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Titre	**Convention Trust de 1985 : Rapport et publication proposée**
Document	**Doc. prél. No 12B de janvier 2026**
Auteur	Bureau Permanent (BP) Groupe de travail sur l'article 2 de la Convention Trust de 1985 Présidente du Groupe de travail
Point de l'ordre du jour	Point III.3.b
Mandat(s)	C&D Nos 70 à 72 du CAGP de 2025
Objectif	Rendre compte des deux premières réunions du Groupe de travail et obtenir l'approbation des Membres de la HCCH pour la publication proposée
Mesures à prendre	Pour décision ☒ Pour approbation ☒ Pour discussion ☐ Pour action / achèvement ☐ Pour information ☐
Annexes	Annexe I : Rapport de la première réunion (*en anglais uniquement*) Annexe II : Liste des participants à la première réunion Annexe III : Aide-mémoire de la deuxième réunion établi par la Présidente (*en anglais uniquement*) Annexe IV : Liste des participants à la deuxième réunion Annexe V : Note sur l'application et l'interprétation de l'article 2 de la *Convention du premier juillet 1985 relative à la loi applicable au trust et à sa reconnaissance* ainsi que sur les institutions analogues au trust, y compris ses annexes A et B
Document(s) connexe(s)	- Doc. prél. No 13B de janvier 2025 – Convention Trust de 1985 : Rapport et publication proposée - Doc. prél. No 15B de février 2024 – Convention Trust de 1985 : Actualisation

	- Doc. prél. No 10A de février 2023 – Convention Titres de 2006, Convention Trust de 1985, Principes sur le choix de la loi de 2015 : Actualisation - Doc. prél. No 3A de janvier 2023 – Économie numérique et Conférence de la HCCH sur le droit commercial, numérique et financier transfrontière (Conférence CODIFI) : Rapport - Doc. prél. No 10C de décembre 2022 – Convention Trust de 1985 : Actualisations et travaux futurs éventuels - Doc. prél. No 14 de novembre 2021 – Convention HCCH Trust de 1985 : Actualisations et travaux futurs éventuels - Doc. prél. No 15 de décembre 2020 – La Convention HCCH Trust de 1985 : Actualisations et travaux futurs éventuels

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Convention Trust de 1985 : Rapport et publication proposée

I. Introduction

1 Conformément aux Conclusions et Décisions (C&D) Nos 70 à 72 du Conseil sur les affaires générales et la politique (CAGP) de 2025[1], un Groupe de travail a été établi en mars 2025 en vue d'examiner et de compléter l'étude sur l'application et l'interprétation de l'article 2 de la Convention Trust de 1985 ainsi que sur les institutions analogues au trust. Le Groupe de travail s'est réuni en ligne à deux reprises en 2025, en mai et en octobre.

2 Du 6 au 7 mai 2025, le Groupe de travail a tenu sa première réunion, à laquelle ont participé 26 délégués et autres experts, représentant 11 Membres de la HCCH et quatre Observateurs, ainsi que des membres du Bureau Permanent (BP). À cette occasion, le Groupe de travail a examiné l'avant-projet de publication proposée établi par le BP en amont de la réunion et a délibéré sur son objectif, son titre, sa structure, son contenu et sa forme. Il a été convenu que la publication serait une « Note » et qu'elle serait composée d'un document principal et de deux annexes. Le rapport de la première réunion et la liste des participants figurent respectivement à l'annexe I et à l'annexe II de ce Document préliminaire.

3 Au cours de la période intersessions allant de mai à octobre 2025, les membres du Groupe de travail ont fourni des contributions d'experts écrites afin de faciliter la préparation de la publication proposée. L'avant-projet de Note a été revu par le BP sur la base des contributions reçues dans la période intersessions et a été transmis au Groupe de travail en amont de sa deuxième réunion.

