (for example, women, monks or incapacitated citizens, in some way connected with the right of feudal ownership). Already in the sixteenth century in England, the Statute of uses (Status of trust) was introduced, which was mainly applied to land or real estate, the concept of "split ownership" was formed, which denoted the ownership of property immediately after two subjects. Already in the 19th century, a system of trust and an institution of trustees and beneficiaries were formed, which made it possible to form common funds and manage them in order to generate profits for the benefit of all founders of the foundation.

At the present stage, Australia, the USA, Canada, China, Cyprus, France, Luxembourg, Italy, Malta, the Netherlands, and the United Kingdom of Great Britain take part in the Convention on the recognition of this type of activity as a trust property. Some legislative points regulating trust management have been adopted in Japan, Ceylon, and some countries of South America.

In some way, the use of trust management can be manifested through the creation of "offshore" companies registered in zones with minimal taxation or tax benefits and transferring their property to trust management to third parties [15].

In modern scientific literature, there are many approaches to classifying trusts and determining their characteristics. First of all, the differences are related to the ability of the trust to manage property or assets and the power to change the forms of assets. The different level of trust of the settlor in the trust (trustee) forms different trusts,

so are defined:

- a wasteful trust, defined as a Fondo de comercio (Argentine Commercial Fund) and designed to protect the family business (most often by dividing assets or property), can be realized through the transfer of ownership by a trustee [16];
- a charitable trust that accepts the creation of this trust (Japan, China, USA (Louisiana)) is aimed at obtaining additional benefits for the beneficiary, for example, they can form additional rights for employees of companies, or foundations like Fideicomisos de liberalidad (Argentine Generosity Fund), scholarships or student assistance, maintenance of public spaces, etc., generally involves the donation of certain assets or property to the beneficiary;
- discrete trusts, most often formed temporarily, the manager of such a trust himself determines the beneficiary, were used in Germany as an intermediate stage in the privatization of state property (agricultural or municipal enterprises), in order to avoid understating their value and, as a result, value. It also reduces the risk of deliberately bringing the enterprise to bankruptcy in order to reduce its cost at the stage of privatization;
- a constructive trust created by the court as a temporary option pending a final decision;
- a pronounced trust, created as a result of combining several trusts, the ownership of assets is assigned to the founder of trusts, there can be revocable and irrevocable (the former are mostly lifetime and involve the

transfer of ownership to the beneficiary, the latter are hereditary, where the ownership remains with the founder until his death, however, the beneficiaries receive a special position and benefits as a result of this form of trust);

- family trusts;
- resulting (legal) trusts arise as a result of economic relationships between the owners of one property or assets;
- commercial (business) trusts can be created as an alternative to special economic zones to reduce or optimize taxation [17].

However, in general, there are many approaches to the classification of trusts and trust funds, depending on the principle of grouping. So, depending on the purpose of creation, all trusts are divided into:

- 1) Personal trust (private), are in the interests of the beneficiaries, they, in turn, are divided into:
 - 1.1) Spendthrift trust (protective);
 - 1.2) Asset-protection (formed to protect assets);
 - 1.3) Estate-planning (for the transfer of assets in the event of the death of the founder of the trust);
 - 1.4) Tax-planning (created to optimize the tax base);
 - 1.5) Privacy-protection (created to protect confidentiality);
 - 1.6) Other individual trusts;
- 2) Charitable (charitable foundations or trusts created for the purpose of helping or supporting individual beneficiaries, the beneficiary may not be recorded in the trust agreement);
- 3) Non-charitable purpose (charitable foundation, trust fund such as caring for animals, management of public places, etc.).

By the method of creation, trusts can be divided into:

- 1) Express (explicit), created by the founder in favor of the beneficiary:
 - 1.1) Inter vivos (transfer of property during the life of the founder);
 - 1.2) Testamentary (transfer of property in the will of the founder);
 - 1.3) Declaration of trust (property owner declares a trust);
 - 1.4) Other trust agreements;
- 2) Implied trust (implicit trust that is created without will):
 - 2.1) Resulting trust (created by economic activity and not by deliberate creation of trusts);
 - 2.2) Constructive trust, where duties are established as a result of the right of equity.

Depending on the role of the owner or trustee, trusts can be:

- 1) Active (active, subdivided into fixed and discretionary);
- 2) Passive/bare (passive, in which the trustee is required to transfer assets to the beneficiary on demand).

By the use of trust instruments, trusts may be called:

- 1) deed;
- 2) agreement;
- 3) settlement;
- 4) declaration;
- 5) will [18].

The main methods of using trust management involve asset management in order to obtain the most effective result. The purposes of creating various forms of trust management can be:

- protection of assets, mainly from property claims against the beneficiaries or the founder;
- transfer of assets as an alternative to a will; ensuring confidentiality, as a result of which the beneficiaries of the trust can be removed from public information;
- tax optimization or reduction of the tax base;
- preservation of capital from waste (for example, if the trust is created in favor of children who do not have the skills to manage financial assets);
- joint ownership of property (especially for intractable property or for the formation of a semblance of a joint stock company);
- charity;
- pension savings (especially relevant for corporate pensions, where the founder is the company itself, and the beneficiaries are employees);
- concealment of income;
- safety of property in case of litigation.

