

EVOLUTION OF PRIVATE LAW – NEW CHALLENGES

Piotr Pinior,
Wojciech Wyrzykowski,
Marcusz Żaba
(Eds.)



EVOLUTION OF PRIVATE LAW - NEW CHALLENGES

edited by
Piotr Pinior, Wojciech Wyrzykowski, Mateusz Żaba

Abstract
General Aspect of Registration Obligations of Trading Companies in the Slovak Republic
Registration of Companies in the Slovak Republic
Agreement Terminated in Terms of Business
Corporate Creditors
Katowice 2020

Reviewer
dr hab. Roman Uliasz, prof. UR
(Instytut Nauk Prawnych, Uniwersytet Rzeszowski)

© Instytut Prawa Gospodarczego Sp. z o.o. w Katowicach

The moral rights of the authors have been asserted

The Publisher, the authors and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of its publication

Cover design
Krzysztof Mordarski

Proofreader
Marcin Gorgol

Typesetting
Krzysztof Mordarski

*Niniejsza publikacja została sfinansowana przez Uniwersytet Śląski w Katowicach
This publication was funded by the University of Silesia*



ISBN: 978-83-958968-7-3

Publisher

Instytut Prawa Gospodarczego Sp. z o.o.
ul. 3-go Maja 10/2, Katowice 40-096
ipg@ipg.edu.pl
wydawnictwo@ipg.edu.pl

Table of Contents

Preface.....	11
List of Contributors	13
Bibliography	19

Andrii Albu

1. Trust Law in Ukraine: Comparative Aspect.....	33
1. Introduction	33
2. Scientific Discourse	34
3. Comparative Analysis of the Above-mentioned Concepts	36
4. Conclusions	41

Natalia Bashuryn

2. Contractual Regulation of Scientific and Technical Information Relations	43
1. Preliminary Remarks	43
2. Treaty on the Provision of Scientific and Technical Information ...	44
3. Patent Prospecting Treaty	46
4. Research, Development and Technological Contracts.....	48
5. The Contract on Transfer of Know-How	51
6. Conclusions	52

Oliver Buhala

3. Temporal Aspect of Registration Obligations of Trading Companies in the Slovak Republic	55
1. Introduction.....	55
2. Registered Information in Terms of Relevance to Potential Corporate Creditors	56

3. Temporal Aspect of Information Obligations of Trading Companies towards the Registers..... 58
4. Conclusion 60

Jaroslav Dolný, Žofia Mrázová

4. Recent Developments in European Company Law: Harmonisation of Restructuring and Cross-border Conversion.... 63

1. Introduction..... 63
2. Corporate Mobility: New Rules on Cross-border Conversion 65
3. Preventive Restructuring Frameworks 69
4. Conclusion 71

Magdalena Gruber

5. Recent Developments in the Law of Groups of Companies: Related Party Transactions in Austria and the European Union... 73

1. Introduction..... 73
2. Preliminary Remarks..... 74
3. Three Regulatory Models in Europe 75
3. Implications for Cross-Border Transactions..... 79
4. The Amended Shareholder Rights Directive..... 79
5. Concluding Remarks..... 83

Regina Hučková, Michal Toman

6. Application of Smart Contracts in Private Law 85

1. Introduction..... 85
2. Basic Understanding of the Smart Contracts 86
3. Elementary Stages of the Smart Contract Lifestyle 89
4. Practical Applications of Smart Contracts 92
5. Conclusion..... 94

Anatoly Kostuba

7. Corporate Governance: the Main Issues..... 97

1. Ensuring the legal personality of the corporation, which safeguards the implementation of its proper management 98
2. The prudence in a corporate conflict among corporate affiliates... 99

Oleksandr Kovalyshyn

8. Legal Transplants in Ukrainian Company Law 111

1. Introduction..... 111
2. Notion of Legal Transplant 112
3. Legal Transplants in Ukrainian Company Law 114
4. Legal Transplants in Polish Company Law 117
5. Conclusion 119