4 Du 6 au 7 octobre 2025, le Groupe de travail a tenu sa deuxième réunion, à laquelle ont participé 26 délégués et autres experts, représentant huit Membres de la HCCH et cinq Observateurs, ainsi que des membres du Bureau Permanent (BP). À cette occasion, le Groupe de travail a nommé par consensus le Dr Roberta Nocella, déléguée de l'Italie, à sa présidence. Le Groupe de travail a examiné et analysé, paragraphe par paragraphe, le deuxième avant-projet de la « Note sur l'application et l'interprétation de l'article 2 de la *Convention du premier juillet 1985 relative à la loi applicable au trust et à sa reconnaissance* ainsi que sur les institutions analogues au trust » (projet de Note), y compris ses annexes A et B. L'aide-mémoire de la deuxième réunion établi par la Présidente et la liste des participants figurent respectivement aux annexes III et IV de ce Document préliminaire.

5 Compte tenu des débats et des contributions du Groupe de travail pendant ses deux réunions et tout au long de la période intersessions, le BP a établi le projet de Note et ses annexes et les a transmis au Groupe de travail pour commentaires. N'ayant reçu aucun commentaire du Groupe de travail, le BP a diffusé le projet de Note et ses annexes pour commentaires aux Membres de la HCCH le 11 novembre 2025. Conformément à la C&D No 71 du CAGP de 2025, un délai de deux mois a été accordé aux Membres pour envoyer leurs commentaires.

6 Au 12 janvier 2026, date limite pour l'envoi des commentaires, le BP n'avait reçu que des commentaires mineurs ne portant pas sur le fond, émanant de deux Membres de la HCCH sur le projet de Note et ses annexes. Le BP a révisé et finalisé le projet de Note et ses annexes sur la base de ces commentaires. La version définitive du document figure à l'annexe V de ce Document préliminaire.

7 Le Groupe de travail invite le CAGP à prendre acte du Rapport et de l'aide-mémoire figurant aux annexes I et III de ce Document préliminaire.

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1 « Conclusions et Décisions du Conseil sur les affaires générales et la politique de la HCCH (du 4 au 7 mars 2025) », C&D No 71 (disponible sur le site web de la HCCH (www.hcch.net) sous les rubriques « Gouvernance » => « Conseil sur les affaires générales et la politique » et « Archives (2000-2025) »).

8 Au vu de l'absence d'objections ou de commentaires sur le fond des Membres sur le projet de Note et ses annexes transmis dans le délai de deux mois prévu par la C&D No 71 du CAGP de 2025, le Groupe de travail recommande :

- que le CAGP examine la version définitive de la Note sur l'application et l'interprétation de l'article 2 de la *Convention du premier juillet 1985 relative à la loi applicable au trust et à sa reconnaissance* ainsi que sur les institutions analogues au trust, y compris ses annexes A et B, figurant à l'annexe V de ce Document préliminaire et approuve sa publication.

II. Proposition soumise au CAGP

9 Compte tenu de ce qui précède, le BP soumet la C&D suivante à l'attention du CAGP :

- Le CAGP a pris note du rapport de la première réunion et de l'aide-mémoire de la Présidente sur la deuxième réunion du Groupe de travail.
- Le CAGP a approuvé la version définitive de la Note sur l'application et l'interprétation de l'article 2 de la *Convention du premier juillet 1985 relative à la loi applicable au trust et à sa reconnaissance* ainsi que sur les institutions analogues au trust, y compris ses annexes A et B, et a chargé le BP d'organiser sa publication.

