

Contract



April 15, 2016 year 06 | No. 05

Administration Trust.

by Vera García

P. 01-02

March NEWS on
Mexican Commercial Law
P. 03

Contributor
P. 04

We have addressed in previous deliveries of COELUM and TERRUM some of the main advantages of Mexican trust, as mechanism to provide security of payments for obligations established under a loan or a credit agreement.

The administration trust is the agreement in which property or title of goods and/or rights are transferred by the trustor to the fiduciary for their conservation, care, administration and/or collections for the fulfillment of the trust purpose, which should always be licit, and determined at the moment when it becomes due by the beneficiaries¹.

The fiduciary ownership, the title or property that the fiduciary holds in respect to the goods or rights that are given under the trust, as explained above, is different from the ownership concept per se, as the fiduciary is only entitled to dispose of such assets or rights to fulfill the purpose for which they are designated².

The administration trust provides important advantages, for both, the trustor and beneficiary of such trust. For the beneficiary, which may be the creditor from a loan or a credit agreement, it grants him security of punctual payment and for the trustor, it gives him the benefit that the fiduciary will administer the trust assets in the best possible manner and secrecy in respect to the goods that are transferred to the trust.

"The administration trust is the agreements in which property or title of goods and/or rights are transferred by the trustor to the fiduciary for their conservation, care, administration and/or collections for the fulfillment of the trust purpose, which should always be licit and determined, at the moment when it becomes due by the beneficiaries."

For such purpose, the administration trust agreement should establish: i) the fiduciary acceptance; ii) object of the trust; iii) determine trust assets; iv) whether the trust is revocable or irrevocable; v) the initial or/and subsequent contribution; vi) the percentage of trustor's collection rights, if applicable; vii) mechanism of defense; viii) the faculties and operation of the technical committee; ix) the faculties and responsibility of the fiduciary; x) fiduciary fees; xi) tax duties; xii) accountability; and xiii) the corresponding clauses for every agreement.

In addition to the above, if the administration trust is constituted in favor of more than one beneficiary, the agreement should also include: i) the amount owned to each beneficiary; ii) the payment order; iii) if new beneficiaries will be allowed in the future, and iv) if the creditors will be paid simultaneously or successively. It is important to note, that the administration trusts in favor of various beneficiaries, which should be

1.- Article 381 of General Law of Titles and Operations of Credit.

2.- No binding precedent registered No. 343693, "TRUST NATURE" issued by the Supreme Court on the judicial weekly newspaper of the federation and its gazette.

substituted by the death of the previous beneficiary is not permitted in favor of people that are not alive or conceived at the trustor's death³

Therefore, the beneficiary or beneficiaries of the trust, have the security that they will be paid according to the clauses established in the trust. If not, they are entitled to demand the trustee the fulfillment of its duties and fight against the validity of any of its acts against them, in which the trustee acted in bad faith or in excess of its capacities⁴

"For the beneficiary, which may be the creditor from a loan or a credit agreement, it grants him security of punctual payment and for the trustor, it gives him the benefit that the fiduciary will administrate the trust assets in the best possible manner and privacy in respect to the goods that are not transferred to the trust."

The beneficiary could fight against the trustee for not acting in accordance with the terms and conditions established on the trust, by starting proceeding or filing a claim before the national commission for the protection and defense of users of financial services (the "Commission"). The Commission is the authority in charge of promoting the equity in the relations between trustees and the person(s) that enter into an agreement with such trustees ("User" or "Users").

There are two legal procedures established by the Commission pursuant to the Law for the Protection and Defense of Users of Financial Services:

1. The conciliation procedure: if both parties agree to conciliate, the Commission will issue a settlement which will not permit any appeal⁵.
2. The non-conciliation procedure: if the fiduciary do not accept to follow the conciliation procedure, the user may request the Commission to issue an opinion. In the case that this opinion contains an obligation imposed to the fiduciary, it will be considered as an executive title in favor of the User that could be used in court. The fiduciary may appeal this opinion before the corresponding judicial authority⁶.