Michał Labno

9. Polish Simple Joint-Stock Company – Controversies..... 121

1. Introduction..... 121
2. Share Capital in Simple Joint-Stock Companies 123
3. Preference Shares in Simple Joint-Stock Companies 125
4. Overall Need to Introduce a New Type of Company 127
5. Conclusion..... 129

Dominik Mizerski

10. Transfer of Company's Registered Office and Admissibility of Cross-border Conversion in the Light of the Directive of the European Parliament and the Council (EU) 2019/2121.. 131

1. Introduction 131
2. Freedom of Establishment vs. Admissibility of Cross-border Conversion of Companies..... 131
3. Consequences of the Polbud – *Wykonawstwo Sp. z o.o.* Judgment in the Light of the Admissibility of Cross-border Transfer of the Registered Office..... 135
4. Cross-border Conversion of Companies under Directive 2019/2121 of the European Parliament and of the Council..... 139
5. Conclusions..... 142

Mykola Ostapiuk

11. Small Cases in the Civil Process of Ukraine 143

1. Introduction 143
2. Money Claim 144
3. Cases of Minor Complexity that are Recognized by the Court as Small Cases 146

4. Family Cases.....	148
5. Cases in the Field of Consumer Rights Protection.....	149
6. Conclusions.....	150

Piotr Piñior

12. Types of Cross-border Division of Company and its Consequences in the Light of Directive (EU) 2019/2121.....	153
1. Introduction.....	153
2. Types of Cross-border Division.....	154
3. Consequences of the Cross-border Division of Company.....	157
4. Final Remarks.....	161

Simona Rudohradská

13. The Position of Collaborative Platforms from the Perspective of Competition Law.....	163
1. Introduction.....	163
2. A Few Notes on Collaborative Platforms and Collaborative Economy.....	164
3. Service Providers.....	165
4. Users of Services.....	165
5. Intermediaries.....	166
6. Regulation of Competition at the European Union level.....	167
7. Digital Platforms in the Case-law of the Court of Justice of the European Union in the Context of Competition.....	168
8. Difference between Uber and Airbnb in Terms of Intermediation Platforms.....	173
9. Competition and Digital Platforms.....	174
10. Conclusion.....	174

Wojciech Wyrzykowski

14. A few Remarks Regarding the Sale of All Rights and Obligations in a Partnership.....	177
1. Preliminary Remarks.....	177
2. Form of Disposal of All Rights and Obligations.....	179
3. The Legal Nature of the Consent of the Other Partners to Sell All Rights and Obligations.....	182

4. Possibility of Selling the Membership in a Partnership to Several Entities.....	184
5. Summary.....	186

Liubomyr Zinych

15. Implementation of IP Box Regime in the Republic of Poland: Adaptation of Experience for Ukraine.....	187
1. Preliminary Remarks.....	187
2. Terms of Use of the IP Box Regime in Poland.....	188
3. Comparison of the Polish IP Box Regime with the Draft of the Ukrainian IP Box.....	191
4. Conclusion.....	193

Mateusz Żaba

16. On the Creditor Protection in Cross-border Division of Companies in the Light of Directive (EU) 2017/1132.....	195
1. Preliminary Remarks.....	195
2. Institutional and Individual Protection of Creditors.....	197
3. Instruments of the Institutional Protection of Creditors.....	198
4. Instruments of the Individual Protection of Creditors.....	203
5. Final Remarks.....	206

Lucia Žitňanská

17. Preventive Restructuring and Liability of Directors of Companies.....	209
1. Preliminary Remarks.....	209
2. Fiduciary Obligations of a Director When There is a Likelihood of Insolvency in Accordance with Slovak Legislation in the Context of Article 19 of the Directive.....	210
3. Issues Regarding the Transposition of Article 19 (a) of the Directive in Regards to the Obligation of Loyalty.....	214
4. The right of Partners to Decide and Instruct the Director as an Issue in Relation to Article 19 (a) of the Directive.....	216
4. Conclusion.....	218

Stankovic, S. 2009. "Economic Efficiency of Property Management in Ukraine: A Comparative Study." *Journal of Law and Economics* 52(1): 1-24. <http://dx.doi.org/10.1017/S0022218X09001010>.