ANNEXES

Annexe I

WORKING GROUP ON TRUSTS

REPORT OF THE FIRST
WORKING MEETING

6-8 MAY 2025

Connecter Protéger Coopérer Depuis 1893
Connecting Protecting Cooperating Since 1893
Conectando Protegiendo Cooperando Desde 1893

HCCH Working Group on Trusts: Report of the First Meeting (6-8 May 2025)

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HCCH Working Group on Trusts: Report of the First Meeting (6-8 May 2025)

I. Introduction

1 From 6 to 8 May 2025, the Working Group on Trusts (WG on Trusts) held its first meeting online via the Teams platform. 26 delegates and other experts, representing 11 HCCH Members and four Observers, participated in the meeting.[1]

2 Prior to the meeting, the Permanent Bureau (PB) prepared and circulated the document *Preliminary Draft: Report on the Study on the Application and Interpretation of Article 2 of the Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition and on the Institutions Analogous to Trusts* (hereinafter "Note" or "draft Note", see para. 7), accompanied by the supplementary document *List of Institutions of Trusts or Potentially Analogous to Trusts by Jurisdiction*, for comments and input from the WG on Trusts. This meeting summarises the general points of discussion raised at the meeting. Along with this meeting report, the PB will iterate the draft Note based on feedback received from participants of the WG on Trusts.

II. Differences between English and French versions of Article 2

3 Experts considered Section III of the draft Note and the possible divergences in interpretation of Article 2 between the English and French Versions of the Trusts Convention, particularly regarding the term "*patrimoine*". The WG noted that the Convention's usage of *patrimoine* was correct, but that confusion may arise in practice based on the different understandings of related fiduciary duties and liabilities in different jurisdictions. Experts proposed edits to paragraphs 23 and 24: (1) to clarify that, broadly, there is no single definitive interpretation of patrimony or *patrimoine*, including within common law jurisdictions; (2) to provide examples of systems that may face challenges with respect to this terminology; and (3) to discuss specific types of patrimony, such as fiduciary patrimony and trust patrimony. The WG agreed to provide the PB with sources that would help clarify the issues surrounding the use of the terms "patrimony" or "*patrimoine*".

III. Scope of publication, review and comments

4 Experts discussed the different categories of institutions that have been raised in the draft Note as potentially analogous to trusts. In general, experts noted that while certain institutions appear to be excluded from the scope of the Trusts Convention, some may have been created domestically by legislation with the intent to mirror the common law trust and, therefore, to fit within the scope of Article 2 of the Convention. As a guiding principle, the WG referred to the Explanatory Report's distinction between structurally analogous and functionally analogous institutions.[2] The WG noted that it would be necessary to consider the specific context of each institution.

5 The WG provided the following institutions:

a. Foundations: The WG noted that differences exist between different types of foundations; there was no consensus in the WG to include foundations for consideration as an analogous institution. The WG nonetheless agreed to discuss the matter of foundations in the publication,

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1 A list of participants can be found on the Secure Portal of the HCCH website at www.hcch.net under "Working / Experts Groups" then "Working Group on Trusts".

2 Explanatory Report, p. 372, para. 13. "The question of whether analogous institutions existing in certain civil law countries also meet the criteria of the Convention will be more difficult to resolve. It is specifically noted that, it will be necessary to distinguish those institutions which are structurally analogous to the trust, and which fall under the Convention, from those which are only functionally analogous and which are not covered."

including the matter of how different foundations may be distinguished from each other. Some members of the WG indicated that certain foundations may have been created with the legislative purpose to fit within the scope of Article 2.

b. Contractual Institutions and Relationships: Some members of the WG noted that exclusively contractual arrangements should not be considered as analogous to a trust. Others noted that some of the identified institutions, although created entirely by contract, were designed specifically with the purpose of fitting within Article 2 of the Convention. The WG had no objection to a suggestion by the PB to include institutions that were expressly created to fit within the scope of Article 2 of the Convention. As with the matter of foundations, the WG expressed support for including a discussion of these institutions in the publication.

c. The *waqf*: The PB recalled to the WG that, at the meeting of CGAP in March 2025, concerns were expressed about the inclusion of religious institutions. The PB also noted that many of the jurisdictions that have the *waqf* are not represented in the WG. Delegates expressed that many systems have legal and religious traditions intertwined, and that concerns here would be alleviated by applying the same legal analysis as that applied to other institutions—in this context the *waqf* does not appear to be analogous to a trust. As with the other institutions, delegates did not object to the inclusion of a discussion on the *waqf* in the publication. Delegates requested that the PB reach out to HCCH Members that are unrepresented on the WG that have the *waqf* in their jurisdictions, as they may contribute constructively to the discussion.