However, it is worth noting that neither the settlor nor the beneficiaries have sufficient control over the actions of the trustee. This requires a high level of trust in the trust, this is the key difference from a joint stock company, where the founder has the right to change the manager, appoint new directors, etc. On the other hand, a trust has features that are not inherent in joint stock companies, these are: protection of property, in this case, the participation of the protector in trust relations is possible [19].

At the same time, the use of trust management is accompanied by a number of problematic issues, including:

- 1) the place of trust operations in the banking sector and the banking services system is not always clearly defined;
- 2) the complexity and ambiguity of state regulation of this type of service;
- 3) the need for risk management and the

ambiguity of the level of profitability of this type of operations;

- 4) opportunities for the development of this type of service [20].

Nevertheless, despite certain difficulties and different degrees of development in different

countries, trust management is expanding more and more, becoming an important part of banking. Figure 2 shows the dynamics of trust management services in the Russian Federation during 2017-2019.

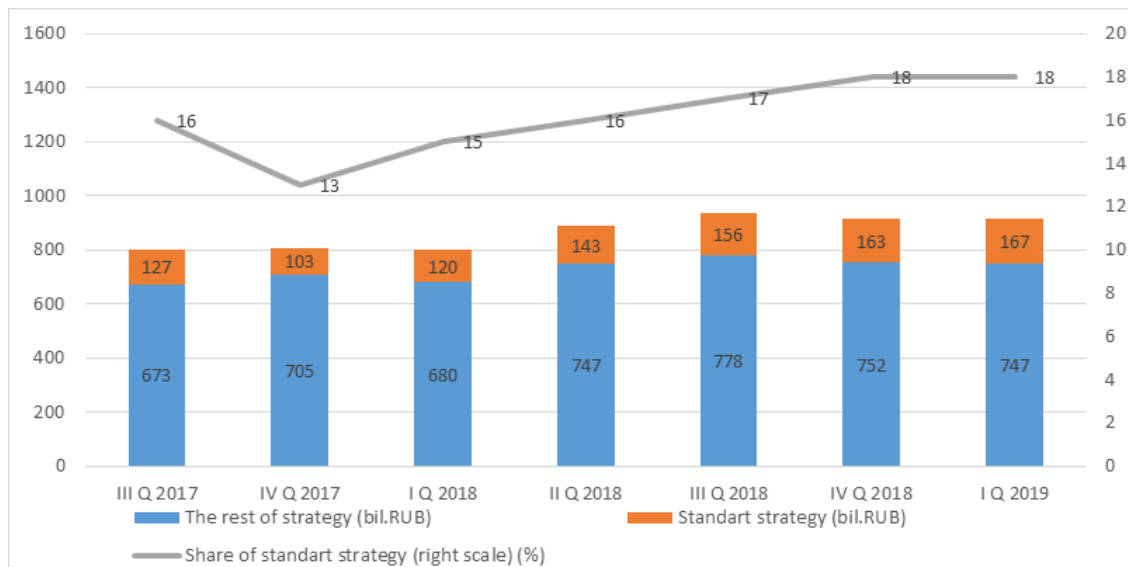


Figure 2 The dynamics of the value of portfolios in trust in the Russian Federation [21]

The main directions for improving and overcoming problems in trust management are the formation of an appropriate regulatory framework that would take into account both the international practice of trust management and the national characteristics of this kind of activity. In addition, it is necessary to improve the mechanisms of the trust management itself, that is, the development of trust management mechanisms and their regulatory support, the elimination of the dual understanding of concepts and procedures. Within the banks themselves, the regulation of trust operations is required, which implies the introduction of trust management services into the banking services system and the formation of an appropriate infrastructure to ensure the conduct of such operations. A difficult issue is the increasing popularity of trust management operations among the population, especially in the CIS countries, where financial instability does not contribute to public confidence in banks and banking activities, which in turn leads to distrust of banks and a low level of distribution of this type of services [22].

2 Conclusions

Trust management is defined as a form of relationship for the transfer of rights to manage certain resources in order to preserve them and generate additional income. Moreover, these relations are necessarily governed by a contract or agreement. Trust management is sufficiently represented in the banking practice of various countries, although there are certain differences in the understanding of its essence and legal interpretation. The legal regulation of trust at the international level is regulated through the recognition of such trusts (The Hague Convention), at the national level it has its own characteristics in each country. The forms of trust management are very diverse and can differ in the purposes of creating trusts, methods of creation, depending on the role of the owner and trustee, depending on the financial instruments used. Despite certain problems with the use of remote control (legal uncertainty, the presence of risk, imperfect government regulation, etc.), this service is constantly evolving and is increasingly becoming an important integral part of banking in different countries and regions.