Stankovic, S. 2010. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 53(1): 1-24. <http://dx.doi.org/10.1017/S0022218X10000010>.

Stankovic, S. 2011. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 54(1): 1-24. <http://dx.doi.org/10.1017/S0022218X11000010>.

Stankovic, S. 2012. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 55(1): 1-24. <http://dx.doi.org/10.1017/S0022218X12000010>.

Stankovic, S. 2013. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 56(1): 1-24. <http://dx.doi.org/10.1017/S0022218X13000010>.

Stankovic, S. 2014. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 57(1): 1-24. <http://dx.doi.org/10.1017/S0022218X14000010>.

Stankovic, S. 2015. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 58(1): 1-24. <http://dx.doi.org/10.1017/S0022218X15000010>.

Stankovic, S. 2016. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 59(1): 1-24. <http://dx.doi.org/10.1017/S0022218X16000010>.

Stankovic, S. 2017. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 60(1): 1-24. <http://dx.doi.org/10.1017/S0022218X17000010>.

Stankovic, S. 2018. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 61(1): 1-24. <http://dx.doi.org/10.1017/S0022218X18000010>.

Stankovic, S. 2019. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 62(1): 1-24. <http://dx.doi.org/10.1017/S0022218X19000010>.

Stankovic, S. 2020. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 63(1): 1-24. <http://dx.doi.org/10.1017/S0022218X20000010>.

Stankovic, S. 2021. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 64(1): 1-24. <http://dx.doi.org/10.1017/S0022218X21000010>.

Stankovic, S. 2022. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 65(1): 1-24. <http://dx.doi.org/10.1017/S0022218X22000010>.

Stankovic, S. 2023. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 66(1): 1-24. <http://dx.doi.org/10.1017/S0022218X23000010>.

Stankovic, S. 2024. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 67(1): 1-24. <http://dx.doi.org/10.1017/S0022218X24000010>.

Stankovic, S. 2025. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 68(1): 1-24. <http://dx.doi.org/10.1017/S0022218X25000010>.

Stankovic, S. 2026. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 69(1): 1-24. <http://dx.doi.org/10.1017/S0022218X26000010>.

Stankovic, S. 2027. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 70(1): 1-24. <http://dx.doi.org/10.1017/S0022218X27000010>.

Stankovic, S. 2028. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 71(1): 1-24. <http://dx.doi.org/10.1017/S0022218X28000010>.

Stankovic, S. 2029. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 72(1): 1-24. <http://dx.doi.org/10.1017/S0022218X29000010>.

Stankovic, S. 2030. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 73(1): 1-24. <http://dx.doi.org/10.1017/S0022218X30000010>.

Stankovic, S. 2031. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 74(1): 1-24. <http://dx.doi.org/10.1017/S0022218X31000010>.

Stankovic, S. 2032. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 75(1): 1-24. <http://dx.doi.org/10.1017/S0022218X32000010>.

Stankovic, S. 2033. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 76(1): 1-24. <http://dx.doi.org/10.1017/S0022218X33000010>.

Stankovic, S. 2034. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 77(1): 1-24. <http://dx.doi.org/10.1017/S0022218X34000010>.

Stankovic, S. 2035. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 78(1): 1-24. <http://dx.doi.org/10.1017/S0022218X35000010>.

Stankovic, S. 2036. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 79(1): 1-24. <http://dx.doi.org/10.1017/S0022218X36000010>.

Stankovic, S. 2037. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 80(1): 1-24. <http://dx.doi.org/10.1017/S0022218X37000010>.

Stankovic, S. 2038. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 81(1): 1-24. <http://dx.doi.org/10.1017/S0022218X38000010>.

Stankovic, S. 2039. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 82(1): 1-24. <http://dx.doi.org/10.1017/S0022218X39000010>.