6 The WG thus agreed to retain discussion of all the institutions listed above, foundations, contractual institutions and the *waqf*, in the publication.

IV. Title, format, language and structure

7 The WG turned to a discussion on the title of the document to be published. Several delegates expressed their preference of describing the document as a "Note" as opposed to a practical handbook or a guide, as the term "Note" is more neutral. The WG tentatively agreed to the title *"Note on the Application and Interpretation of Article 2 of the Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition and on the Institutions Analogous to Trusts"*, noting that the final title of the publication could be decided at the second meeting.

8 As to the possible alternative formats of publication, the PB described the possibilities of delivering the Note as both a paper and electronic publication, and as an *app* which allows for quick comparison of different institutions of different jurisdictions. The WG asked to postpone the decision on the possibility of an *app*.

9 The WG decided on the following procedure for translation of local institutions and legislation in Part 2. In each of the official language versions of the Note (English, French, Spanish), the publication will use the language of the publication for all names and legislative sources from other jurisdictions—relying on official translations where available, but using PB translation capabilities or other assistance where official translations are otherwise unavailable. Exceptionally, the original names of the institutions will not be translated unless an official translation is available (for example, the terms "fiducie" and "fideicomiso" may be used in the English publication, where no official translation exists in the jurisdictions that have these institutions). Footnotes will be included to indicate the source of the translation, indicating whether the translation is official or unofficial, and where necessary, the original language text will be included.

10 Structure: The EG agreed that the sections should be revised and reordered as below:

Part I: Introduction (current heading I in the draft Note)

Part II: Background of the Study (current heading IV in the draft Note)

Part III: [Outline of the Convention (current heading II in the draft Note)

Part IV: Trusts and Analogous Institutions (combining the draft Note's heading III; Part 1; and the introductory paragraphs that appear at the beginning of Part 2; and including new information and nuanced analysis, such as commentary about the criteria and features of the main categories of institutions).

11 The WG considered the inclusion of a new section on how to use the Note and the appropriate disclaimers. The WG decided to proceed with the following additions:

a) reiterate the scope of Article 2 and other provisions relating to the scope of the Convention, noting the objective of the Convention to include institutions that are structurally analogous to a trust as opposed to those which are merely functionally analogous;

b) include a disclaimer acknowledging that the conclusions provided in the tables of Part 2 are subject to differing views, and that the institutions listed "may be analogous" to trusts rather than are conclusively analogous to trusts;

c) state that not all jurisdictions in the table are represented in the WG and therefore the information may not have been verified by representatives of the jurisdiction being reported;

d) state that the information in Part 2 and Part 3 is not intended to be exhaustive.

12 Members of the WG offered to submit information on their respective jurisdictions for inclusion in Parts 2 and 3 of the Note. Some members questioned the value of Part 3 but decided to defer expressing their views until that part is more fully developed.

V. Conclusion

13 The next meeting of the WG on Trusts is scheduled to take place online via the Teams platform on 6-7 October 2025. Noting that the work of this WG is subject to available resources, the PB proposed the following schedule for the remainder of the year, with flexibility taking into account the resources available at the PB:

Task	Deadline
Input from WG during intersessional work period	23 May 2025
PB finalisation of iterated draft for circulation to HCCH Members (*Note: Per CGAP mandate, HCCH Members are to have two calendar months for comments.)	ca. 11 July 2025
Deadline for comments from HCCH Members on iterated draft	12 September 2025
PB circulation of revised iterated draft to WG	Week of 22 September 2025

Second meeting (will include para. by para. discussion at WG for approval of draft)	6-7 October 2025
Circulation to Members for final approval (by way of Prel. Doc.)	November / December 2025
CGAP 2026	March 2026

Annexe II

List of participants - HCCH Working Group on on the Study relating to Institutions Analogous to Trusts

