The protagonists of the trust: the settlor

The settlor, along with the trustee, is the central and indispensable figure of the trust, the "engine" that triggers the use of the institution, and even before that, our potential client who must be convinced of the goodness of the solution we have studied for him.
When deciding to establish the trust, the settlor must establish a "program" to be entrusted to the trustee, to whose realization, simultaneously or with subsequent acts of endowment, he will allocate part of his own assets, thus obtaining the segregation of assets that is the effect, but cannot be the cause, of the establishment of the trust itself.
Anything can be transferred into the trust, from real estate to a sum of money, from a credit to a shareholding, from a work of art to a company, or even a legally protected expectation: in short, there are no limitations of any kind.
The aspect of transferring ownership to the trustee is the most delicate to overcome on a psychological level for the settlor, who loses ownership of the asset and who with the establishment of the trust and the segregation of assets should "exit the scene" in the management of the assets themselves.
The concept is very difficult to make our clients understand and "digest", but the protection that the trust provides to the segregated assets derives precisely from the fact that the assets and rights disposed of in trust are no longer owned by the settlor and as such are not accessible to his potential creditors.
In reality, the loss of possession of the asset, at least in our country, is only possible because the settlor can retain rights over the asset that, on the other hand, would not be recognized in other legal systems.

For example, in the case of real estate, the settlor can simply dispose of the bare ownership in trust, retaining the right of usufruct or habitation.
Within the framework of the establishment deed, the settlor must also identify the first person who will hold the office of trustee, as well as, if this figure is provided for, who will be called upon to perform the role of guardian of the trust.
The fact that with the establishment of the trust the settlor must "exit the scene" from the management of the assets disposed of in trust, entails as a consequence that he has no legal remedy or power against the trustee: the trustee is not indeed the fiduciary of the settlor, but rather the fiduciary of the relationship of trust that has been created with the establishment of the trust and with his appointment as trustee.

The existence of this relationship of trust means that the settlor can still give indications to the trustee, generally through the form of the so-called letters of wishes, but the trustee is not naturally bound to implement them, as his management must be autonomous and free from conditioning.

In the establishment deed, the settlor may also reserve certain powers over the trust fund: Article 2 of the Hague Convention states that this circumstance should not necessarily be considered incompatible with the existence of a trust, provided, however, that with the establishment of the trust, the assets pass under the control of the trustee. The powers that the settlor can reserve must therefore not conflict with the autonomy that must be recognized to the trustee in carrying out the task: if this autonomy is lacking, or is only apparent, then one of the "three certainties" that, according to Anglo-Saxon legal tradition, must characterize the establishment deed, namely the settlor's intention to establish a trust, is undermined.
Specifically, we talk about a sham trust when the settlor retains control over the trust fund and the establishment of the trust is aimed at creating a false impression in third parties, leading them to believe that the assets are under the control of the trustee when in fact the settlor continues to be the undisputed dominus.

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