For the above, we can say that the administration trust, is a good mechanism to provide security for the payment of obligations that the trustor have entered; or will enter in the future and certainty that the beneficiaries of such trust are protected by law against possible misconducts that the trustor may have.

3.- Article 294 fraction II of the General Law of Titles and Operations of Credit and the No binding precedent no. I.11o.C.105 C, "SUBSTITUTE BENEFICIARY. HIS DESIGNATION, IN THE CASE OF DEATH OF THE PREVIOUS ONE, HAVE ONLY PURPOSE OF APPOINTING A SUCCESSOR OR REPLACING THE QUALITY OF THE BENEFICIARY" issued by the Supre Court on May 2004 on the judicial weely newsspaper of the federacion and itz gazette.

4.- Article 381 of the General Law of Titles and Operations of Credit.

5.- Article 68 and 68 BIS of the Law for the protection and defense of users of financial services.

6.- Article 68 and 68 BIS of the Law for the protection and defense of users of financial services.

Goods trade deficit narrows in February; inventories rise.

The U.S. goods trade deficit narrowed sharply in February, and inventories increased, which could prompt economists to raise their estimates for first-quarter gross domestic product. The Atlanta Federal Reserve is forecasting GDP will show a 1.0 percent annualized expansion rate in the first quarter. The economy grew at a 1.9 percent pace in the fourth quarter. <http://www.reuters.com/article/us-usa-economy-tradefigures-idUSKBN16Z109> 17/03/2017.

Mexico Emerges as Most Alluring Emerging Market, India Worst.

Based on a range of metrics analyzed by Bloomberg, Mexico is the most attractive emerging market for investors and India the worst. Given the expectations that US dollar will weaken, some fund managers are convinced to hold a higher share of Mexican Government bonds. On the other hand, given India's expensive stocks, bonds and currency, this nation is considered the least attractive developing nation for investors. <https://www.bloomberg.com/news/articles/2017-03-21/trump-bashed-mexico-most-attractive-emerging-market-india-worst> 21/03/17.

US Officials: Info suggests Trump associates may have coordinated with Russians.

The FBI has information that shows, it is very possible that Donald Trump communicated with Russians to coordinate and release harmful and destructive information against Hilary Clinton. However, press secretary Sean Spicer said there was no evidence that proves any collusion. The FBI has been investigating four former Trump associates, Michael Flynn, Paul Manafort, Roger Stone and Carter Page, to prove if they made improper contact with Russia. <http://edition.cnn.com/2017/03/22/politics/us-officials-info-suggests-trump-associates-may-have-coordinated-with-russians/> 23/03/17.

Life after TPP: Who will be the loser in US-Japan trade talks?

The Trans-Pacific Partnership (TPP) has been a part of the current Japanese government's growth strategy, so the U.S. withdrawal from this trade agreement has been damaging to the country's prime minister, Shinz Abe, and will pose further problems in the future. The question is: Will Japan be forced to sign an agreement much less advantageous than the previous arrangement? There is strong speculation that this will be the case. <http://www.cnbc.com/2017/03/24/life-after-tpp-who-will-be-the-loser-in-us-japan-trade-talks.html> 24/03/2017.

UK banks given new stress test scenarios.

The UK's biggest banks have been told to prepare for a wide range of challenges, as part of the Bank of England's latest stress tests. The seven major lenders taking part are Barclays, HSBC, Lloyds, RBS, Santander UK, Standard Chartered and Nationwide. Under its annual cyclical scenario, banks must show they can cope with a recession in the global economy and in the UK, interest rates peaking at 4%, and with house prices falling by a third. <http://www.bbc.com/news/business-39403610> 27/03/2017.

United States and Allies Protest U.N. Talks to Ban Nuclear Weapons.

United States and some other United Nations members boycotted talks for a treaty that would ban this weapons, arguing that the time was not right to outlaw nuclear arms. US Ambassador Nikki R. Haley affirmed that North Korea would not ban this weapons, generating a threat to the world and specifically to the United States. This talks are supported by 120 countries and led by Austria, Brazil, Ireland, Mexico, South Africa, and Sweden. United States and Britain led the group against this meeting, Russia and China did not protest neither participated in the talks. <https://www.nytimes.com/2017/03/27/world/americas/un-nuclear-weapons-talks.html> 28/03/2017.