First meeting - 6-8 May 2025

Family name(s)	Name(s)	State or Organisation	Position	Status of attendance (online/on site)
Warren	Brody	Australia	A/g Director, Private International and Commercial Law, Attorney-General's Department	Online
France	Michael	Australia	A/g Senior Legal Officer, Private International and Commercial Law, Attorney-General's Department	Online
Simard	Valérie	Canada	Counsel, Constitutional, Administrative and International Law Section, Justice Canada	Online
Blakeney	Christopher	Canada	Counsel, Constitutional, Administrative and International Law Section, Justice Canada	Online
Morissette	Raphaël	Canada	Avocat, Direction des affaires juridiques, Ministère des Finances du Québec	Online
Cob Briceño	Sofía	Costa Rica	Minister Counsellor of the Embassy fo Costa Rica	Online
Bartodziej	Silvia	Germany	Head of Division, Division for Civil Law - General Questions, Federal Ministry of Justice	Online
Wurm	Christoph	Germany	Legal Advisor in the Division for Private International Law, Federal Ministry of Justice	Online
Nocella	Roberta	Italy	Expert for the Ministry of Justice of Italy	Online
Saukuma	Agnese	Latvia	Financial Market Policy Department, Ministry of Finance of the Republic of Latvia	Online
Sánchez Cordero Dávila	Jorge	Mexico	Member of the External Advisors Commission to the Mexican Ministry of Foreign Affairs on matters of Private International Law	Online
Boutin	Gilberto	Panama	Member of the Association of Private International Law and Comparative Law of Panama	Online

Mayer	Thomas	Switzerland	Legal counsel, Federal Office of Justice/Private international law unit	Online
Korol	Mykhailo	Ukraine	the Strategic Development Department of the National Securities and Stock Market Commission (NSSMC)	Online
Taranenko	Kateryna	Ukraine	Treaties on Legal Assistance of International Legal Assistance Subdepartment of the International Law and Representation	Online
Farr	Peter	United Kingdom	Ministry of Justice	Online
Rowden	Matthew	United Kingdom	Senior Policy Adviser, Private International LawInternational, Rights ar	Online
Fresnedo de Aguirre	Cecilia	ASADIP	ASADIP member	Online
Villegas	Candela	ASADIP	ASADIP member	Online
Pasqualis	Paolo	CNUE	Notary	Online
Górniak	Kacper	CNUE	Notary and assistant professor in the Civil Law Department at the Faculty of Law, Jagiellonian University in Cracow	Online
Cuniberti	Gilles	EAPIL	Professor at the University of Luxembourg	Online
Contaldi	Gianluca	EAPIL	Professor at the University of Macerata	Online
Franzina	Pietro	EAPIL	Professor at the University of the Sacred Heart of Milan	Online
Panico	Paolo	STEP	Director at Private Trustees SA	Online
Noseda	Filippo	STEP	Partner at Mischon de Reya LLP	Online
Goh Escolar	Gérardine	HCCH	Deputy Secretary General of the HCCH	In person
Salinas Peixoto	Raquel	HCCH	Legal Officer	In person

Cheng	Harry	HCCH	Legal Officer	In person
Chiang	Melinda	HCCH	Secondee (Hong Kong SAR)	In person
Villanueva	Samantha	HCCH	Intern	In person

Annexe III

WORKING GROUP ON TRUSTS

AIDE-MÉMOIRE OF THE SECOND MEETING

OCTOBER 2025

Aide-mémoire of the second meeting of the Working Group on Trusts prepared by the Chair

I. Election of the Chair

1 The Permanent Bureau (PB) opened the meeting. The Working Group on Trusts (WG), by consensus, appointed as its Chair Dr. Roberta Nocella (Ministry of Justice, Italy), a delegate representing Italy.

2 The WG adopted the draft Agenda.

II. Discussion of the Text of the Study

A. General

3 The WG acknowledged the submissions made by the various WG members in the intersessional period. The WG commenced discussion of the iterated draft Note on the Application and Interpretation of Article 2 of the *Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition* and on the Institutions Analogous to Trusts (draft Note), which had been edited to take in these submissions.

