

Trust in France

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France has signed the Hague Convention on the Law applicable to Trusts and on their Recognition (hereinafter referred to as "the Hague Trust Convention"), but this has not yet to be ratified. At present, there is no institution in French law similar to the Anglo-American trust. By the way, according to the Hague Trust Convention the foreign trusts are to be recognised in France, but it is impossible to initiate trusts in France. The international nature of business life requires to fill this gap and the French government has prepared a bill to introduce into France the equivalent of a trust. This bill was presented to the Assemblée Nationale on 20th Feb. 1992, but it is not yet examined by Parliament. The main aim of this report is to introduce this bill and additional one is to make a survey of FCP (Fonds Communs de Placement), whose function is similar to that of unit investment trust.

In this bill, the institution is referred to as "Fiducie", which is defined as a contract by which a settlor transfers all or part of his property or rights to a trustee who is obliged to act for the benefit of a beneficiary in accordance with the terms of the contract. Various applications of "Fiducie" are expected in France, so the character of this bill is that it does not have many mandatory provisions. But the French Parliament is not said to be so sympathetic with the "Freedom of Contract". So it is uncertain whether the Parliament passes the bill with slight changes.

Now let's proceed to FCP. At present it is governed by Law n. 88-1201 of december 1988. First of all, FCP is not corporate entity, but the investors are its co-owners. But Law n. 88-1201 of december 1988 provides that the provisions relative to co-owners in Code Civil are not applicable to FCP and that each investor is not responsible for the debts arising from its operation.