References

- [1] Smirnov I 2020 *Doveritelnoje upravlenije* **E-Source:** <https://myfin.by/wiki/term/doveritelnoe-upravlenie>
- [2] *Doveritelnoje upravlenije* **E-Source:** <https://www.banki.ru/wikibank/doveritelnoe-upravlenie/>
- [3] Vorotilov A 2013 *Tonkost upravlenija* **E-Source:** <https://forbes.kz/finances/markets/tonkost-upravleniya/>
- [4] *Doveritelnoje upravlenije* **E-Source:** <https://1fn.ru/?id=281&t=902>
- [5] *Slovar bisnes-terminov* **E-Source:** <https://dic.academic.ru/dic.nsf/business/20459>
- [6] Fedulova D V 2010 Grajdansko-pravovaja suschnost doveritelnogo upravlenija *Vestnik Tomskogo gosudarstvennogo universiteta* **1** 113-6 **E-Source:** <https://cyberleninka.ru/article/n/grazhdansko-pravovaya-suschnost-doveritelnogo-upravleniya/viewer>
- [7] Ponjatije I *Suschnost doveritelnogo upravlenija* **E-Source:** <http://www.bankforward.ru/bfos-564-1.html>
- [8] Kovalevich A E 2012 Doveritelnoje upravlenije: suschnost I sodernanije *Vestnik Belorusskogo gosudarstvennogo ekonomicheskogo universiteta* **4** p 73-9
- [9] Asaul A N, Abajev H S, Molchanov Ju A 2007 *Upravlenije, ekspluatacija I razvitije imuschestvennih kompleksov* SPb.: Gumanistica **E-Source:** http://www.aup.ru/books/m7/2_1_5.htm
- [10] Mazajeva A V 2017 Doveritelnoje upravlenije i trust: opit stran continentalnogo prava *Journal zarubejnogo zakonodatelstva i sravnitalnogo pravovedenija* **1** **E-Source:** <https://cyberleninka.ru/article/n/doveritelnoe-upravlenie-i-trast-opyt-stran-kontinentalnogo-prava/viewer>
- [11] *Sut i vidi doveritelnogo upravlenija* 2020 **E-Source:** <https://privatefinance.biz/sut-i-vidyi-doveritelnogo-upravleniya/>
- [12] Cvigert K, Kets H 1998 *Vvedenije v sravnielnoje pravovedenije v cfere chastnogo prava* **2**(1) M.
- [13] Dozorcev V A 1996 *Doveritelnoje upravlenije imuschestvom* (gl.53) *Grajdanskiy kodeks Rossijskoi Federacii. Ch.2. Text, commentarii, alphavitno-predetnij ukazatel* /pod red. O M Kozir, A L Makovskogo, S A Hohlova. M
- [14] *Scheta doveritelnogo upravlenija: dlja chego otkrivajutsa i ispolsuiutsa* 2019 **E-Source:** <https://bilderlings.com/ru/blog/schet-doveritelnogo-upravleniya/>
- [15] Ripol-Saragosi F B, Ternikova E V 2012 Doveritelnoje upravlenije – progressivnaja forma menedgmenta *Injenernij vestnik Dona* **1** 448-51 **E-Source:** <https://cyberleninka.ru/article/n/doveritelnoe-upravlenie-progressivnaya-forma-menedzhmenta>
- [16] Hazus H 1946 Substance Response Trust Fund *Hearing, public, Heat islands* **101** 57-8
- [17] Moroz M I *Preimuschestva i nedostatki otdelnih vidov trustov*. *Vestnik Nijegorodskogo universiteta im. N.I.Lobachevskogo* **6** 156-61 **E-Source:** <https://cyberleninka.ru/article/n/preimuschestva-i-nedostatki-otdelnyh-vidov-trastov/viewer>
- [18] Budilgin S 2014 *Trusti dlja chainikov: chto oznachajut formulirovki trustovogo soglashenija?* **E-Source:** https://zakon.ru/blog/2014/2/19/trasty_dlya_chajnikov_chno_oznachayut_formulirovki_trastovogo_soglasheniya
- [19] Budilgin S 2014 *Anglosaksonskiy trust dlja chainikov* **E-Source:** https://zakon.ru/blog/2014/2/17/anglosaksonskij_trast_dlya_chajnikov
- [20] Genkin A S 2013 *Effektivnij trust: opit Zapadnoi Evropi I rossijskaja praktika*. M.: Izdatelskij dom «ALPINA» 368 p
- [21] https://www.cbr.ru/Collection/Collection/File/25379/review_secur_19Q1.pdf
- [22] Babajeva D R 2015 *Zarubejnij opit i rossijskaja practika trustovih operatsij commercheskih bankov* *Regionalnije problem preobrazovanija ekonomiki* **9**(59) 111-6 **E-Source:** <https://cyberleninka.ru/article/n/zarubezhnyy-opyt-i-rossijskaya-praktika-trastovyh-operatsiy-kommercheskih-bankov> (Last view: 14.08.2020)