4 The WG discussed the terminology used in the draft Note and agreed to use precise and neutral terminology, focusing on the terms used in the Convention. The WG agreed on several terms to be used, for example, replacing "divergences in interpretation" with "interpretation", and requested that the PB update the draft Note accordingly to ensure the consistent use of agreed terminology.

5 The WG then commenced on a paragraph-by-paragraph discussion of the draft Note.

B. Sections I ("Introduction") and II ("Background of the Study (2020-2025)")

6 The WG agreed to take on all the suggested edits received in the intersessional period and update the sections as indicated in the draft Note.

C. Section III ("Outline of the Trusts Convention")

7 There were no comments to the text of Section III in the draft Note.

D. Section IV ("Interpretation of Article 2 of the Trusts Convention")

8 The WG agreed to replace existing text with a more concise version proposed by the delegation of Canada. The WG agreed that the term "*patrimoine*" should appear in quotation marks where used.

E. Section V – Institutions Meeting the Trusts Convention's Criteria

9 The WG agreed that the draft Note should include a discussion of common law trusts, and that examples of common law trusts, in particular from jurisdictions of Contracting Parties to the Trusts Convention, should be included in Annex A.

10 The WG agreed that the heading of the section will be changed to "Institutions Meeting the Criteria in Article 2 of the Trusts Convention."

11 The WG agreed that an introductory paragraph on trusts in equity should be included in the draft Note, with its specific placement (whether at the beginning of Section V, or elsewhere) to be determined after the draft is complete. Text for this introductory paragraph will be contributed by the UK, in coordination with Australia and Canada. Australia, Canada and the UK will also provide to the PB information on the institutions within their respective legal systems that would correspond to common law trusts. The PB will update Annex A of the draft Note accordingly.

12 The WG discussed and agreed to accept the changes as suggested in intersessional submissions to the first seven paragraphs of Section V before the first subheading on "Contractual arrangements".

13 The WG agreed to replace the term "analogous institutions" or "institutions analogous to trusts" throughout the text of the draft with "institutions meeting the criteria in Article 2" where appropriate.

14 The WG then turned to the discussion of the three subsections on contractual arrangements, foundations, and *waqfs*.

15 On contractual arrangements, the WG discussed whether to specify that this subsection referred to "fiduciary contractual arrangements". After discussion, the WG decided to keep the heading as is. The delegate of Germany indicated a preference for text under this subsection to refer to trusts having the characteristic of being established by the unilateral act of the settlor. After much discussion however, the WG decided to replace the text under the heading "contractual arrangements" with new text suggested by the delegate of Canada, which notes that contractual arrangements would have to fulfil the characteristics specified in Article 2 of the Convention to fall within its scope.

16 The WG then turned to discuss the subsection on "Foundations". The WG agreed to retain the subsection on "Foundations", incorporating Canada's proposed paragraph and retaining only the current paragraph 53, with all other paragraphs deleted. The WG agreed that a new subsection on "Institutions with Legal Personality" should be added above the subsection on "Foundations". The WG moreover agreed that the paragraphs under the subsection on "Foundations" should refer to the previous paragraph, in order to clarify that foundations with legal personality do not meet the criteria in Article 2 of the Convention. The WG also agreed on other minor edits to the text of the subsection on "Foundations".

17 Turning to the subsection on "*Waqf*s", the WG agreed that a discussion on *waqfs* should be retained in the draft Note, and also acknowledged that, in some jurisdictions, *waqfs* may be structured to meet the criteria of Article 2.

F. Section VI – Legislation and Cases on the Application and Interpretation of Article 2 of the Trusts Convention

18 The WG discussed and accepted some editorial changes to the text in this section.

19 The WG requested that the PB review the text of the draft Note to ensure that all terminology agreed upon by the WG is used consistently throughout the draft Note.

