



# MASARYKOVA UNIVERZITA PRÁVNICKÁ FAKULTA

## „Svěřenský fond“- Trust fund“

### Daring New Legal Transplant in the Czech Law

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# RECODIFICATION OF PRIVATE LAW (2014)

- Fundamental changes („revolution“) on this field
- Formulation of fundamental principles, „back to the european roots“
- Unification in the area of private law
- Strengthening of the autonomy of the individual´s will
- Inspiration in the foreign legal regulations (primarily Austrian, German, Swiss, Quebec, Dutch)



# „Revolution“ in the area of private law

- Civil Code n. 89/2012 Coll.
  - n. 90/2012 Coll. on business corporations
  - n. 91/2012 Coll. on international private law
  
- Hundreds of acts and regulations were repealed  
(the Civil Code itself - 238)
  
- Almost hundred of acts and regulations were amended
  - - new Land Registry Act
    - new Legal Persons Registry Act
    - new court proceedings (n. 292/2013 Coll.)
    - changes in tax law



# Structure of the NCzCC: 3081 provisions

- general part
- family law
- absolute property rights
  - property rights (iura in re)
  - law on succession
- relative property rights
  - general obligation law
  - obligation from contracts and quasi contracts
  - obligation from delicts and quasidelicts
- final provisions



# Svěřenský fond - Trust fund

- inspiration in Trust/fiducie (Quebec)§ 1260 CCQ
- strange concept for Czech legal environment - problems
- different concept of ownership/patrimony
- „Fear of the unknown“ - getting better/more regulation
- question, if not better solution f.e. - Austrian Private Foundation (the same function)



# Trust fund, what is it?

- Relationship (obligation)? Set of obligations?
- Property? Way of „holding“ property?
- Person? Legal entity?
- or Something else?

„....one cannot define the essence of an institution as a series of relationships among three people when none of those people is essential to its existence ”.

(Pierre Lepaulle, 1932)

Art. 1448 NCzCC

(1) Un fonds de fiducie est formé par le détachement d'un patrimoine de la propriété d'un constituant de façon telle, que celui-ci confie le patrimoine au fiduciaire dans un but particulier par un contrat ou établissement pour cause de décès et le fiduciaire du fonds de fiducie s'engage à entretenir et administrer ce patrimoine.

(2) La création d'un fonds de fiducie donne naissance à une propriété distincte et indépendante du patrimoine détaché et l'administrateur de la fiducie de placement est obligé de se charger de ce patrimoine et de sa gestion fiduciaire.

(3) Le droit de propriété à l'égard d'un fonds de fiducie, est exercé en son nom sur un compte de fonds de fiducie ; le patrimoine placé dans le fonds de la fiducie cependant n'est ni la propriété du fiduciaire, ni celle du constituant, ou de la personne qui doit être satisfaite à partir du fonds de fiducie.

Art. 1448 NCzCC

(1) A trust fund is created by setting aside part of the property owned by the founder in such a way that the owner entrusts the administrator/trustee with the property for a particular purpose through a contract or disposition mortis causa, and the administrator/trustee obliges himself to keep and administer the property.

(2) The creation of a trust fund establishes separate and independent ownership of the part of property and the trustee is obliged to assume the property and its administration.

(3) The rights arising from the right of ownership in the property in a trust fund are exercised by the administrator/trustee in his own name and on the account of the trust fund; however, the property in a trust fund is not owned by the administrator/trustee or the founder, or the person entitled to receive a performance from the trust trust.



## Art. 17 NczCC

(1) Seule une personne peut avoir des droits et les exercer. Une obligation ne peut être imposée qu'à une personne et il est seulement possible d'exiger à son égard d'exécuter l'obligation.

(2) Si une personne établit un droit ou impose une obligation à celui qui n'est pas une personne, le droit ou l'obligation est imputé à une personne à laquelle il appartient selon la nature du cas juridique.

## Art. 17 NczCC

(1) Only persons may have and exercise their rights. Duties may only be imposed upon and their performance enforced against persons.

(2) If anyone creates a right or imposes a duty upon something other than a person, such a right or duty shall be attributed to the person to whom it belongs according to the legal nature of the case.





# Where are we now? 2019? How it works?

- Amendment of the NCzCC - registration of the trust funds
- Developments in the tax regime?
- Regulation of trust industry (trustee act)?
- preventing the abuse of the trust-like vehicles? - AML directives
- Signing Hague convention?
- ECJ/EFTA court case law (Panayi trust, Olsen and others)



## Conclusions:

- „Trust-like“ vehicle, concept unique in Europe (inspired by CCQ)
- Only a time and legal practice will show of and how this new legal transplant will cope in the Czech legal system
- Inspiration for others?



Thank you very much for your attention😊

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