Stankovic, S. 2040. "The Role of Property Management in the Development of the Real Estate Market in Ukraine." *Journal of Law and Economics* 83(1): 1-24. <http://dx.doi.org/10.1017/S0022218X40000010>.

1. Andrii Albu

Trust Law in Ukraine: Comparative Aspect¹

1. Introduction

The history of the introduction of trust institutions and trust property management in Ukraine goes back to 2003, when the Civil Code of Ukraine was amended by a provision whereby the agreement of property management certifies the trustee's property right to the trusted property.

It is understood, however, that the law or a property management agreement specifies the limitations of the trustee's right to the trust property. Consequently, the trustee is a trusted owner of property that he/she holds in possession, uses and disposes of in accordance with the law and agreement of property management.

The introduction of trust property into the Civil Code of Ukraine was substantiated by the need to coordinate the Code with the law of Ukraine "On Mortgage Lending, Consolidated Mortgage Debt Transactions and Mortgage Certificates" approved on 19 June 2003, and the law of Ukraine "On Financial Lending Mechanisms and Property Management in Housing Construction and Real Estate Operations" in which the trust property was pre-secured. It can therefore be concluded that trust and trust property management co-exist or exist parallel to each other in the current Civil Code of Ukraine.

¹ This article was written in the framework of Jean Monnet Module "Commercial Law of the European Union" and financed with the support of the European Union (the Erasmus+ Programme of the European Union).

An analysis of the experiences of foreign countries, in particular, countries where the sphere of management has been developing over the years and countries which – like Ukraine after the collapse of the Soviet Union – faced the need of regulation and recognition of management relations, shows that the implemented concepts are almost never identical in their essence. In the Republic of Kazakhstan, the concept of management is represented by trust management prescribed in the provisions of the 1999 Civil Code. Prior to that time, management was determined by the Decree of President of the Republic of Kazakhstan of 25 December 1995 “On Privatization”. The present normative legal act provides that the transfer of state property to trust management was recognized as a preliminary stage of privatization². The choice of such an unusual mechanism for the Kazakh economic and legal reality was justified by the need to implement investment programs and secure amortization of the state companies set to undergo privatization.

Ukraine displayed impressive originality in building interaction between the above concepts. Pursuant to para. 2 Art. 316 of the Civil Code of Ukraine, “trust property is a special type of proprietary right,” which effectively means recognition of the classic concept of trust, although it is further stated that it “follows from the law or agreement”³. This wording allows for the conclusion as to the parallel existence of the concept of trust management.

2. Scientific Discourse

These two perspective concepts, despite the similarities and proximity of their individual characteristics, are not identical and come from different legal sources. O.V. Cherkashyna notes that trust management and trust are two forms of management that govern similar relationships in different legal systems⁴, in particular, that trust property, or as it is called

² Contents of Trust Law. [Electronic resource] <https://journal.zakon.kz/203656-soderzhanie-prava-doveritel'nogo.html> (as of 2.11.2020).

³ Civil Code of Ukraine dated 13.02.2020 No. 435-IV. [Electronic resource] <https://zakon.rada.gov.ua/laws/show/435-15> (as of 2.11.2020).

⁴ Trust and Management of Trust Property. [Electronic resource] <http://arbitr.msk.ru/upload/article.php?id=045> (as of 2.11.2020).

“trust”, is inherent in Anglo-American law, whereas trust management is specific to continental law.

S.I. Kovalov holds the view that the countries of the Roman-German legal family did not wish to fully adopt the concept of trust property and instead created trust structures (so-called institution of trust management) that enable the use of trust property elements without the structural remodeling of the whole legal system⁵. The countries of the Roman-German legal family cannot therefore fully use the concept of trust property, as their legislation does not admit the possibility of splitting property law.

In the opinion of Yu.V. Kurpas, the adoption of the classic trust structure in Ukraine seems to be impossible, given that the continental concept of proprietary right implies the “uniform” proprietary right that contradicts the understanding of certain powers resulting from “splitting” of the proprietary right⁶. The classic understanding of trust property would in fact suggest that the trustee should have the respective proprietary right, which contradicts the civic approaches developed in Ukraine.

