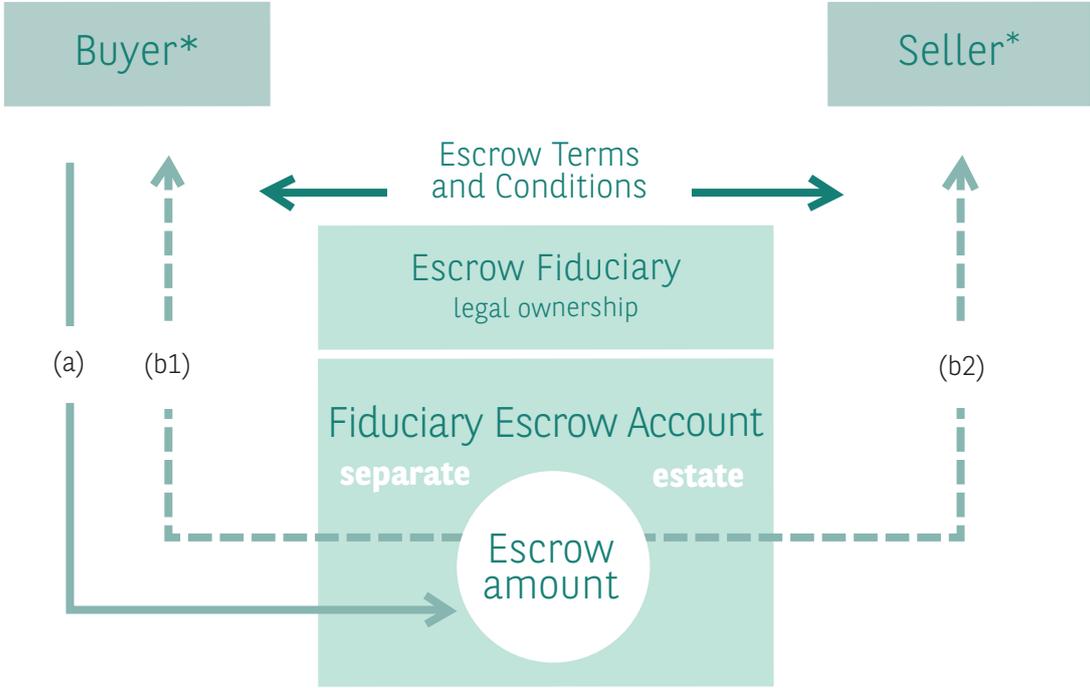




# The Escrow Agreement

If the only thing preventing you from completing a deal is a risk or uncertainty you have identified, then an Escrow Agreement with BNP Paribas may offer a solution. Future financial risks will be kept under control and you can go ahead with your transaction.

## Escrow Agreement



\* This example is based on a sale and purchase agreement. However, escrow can also be used in other transactions and situations.

(a) Start: deposit of escrow amount.

(b1) Settlement: release of escrow amount to buyer if the risk materialises.

(b2) Settlement: release of escrow amount to seller if the risk has not materialised by the end of the security period.



## Fiduciary Escrow Agreement

The Fiduciary Escrow Agreement (“FEA”) is a contract concluded by both parties to a transaction with BGL BNP Paribas acting as Escrow Fiduciary. It is based on the Luxembourg Act of 27 July 2003 on trusts and fiduciary agreements and on the Luxembourg Act of 5 August 2005 on financial collateral agreements.

Typically, a portion of the price in a transaction involving a predefined risk is not paid by the buyer directly to the seller but is temporarily transferred to a fiduciary bank account held by

BGL BNP Paribas. The amount set aside (“under escrow”) for the required period of time is a guarantee for both parties, enabling them to move forward with their transaction or business. If, at a later stage, a risk event occurs and thus reduces the value of the transaction or the acquired asset, the Escrow Fiduciary would be required under the FEA to return the escrow amount to the buyer as compensation for the loss of value. If the risk has not materialised by the end of the security period, the escrow amount will be released to the seller.