G. Annex A

20 In accordance with the decision in paragraph 9 above, examples of common law trusts, in particular from jurisdictions of Contracting Parties to the Trusts Convention, will be included in Annex A.

21 The WG discussed and accepted the edits as suggested by the delegates of Canada to the chapeau paragraphs of Annex A.

22 The WG agreed that the first column of the fourth row of each table in Annex A should read, "Whether the institution may potentially meet the criteria of Article 2".

23 The WG reviewed the tables in Annex A and agreed on each of the classifications of the institutions listed.

a. The PB confirmed that it had reviewed the translation of the text in the entry for Brazil and revised the translation.

b. The WG also agreed to use the original term from the originating legislation/case law of the respective jurisdictions in the tables in Annex A. For example, for Romania's entry, the WG agreed that the term "fiducia" should be retained in the translation of the legislation and that the term should not be translated from "fiducia" to "trust". The WG requested that the PB review Annex A in its entirety to ensure that all such terms included in the tables of Annex A are retained in their original language even if the rest of the legislation is translated into English.

H. Annex B

24 The WG agreed to retain the content in Annex B to the draft Note and to separate the text out into a separate document, which would be maintained by the PB on a separate webpage on the Trusts section of the HCCH website. The WG agreed that HCCH Members or Contracting Parties to the Convention may then send the PB updates and developments to their legislation and case law as and when these updates or developments occur.

III. Next Steps

25 The WG agreed that the PB would take in all changes as discussed at this second meeting, and iterate the draft Note as agreed, including reviewing the text to ensure consistent use of terminology and *toilettage*. The PB would also incorporate the paragraph on trusts in equity, to be drafted by the UK in coordination with Australia and Canada, into the next version of the draft Note.

26 The next version of the draft Note will be circulated to the WG via the Secure Portal of the HCCH website, and WG members will have two weeks to review the text. WG members may submit comments in writing via email to secretariat@hcch.net. All comments submitted by WG members will also be uploaded to the Secure Portal. Given that the text of the draft Note had been discussed paragraph by paragraph at this second meeting, the WG agreed that comments made would be limited to the accuracy of the information provided in the draft Note.

27 The WG agreed that the PB would then incorporate any written comments by WG members to the draft Note. The PB would then circulate the draft Note to HCCH Members for their comments.

28 In accordance with Conclusion and Decision No. 71 of CGAP 2025, HCCH Members would be provided with a two-month period for comments, after which their comments will be made available to the WG. The draft would then be further iterated and finalised by the WG. The finalised draft would be re-circulated to HCCH Members for approval. In the absence of any objection within one

month, the finalised draft would be taken to be approved and be published. In the case of one or more objections, the PB would immediately notify HCCH Members of any objection and the document would be submitted to CGAP 2026.

IV. Conclusions: Recommendations from the WG

29 The WG invites CGAP to take note of the report and *Aide-mémoire* contained in the Annexes of the Preliminary Document that will be submitted to CGAP.

30 Depending on whether the text of the draft Note is approved by HCCH Members in accordance with the procedure mandated by CGAP 2025, the WG recommends as follows:

- In the case that the draft Note is approved by HCCH Members: that CGAP note the approval of the draft Note on the study on the application and interpretation of Article 2 of the 1985 Trusts Convention, and mandate the PB to make plans for its publication.
- In the case that the draft Note is not approved by HCCH Members: that CGAP approve the continuation of the WG's work, subject to available resources, including further meetings online as well as intersessional work, in 2026 prior to CGAP's meeting in 2027, during which the text of the draft Note will continue to be discussed and iterated with a view towards its finalisation. Members would be provided with a two-month period for comments, after which the draft would be iterated and finalised by the WG. The finalised draft would be re-circulated to Members for approval. In the absence of any objection within one month, the finalised draft would be taken to be approved and be published. In the case of one or more objections, the PB would immediately notify Members of any objection and the document would be submitted to CGAP 2027.

