

Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition

The Trusts Convention specifies the law applicable to trusts and governs the recognition of trusts in the Contracting Parties. The trust is a unique legal institution originally developed in the common law tradition, where a person, the settlor, places assets under the control of a trustee in order to fulfil a pre-determined purpose or for the benefit of a beneficiary (Art. 2). The trustee is charged with, and accountable for, the administration of the trust. Bearing in mind the adoption of trusts and analogous institutions in different jurisdictions and the uniqueness of this common law institution, the Trusts Convention establishes provisions common to trusts and builds bridges between different legal traditions. By facilitating cross-border recognition of trusts, the Trusts Convention provides predictability and certainty to the beneficiaries of trusts and those involved in legal relationships created by trusts. It enhances party autonomy by giving priority to the law chosen by the settlor, and harmonises conflicting private international law provisions among the jurisdictions that recognise the institution of trusts.

Principal features of the Convention

Scope of Convention

The Convention does not define trusts in its text. Rather, it lists the characteristics of a trust and the type of legal relationships created by a trust. This reflects the intention of the drafters to ensure that the Convention would be relevant and applicable in an international context. However, the scope of the Convention is limited so that it applies only to trusts created voluntarily and evidenced in writing. Therefore, trusts created by operation of law do not fall within the scope of the Convention, and trusts created by judicial decision only fall within the scope of the Convention if the Contracting Party so declares. Preliminary issues relating to the validity of wills or of other acts in which assets are transferred to the trustee are also expressly excluded from the scope of the Convention. In other words, the Convention is applicable only to matters that concern the trust itself, and only to such matters that arise after the establishment of the trust.

Party autonomy and recognition

The main objective of the Trusts Convention is to determine the law applicable to trusts and to deal with the most critical issues concerning their recognition. With that objective in mind, the Trusts Convention gives priority to party autonomy in determining the law that governs a trust. Primarily, this law is the one chosen by the settlor, either expressly or implied in the terms of the relevant documents of formation of the trust. The Convention avoids the possibility of applying a law which does not provide for trusts. Thus, secondarily, the law applicable to a trust will be the law with which it is most closely connected. The Convention determines that the law applicable will also be the one governing the validity of the trusts, its construction, its administration, and its effects. By indicating the law applicable to a trust, the Trusts Convention solves the issue of their recognition. As long as the trust was created in accordance with the law specified in the Convention, it shall be recognised as a trust. The Convention in this respect provides a helpful tool for cross-border situations involving trusts, indicating the minimum criteria that allows for their recognition. These criteria concern the characteristics most inherent to a trust: that the trust property constitutes a separate fund, and that the trustee is legally responsible for such property.

Exclusions and flexibility for Contracting Parties to decide extent of application

The Convention provides great flexibility for Contracting Parties to decide the extent to which the Convention will apply to them. It excludes *renvoi* and provides for a public policy exception, exclusions that are common to other HCCH Conventions. Fiscal matters are also excluded from the scope of the Convention. Nevertheless, Contracting Parties can extend the provisions of the Convention to types of trusts not expressly included in its text. That is the case of trusts declared by judicial decisions, which can be included by the Contracting Parties at any time by the deposit of a declaration to that effect (Art. 20). Contracting Parties can also decide if the Convention applies to trusts that were created before the date on which, in relation to that Party, the Convention entered into force (Art. 22).

Additional resources

The [Trusts Section](#) of the HCCH website contains the latest information about the Trusts Convention. This includes:

- Text of the Convention
- Status Table of Contracting Parties
- Explanatory Report on the Trusts Convention