## Examples

- > Goods or services requiring a guarantee deposit with respect to any latent errors or defects
- > Acquisition of a company whose value, and thus the acquisition price, may be negatively impacted at a later stage by
  - the uncertain outcome of a law suit, arbitration or a dispute with the tax administration
  - the departure, prompted by the acquisition, of key staff or clients contributing to the value of the company
  - a pending patent not being granted to the acquired company
  - unexpected market fluctuations
  - unexpected new regulations.
- > The construction of real estate or the production of high-tech equipment requiring substantial upfront investment by the construction company or the manufacturer, who requires the client to make regular progress payments
- > A transaction or project involving several suppliers, some of which demand specific payment guarantees for their invoices
- > The purchase of a hotel that is famous for its beautiful view and swimming pool, where
  - the view may be at risk because of forthcoming local elections or a new mayor’s building projects
  - substantial additional investment in the swimming pool may become necessary because of new environmental legislation.
- > Technical equipment that may eventually prove to be in breach of upcoming technological or industrial standards
- > Any other transaction, whatever the size, in which the parties acknowledge that potential risks or uncertainties exist and agree on the amount to be escrowed in order to cover them.

In such cases, placing the escrow amount under an FEA with BGL BNP Paribas may be the best solution to break a deadlock and go ahead with the deal.

## What are the differences between a Fiduciary Escrow Agreement and a Bank Account Pledge Agreement (also called Blocked Account)?

### Under a Luxembourg Pledge Agreement between a buyer and a seller:

- > The buyer obtains a pledge on funds deposited in the seller's bank account as collateral. BGL BNP Paribas acts solely as third party custodian.
- > The buyer is entitled to enforce his rights to the pledged funds in accordance with the provisions agreed between the buyer and the seller, and duly notified to BGL BNP Paribas.
- > In accordance with the Pledge Agreement, the seller may, or may not, be entitled to transfer or make use of the pledged funds.
- > Third party creditors are unable to seize the pledged funds as long as they are held in the seller's bank account<sup>1</sup>.

### Under an FEA

- > The bank account in which the escrowed funds are held, is owned by BGL BNP Paribas as Escrow Fiduciary.
- > The Escrow Fiduciary is the only party entitled to transfer the funds and decide on their release, in accordance with the terms of the FEA.
- > The buyer and seller have no powers over this bank account.
- > Third party creditors are unable to seize the escrowed funds as long as they are held in the bank account under the FEA<sup>1</sup>.

## What are the advantages of a BNP Paribas Fiduciary Escrow Agreement, particularly in comparison with other types of escrow?

- > BGL BNP Paribas, as the Escrow Fiduciary holding the escrow amount, is a bank licensed by the Luxembourg financial regulator, CSSF, and a core company of the BNP Paribas group.
- > BGL BNP Paribas is an authorised fiduciary recognised by the Luxembourg Act of 27 July 2003 on fiduciary agreements.
- > Containment principle: the escrow amount is owned by the Escrow Fiduciary, which is obliged to release it to either of the parties to the contract, as agreed in the FEA. This ring-fences and guarantees the availability of the amount in order either to cover payment for the main transaction, or to compensate for the addressed risk if it materialises after the transaction has been concluded.
- > Any third-party creditor wishing to realise his claim on one of the transaction parties cannot block the settlement of the FEA by seizing the escrow funds as long as these are owned by the Escrow Fiduciary<sup>1</sup>. Such creditor cannot seize the funds until after they have been released to the party who is his debtor.
- > Under the FEA, the escrow amount constitutes a separate estate. No further guarantees other than the deposit of the escrow amount are required.
- > As a consequence, the FEA can usually be set up more quickly than other escrow agreements, and has a stronger legal effect.

1. Unless, under some jurisdictions and in some situations, the debtor has signed the FEA or Pledge Agreement with the purpose of frustrating the creditors' rights, or with any fraudulent purpose.

## Further information

### Feel free to contact us if you:

- > Need more details or additional information or documentation on the FEA
  - > Wish to address specific issues or need advice on an FEA, or on escrow in general
- > Want to discuss a specific transaction and/or risk and test the feasibility of covering the financial risks with an FEA
  - > Want a free quote or details about first steps to take



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