H.H. Kharchenko argues that the concomitant use of the concepts of trust and trust property management is not self-contradictory, but instead it serves to enrich the legal mechanisms of private and legal persons’ asset management and enhance business practice⁷. R.A. Maidanyk points out that in Ukraine, as in the other countries of Roman-German legislation, there is a prevailing trend for “splitting” the proprietary right to the same object. This is explained by the fact that the exceedingly rough and slow structure of the “uniform” proprietary right is to some extent out-of-date and not always entirely adequate to the modern proprietary

⁵ Kovalov S.I., *Trust Property Management in Foreign and Russian Law*, thesis for the degree of Candidate of Legal Sciences: 12.00.03, Kovalov S.I. People’s Friendship University of Russia. – M.: 1999, p. 166.

⁶ Kurpas Yu.V., *Establishment and Development of Trust Institute in Ukraine*, summary of thesis for the degree of Candidate of Legal Sciences: specialty 12.00.03, “Civil Law and Civil Process: Family Law; International Private Law”, Kurpas Yulija Volodymyrivna, K., 2004, p. 22.

⁷ Kharchenko H.H., *Legal Regulation of Trusts and Trust Companies: Comparative Legal Analysis*, thesis for the degree of Candidate of Legal Sciences: 12.00.03, Kharchenko Georgii Georgiiovych. – O., 2003, p. 193.

relations⁸. However, it is still too early to discuss the “splitting” of the proprietary right in Ukraine. The reason for this lies in the fact that the proprietary right in Ukraine is still absolute in nature, namely, the owner is confronted by an indefinite and unlimited number of persons who are prohibited from violating his proprietary right and posing obstacles to the exercise thereof.

3. Comparative Analysis of the Above-mentioned Concepts

Contrary to the Anglo-American concept of trust, the trust property right as set out by the provisions of the Civil Code of Ukraine does not even formally create the legal effect of the “split” proprietary right, that is where there are several titles of property to one property object with a different scope and nature of powers⁹. The scientific and practical commentary to Art. 316 of the Civil Code of Ukraine indicates that the trust property cannot arise on any other basis, in particular, other agreements, except property management agreements, unilateral transactions, court decision¹⁰. The effective legislation provides that the trust property comes into existence based on the agreement of trust property management, which is specific to the trust management concept that normally contradicts the classic understanding of trust.

In the opinion of Yu. V. Kurpas, the main differences of the aforementioned concepts can be seen as follows:

1. As a general rule, the basis for the establishment of a trust is a unilateral act of trust or the law. At the same time, the only

⁸ Maidanyk R.A., *The Problems of Regulation of Contract Relations in Civil Law*, summary of thesis for the degree of Doctor of Legal Sciences: specially 12.00.03 “Civil Law and Civil Process; Family Law; International Private Law”, Maidanyk Roman Andriiovych. – K., 2003, p. 28.

⁹ Shatalov A., *Trust and Trust Management. Critical Analysis*, “Securities Market” – 1997, no. 14, p. 38-42.

¹⁰ Dzera O.V., *Scientific Practical Commentary to Civil Code of Ukraine*, in 2 volumes: 5th edition revised and amended / O.V.Dzera, N.S. Kuznietsova, V.V. Luts. – K.: Yurinkom Inter, 2013, vol.2, p. 1120.

background for the emergence of trust management relations is an agreement. Thus, in trust property relations, the trustor establishes the trust property by the respective act, and from there follow the rights of the trustee that are, appropriately, of a pecuniary nature. The rights of the trustee follow from the clauses of the agreement which is a transaction that establishes the rights and obligations of the parties and the right of a third person (beneficiary). The powers of the trustee are therefore of a binding nature, given that they do not follow from their relation to the property, but from the complex of rights and obligations stipulated by the agreement.

