

# Regulation of Argentine Trusts under the New Argentine Civil and Commercial Code

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**O**n August 1st, 2015, a new civil and commercial code (the “New Civil and Commercial Code”) will become effective in Argentina. The New Civil and Commercial Code introduces new regulations in connection with trusts in Argentina. The New Civil and Commercial Code amends the current Argentine Trust Law (Law No. 24,441, the “Trust Law”).

Trusts are regulated in Chapter 30 of the New Civil and Commercial Code, which incorporates suggestions of legal scholars and case law with respect to certain issues of interpretation and application of trust law.

The main new introductions of the New Civil and Commercial Code are the following:

## Property that may be held in trust:

Pursuant to Section 1670 of the New Civil and Commercial Code,

the entirety of an individual or company’s assets may be held in trust. However, future inheritances cannot be held in trust.

Moreover, guaranties cannot be assigned without the credit that the guarantees serve as such. In other words, interest in secured property cannot be assigned without their secured credit secured, and therefore, they cannot be held in trust. In this sense, Section 2186 of the New Civil and Commercial Code establishes that “...interest in secured property is accessory to the secured obligation. It is not transferable without the secured obligation, and is terminated with the secured obligation, except when established by law...”

## Duty to contract with an insurance company:

Section 1685 of the New Civil and Commercial Code establishes that “notwithstanding [the trustee’s]

responsibility, the trustee has a duty to purchase insurance against civil liability to cover damage caused by the trust property”. This will increase the cost of setting up and managing a trust. Furthermore, this Section provides that when the trustee fails to purchase insurance or when the insurance coverage proves unreasonable with respect to risk or amounts, the trustee is responsible under the terms of Section 1757. Therefore, in this case, the trustee is strictly liable for the damage caused by the risk or defect of the assets held in trust.

## The trustee may also be a trust beneficiary:

Although current Trust Law did not expressly establish a prohibition for the trustee to be a trust beneficiary, most scholars believed that this prohibition was implied by such Law. Now, under Section 1673 of the New Civil and Commercial Code, it is expressly established that the



trustee can also be a trust beneficiary; in which case, however, he/she must avoid any conflict of interests, and must act for the benefit of the other parties to the trust agreement. With regard to the remainder beneficiary (fideicomisario), however, Section 1672 of the NCCC provides that the trustee cannot be a remainder beneficiary.

Trust-backed obligations – Guarantee Trust (Fideicomiso en Garantía): Section 1680 of the New Civil and Commercial Code introduces definition of the guarantee trust or fideicomiso en garantía that allows for trust-backed obligations, establishing that if a specified obligation is backed by a trust, the trustee may apply the sums of money consti-

tuting the trust property, including sums of money coming from judicial or extrajudicial recovery of claims or rights in trusts, to the payment of the secured obligation.



#### About the Author

Javier is a partner in the BA firm Canosa Abogados. Javier's practice develops in corporate law issues, advising several national and foreign companies in various corporate matters, including investment vehicles, corporate management, directors' duties and responsibilities, audits, risks' detection and distribution, documents, policies and corporate contracts, and design and implementation of a suitable corporate form for each business.

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