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**IL *TRUST* NEL DIRITTO COMMERCIALE:  
IL *VOTING TRUST*  
Abstract**

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The Trust is a legal institution of Anglo-Saxon matrix developed in the Common Law Countries. The origins of the Trust are very distant, at the times of "use", even before the Norman Conquest of 1066 AD.

It seemed that the concept of a trust goes back to the time of the Crusades. At the time, before leaving for the Holy Land, man-at-arms (the early settlers) conveyed all his property "in trust" with a faithful friend, which often was a churchman (a precursor of the current trustee), on the understanding that the ownership would be conveyed back on his return or, in case he would die in battle, conveyed to his descendants.

The English term Trust (literally, "to entrust", "fiduciary") precisely recalls the feeling on which is based the relationship between the settlor and the trustee.

The legal institution of trust, usually and daily used in English and in American marketplaces, plays today a significant role also in the civil law Countries, as consequence of the internationalisation of markets and the so-called globalization, which encourages a new form of law shopping, according to which everyone could choose the legal system that is likely to maximize the chances of his interests' protection.

The trust was introduced in our legal system by the ratification (Italian Law no. 364 of October 16, 1989) of the Hague Convention of July 01, 1985, on

the Law Applicable to Trusts and on their Recognition, entered into force on January 01, 1992.

The Hague Convention does not provide a single trust, but rather a plurality of trusts.

In fact, the Convention does not describe the trust, but it provides us with a concept.

Specifically, art. 2 of the Aja Convention states that the trust is the legal relationships created - inter vivos or on death - by a person, (the settlor). A trustee becomes the owner of the assets for the benefit of a beneficiary or for a specified purpose.

The constitutive act of the trust is a unilateral programmatic agreement.

In the constitutive act, the settlor establishes the content, the guidelines and how to manage the assets (trust fund).

The transfer of assets into a trust is done through endowment acts between the settlor and the trustee. The trustee accepts the assignment and the transfer of the ownership of the assets and the management of them for the benefit of the beneficiaries.

The effects deriving from the establishment of a trust are two: the transfer from the settlor to the trustee and the relation between the assets and their purposes.

In fact, the assets are entrusted to the trustee and they don't increase his wealth. The assets entrusted to the trustee constitute a separate fund *ex lege* and are not part of the trustee's wealth. The powers and the rights on the separate fund are carried out by the trustee, not in his own business, but in the exclusive business of the beneficiaries or in order to reach the specified purpose (purpose trust).

The trustee's powers are restricted to the management of the trust, according to the instructions provided in the trust document and the duties that are established by law.

In other words, the assets entrusted to the trustee constitute a separate fund, they are not part of the trustee's or of the settlor's wealth and, therefore, they are not attracted by their patrimonial regime or by their inheritance.

The ratification of the Convention granted the possibility to recognize in the Italian system the effects of the transfer of the assets to the trustee.

This transfer creates a special and separate patrimonial regime that represents an exception to the principle enshrined in art. 2740 of the code civil. However, the trust does not have to be used in a fraudulent way with respect to creditors. Otherwise, both revocative and simulative actions can be undertaken.

The first chapter of this dissertation is focused on the trust, underlining its characteristics and its differences with similar entities in our system. In

the second chapter, the application of the trust and the differences between assets intended for a specific business have been analyzed. Moreover, the Massachusetts trust has been analyzed and we have tried to understand if it is possible to be applied in our system. Finally, we have analyzed the trust and the regulation with regard to bankruptcy.

This research project has dealt with a specific application of the institute at hand: the voting trust. A voting trust is an arrangement between one or more shareholders and one or more trustees, whereby, for a specified period of time or until when a specific event happens, the shares in a company are transferred to a trustee.

The shareholders that transferred their shares keep a beneficial interest. They receive dividends from the trustee and the right that the shares will be retransferred to the beneficiaries when the trust expires. The trustee gives the shareholders the voting trust certificates. The shareholders transfer the share to the trustee. The trustee asks the company new shares that will be issued in his name and the enrollment with the shareholders register. Accordingly, the trustee has the legal title on shares, that will grant him the possibility to exercise the voting right according to the voting trust agreement.

In American law the trust voting is an instrument of the most simple and functional to acquire voting control of a corporation by a small group of

subjects. The thesis points out the differences between the trust and the pact on voting.

In the thesis also analyzes the copious American law in this area and then illustrated the possible application of the trust voting into Italian law.

The Italian market is characterized by the absence of competition and a rigidity of ownership. Therefore, in a market with such characteristics, use the institution of the trust for greater protection of minority shareholders rather than to stabilize the ownership structure, it is more appropriate.

The thesis has attempted to find inside of the Italian use of trust voting that could validly respond to problems of enforcement that some institutions already present in our system show.

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