Scottish lawmakers back call for independence vote.

Scottish lawmakers voted 69-59 in favor of an independence referendum, initiating friction between Edinburgh and the UK Government. This decision gives the opportunity to First Minister Nicola Sturgeon to ask UK Parliament for a referendum between autumn 2018 and spring 2019. Since Britain is expected to leave the European Union in 2019, British Prime Minister, Theresa May said that "now is not the time" for a vote that could break up the United Kingdom. <http://edition.cnn.com/2017/03/28/europe/scottish-indy-vote/> 28/03/2017.

NAFTA architects: Ripping it would be 'disastrous'.

The three original negotiators see the global economic and security order at risk if the Trump threats of tariffs and protectionism become reality -- and other countries adopt the same policies in retaliation. Protectionism "is an atomic bomb for trade," said Jaime Serra Puche, Mexico's former secretary of trade and industry. On ending NAFTA: "We will be shooting ourselves in the foot as a region." The sentiment was echoed by Carla Hills, former U.S. trade representative under President George H.W. Bush: "If we cut off our neighbors, we're cutting ourselves." <http://money.cnn.com/2017/03/28/news/economy/nafta-architects/> 28/03/17.

Brexit: UK backing away from threat to leave with no deal, say EU diplomats.

European diplomats based in the UK say the British government is stepping back from its threat to leave the EU without a trade deal if negotiations break down. The EU diplomats revealed their anxiety that May has been too willing to bend to the prevailing wind with some of her own backbenchers and the Brexit-supporting press, setting up expectations that they believe she will struggle to meet. he diplomats also predicted that the UK was likely to change its rhetoric towards immigration, suggesting that the British realized that strict limits on immigration were a bad idea for British society and the economy, and there was a need to focus more on control and not quantitative limits. <https://www.theguardian.com/politics/2017/mar/28/brexit-uk-backing-away-from-threat-to-leave-with-no-deal-say-eu-diplomats> 28/03/17.

"Little Signs of a Trump Bump" in the Economic Forecast.

Consumers are more confident. And from the president on down, there's talk of a Trump bump. The only problem: The boom is apparent everywhere except in the economic data. Is not that the economy is stalling – far from it. But with the first quarter ending Friday, growth in the first three months of the Trump administration is looking much the way it did under President Barack Obama. Experts considers recent data "solid", but added that the big gap between expectations and reality "creates discomfort for economists and monetary policy makers." <https://www.nytimes.com/2017/03/29/business/economy/economic-growth-first-quarter.html> 29/03/2017.

CONTRIBUTORS

VERA GARCÍA

Attorney at Law: Admitted to practice law in 2012. Ms. Vera García, of Mexican nationality obtained her law degree at Tecnológico de Monterrey, México; attended post- grades studies in Corporate Law by Insituto Tecnológico Autonomo Mexicano; holds the Certificates of International Air Law; Airline Contract Law; Aircraft Acquisition and Financing; and Law of Aviation Insurance by the International Air Transport Association (IATA).

LANGUAGES: Spanish and English.

PRACTICE AREAS: Corporate and Aviation law.

e-mail: vgarcia@asyv.com

sierra

Prol. Reforma No. 1190 25th Floor,
Santa Fe México D.F. 05349
t. (52.55) 52.92.78.14
f. (52.55) 52.92.78.06
www.asyv.com / www.asyv.aero

The articles appearing on this and on all other issues of Terrum reflect the views and knowledge only of the individuals that have written the same and do not constitute or should be construed to contain legal advice given by such writers, by this firm or by any of its members or employees. The articles and contents of this newsletter are not intended to be relied upon as legal opinions. The editors of this newsletter and the partners and members of Abogados Sierra SC shall not be liable for any comments made, errors incurred, insufficiencies or inaccuracies related to any of the contents of this free newsletter, which should be regarded only as an informational courtesy to all recipients of the same.