2. The essential difference between the two concepts under investigation can be seen in the legal status of the trustor. The trustor of trust management remains the owner of the property transferred to trust management, whereas the trustor of a trust forfeits his/her pecuniary right. The trust provides for the constant presence of both participants of legal relations: trustee and beneficiary, as at the moment of the creation of trust property, its founder forfeits the right to the property transferred to the trust and has no rights in relation to the trustee during the term of the trust, only if they have such rights as a beneficiary. Thus, in the case of creation of a trust, instead of one owner whose rights are terminated, two new owners emerge, and in the case of establishment of trust management – the owner remains the same and has certain rights in relation to the trustee, as they are both parties to legal relations that follow from the agreement of trust property management.

3. The Anglo-American concept of trust recognizes the beneficiary as the owner of trust property who enjoys the right to declare requirements related to the property to third persons, including demand of property from illegal possession. By contrast, the concept of trust management envisages that the beneficiary has no possibility to declare requirements related to the transfer of property to third persons who are not bound by the agreement of trust management. Such a fundamental difference inherent in the structures under analysis highlights again the property nature of trust and the binding nature of trust management.

4. During the establishment of a trust, the beneficiary is granted three sets of rights: to the trust property, in relation to the trustee, in relation to third parties who have misappropriated the trust property. However, the trust management agreement provides that the beneficiary acquires only one set of rights in relation to the trustee – to demand the exercise of rights established in the beneficiary's favor.

It is assumed that such fundamental differences between the rights of the beneficiary in trust and trust property management stem not only from the specificity of the above structures, but also from the peculiarity of the structure of the legal relations under investigation: whereas in a trust, the figure of the beneficiary is obligatory, and as a rule, does not coincide with the figure of the trustor, in the relations of trust management it is the opposite: the emergence of a third person is an exception to the general rule, as the trustor is a beneficiary of trust management.

5. Trust relations, unlike the relationships under a contract of trust management, are fiduciary and personally-trusting¹¹.

Such features of the classic understanding of those concepts clearly run counter to their actual interpretation in the effective legislation of Ukraine. We therefore consider it appropriate to distinguish the common and distinctive features of classic trust property (trust) and trust property as enshrined in the effective legislation based on the respective legal acts, namely: the Civil Code of Ukraine, the Law of Ukraine "On Trust Companies"¹², Law of Ukraine "On Mortgage Lending, Consolidated Mortgage Debt Operations and Mortgage Certificates"¹³ and Law of Ukraine "On Financial and Credit Mechanisms and Property Management in Housing Construction and Real Estate Operations"¹⁴.

¹¹ Kurpas Yu.V. *Establishment...*, p. 198.

¹² Law of Ukraine "On Trust Companies" dated 17.02.2006, No. 3370-IV. [Electronic Resource] <https://zakon.rada.gov.ua/laws/show/23-93> (as of 2.11.2020).

¹³ Law of Ukraine "On Mortgage Lending, Consolidated Mortgage Debt Transactions and Mortgage Certificates" dated 06.12.2012, no. 5492-VI. [Electronic Resource] <https://zakon.rada.gov.ua/laws/show/979-15> (as of 2.11.2020).

¹⁴ Law of Ukraine "On Financial Lending Mechanisms and Property Management in Housing Construction and Real Estate Operations" dated 10.06.2017, No. 1817-VIII. [Electronic Resource] <https://zakon.rada.gov.ua/laws/show/978-15> (as of 2.11.2020).

It seems necessary, above all, to distinguish the common features of classic (Anglo-Saxon) trust property and trust property in the Ukrainian legislation. First, it must be stated that the entity that transfers the property should own such property both in trust property (trust) and in the trust property set out in Ukrainian law. Secondly, the management of the trust property both under the classic concept of trust and under the concept referred to in Ukrainian law may be carried out either for the benefit of the trustor or for the benefit of another person – beneficiary. Thirdly, the trustor and the trustee are formally obliged by law to exercise their powers in good faith, based on the interests of the trustor or the beneficiary. The fourth distinctive feature is that the trustor, both under the classic concept and under the concept specified in Ukrainian law, has the right to check the actions of the manager or trustee. The last difference is that the manager and trustee are formally liable for a breach of interests and for causing damage to the trustor.

Furthermore, the distinctive features of the legal relations of trust property should be taken into consideration, given that they indicate the legal nature of the institution under comparison. First, the proprietary right in trust property relations in Ukraine does not pass from the trustor to the trustee, whereas in classic trust relations, the splitting and transfer of the proprietary right occurs. Second, in both cases, the person who receives the property has the power to own, use and dispose of it, although those powers are limited under the trust property provided for in Ukraine. Third, the powers of the trustee are limited only by law, while the powers of the trust property manager may also be limited by the trust property management agreement. When completing legally significant formalities, the manager has the obligation to indicate that the respective property does not belong to him, whereas the indication of the legal connection of property and the trustee is not obligatory. Fourth, the term of trust under the Ukrainian legislation may not exceed five years, and the property is returned to the trustor or transferred to the beneficiary after the expiration of the respective term, whereas the trust is unlimited. Fifth, the trustor has the right to withdraw from the trust management agreement at any time, whereas an early termination of trust property can only be possible as a result of court decision in the event of guilty actions of the trustee that

violate the interests of the owner (trustor). The refusal of the beneficiary to receive trust property benefits (in Ukraine) entails an automatic termination, unless otherwise specified by the agreement, whereas the trust property, as a rule, does not terminate, unless otherwise provided by law.

It should also be indicated that the recovery of debts of the manager of trust property that do not result from the management of the respective property cannot take place with respect to the property in management. The trustee is liable for his debts with all his property, unless otherwise specified by law.

Another difference lies in the fact that the debts arising out of obligations related to the trust property (in Ukraine) are repaid at the expense of the trustor's property, and where such property is insufficient, at the expense of the manager's property. The collection of debts arising in connection with the trust applies in its classic interpretation to the trustor's entire property, including the trust property. In the event of the trustor's bankruptcy, debts can be recovered from the property transferred to trust property management. In that case, the trust property (in Ukraine) is terminated, and the corresponding property is included in the bulk property. The collection of the trustor's debt in the classic trust cannot be extended to the property transferred to trust management, unless otherwise specified by law.

The last distinguishing feature is that in the case of trustee's death, recognition as incapacitated, limited in capacity, missing or in the case of death of the beneficiary (private person) or liquidation of the beneficiary (legal entity), trust property management is terminated, unless otherwise specified by the contract. In the event of the trustee's death, the heirs will inherit the trust property, unless otherwise specified by law or in the agreement for the trust establishment. Where the trustee is recognized as incompetent or missing, the trust property they had follows the legal fate of the rest of their property.

Overall, the analysis of the concept of trust property in Ukraine reveals that it does not correspond to the classic notions of trust and runs counter to its characteristic features.

4. Conclusions

The investigated concept of trust property in Ukraine does not correspond to the classic notions of trust and runs counter to its characteristic features. The originality of the legal basis of the trust property concept that was developed in the Anglo-Saxon system of law in connection with its inherent idea of splitting property rights, which allows the simultaneous recognition of different entities as owners of the same property, makes it virtually impossible to apply it outside its own legal system (Anglo-Saxon) without significant transformations.

Given the above, the concept of trust property applied in Ukraine is adapted to the continental legal family and bears the following features:

- trust property emerges on the basis of agreement that is a bilateral transaction between the trustor and the trustee;
- the trustor can be both a legal entity and private person, but the trustee can be only a subject of the conducted business activity;
- the beneficiary can be the trustor or other person mentioned by him in the agreement;
- the trust property that emerges on the basis of a trust property management agreement does not entail the transfer of the respective proprietary right.

On the whole, the concepts of trust property management and trust are two perspective concepts of property management with centuries-old history used by countries of Anglo-Saxon and continental legal families. They share many similar features, which sometimes results in their erroneous identification. Trust and trust property management have different legal natures, they create different legal regimes for the property and entities, but they are the concepts designed to solve similar problems in different legal systems.