Annexe IV

List of participants - HCCH Working Group on on the Study relating to Institutions Analogous to Trusts

Second meeting - 6-7 October 2025

Family name(s)	Name(s)	State or Organisation	Position	Status of attendance (online/on site)
Warren	Brody	Australia	A/g Director, Private International and Commercial Law, Attorney-General's Department	Online
France	Michael	Australia	A/g Senior Legal Officer, Private International and Commercial Law, Attorney-General's Department	Online
Blakeney	Christopher	Canada	Counsel, Constitutional, Administrative and International Law Section, Justice Canada	Online
Morissette	Raphaël	Canada	Avocat, Direction des affaires juridiques, Ministère des Finances du Québec	Online
Simard	Valérie	Canada	Counsel, Constitutional, Administrative and International Law Section, Justice Canada	Online
Bartodziej	Silvia	Germany	Head of Division, Division for Civil Law - General Questions, Federal Ministry of Justice	Online
Nocella	Roberta	Italy	Expert for the Ministry of Justice of Italy	Online
Sánchez Mejorada y Velasco	Carlos	Mexico	Miembro de la Comisión de Asesores Externos de la SRE en materia de Derecho Internacional Privado	Online
Sánchez Cordero Dávila	Jorge	Mexico	Miembro de la Comisión de Asesores Externos de la SRE en materia de Derecho Internacional Privado	Online
Mayer	Thomas	Switzerland	Legal Counsel, Federal Office of Justice/Private International Law Unit	Online
Taranenko	Kateryna	Ukraine	Senior specialist	Online
Rowden	Matthew	United Kingdom	Senior Policy Adviser, Private International LawInternational, Rights and C	Online

Farr	Peter	United Kingdom	Ministry of Justice	Online
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Paparakis	Michael	United Kingdom	Scottish Government	Online
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Henczel	Natalia	EAPIL		Online
Pichonnaz	Pascal	ELI	Past ELI President; Professor, University of Fribourg	Online
Noseda	Filippo	STEP	Partner at Mischon de Reya LLP	Online
Panico	Paolo	STEP	Director at Private Trustees SA	Online
Goh Escolar	Gérardine	HCCH	Deputy Secretary General of the HCCH	In person
Salinas Peixoto	Raquel	HCCH	Legal Officer	In person
Cheng	Harry	HCCH	Legal Officer	In person

Ho	Wendy	HCCH	Secondee (Hong Kong SAR)	In person
Kang	Jisung	HCCH	Secondee (Korea)	In person
Ahemai	Dilidaer	HCCH	Intern	In person
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Annexe V

Note sur l'application et l'interprétation de l'article 2 de la *Convention du premier juillet 1985 relative à la loi applicable au trust et à sa reconnaissance* ainsi que sur les institutions analogues au trust

I. Introduction

1 La *Convention du premier juillet 1985 relative à la loi applicable au trust et à sa reconnaissance* (« Convention Trust ») a été conclue le premier juillet 1985 ; elle est entrée en vigueur le premier janvier 1992[1].

2 De 2020 à 2025, la HCCH a conduit une étude sur l'application et l'interprétation de l'article 2 de la Convention Trust ainsi que sur les institutions pouvant être considérées comme analogues au trust aux fins de la Convention. Les résultats de cette étude sont présentés ici afin de faire mieux connaître la Convention à l'échelle mondiale, de développer le recours aux institutions qui peuvent être considérées comme analogues au trust et de mettre en lumière le potentiel qu'a la Convention de renforcer la sécurité juridique en matière de reconnaissance des trusts et des institutions analogues.

3 Cette Note contient des conseils pratiques pour l'application de la Convention Trust. Elle adopte une approche comparative du traitement des trusts et des institutions pouvant être assimilées au trust dans différents systèmes de droit – la *common law*, le droit civil et le droit islamique. Elle examine les trois domaines suivants :

i. l'interprétation des versions anglaise et française de l'article 2 de la Convention (voir section IV) ;

ii. les institutions pouvant répondre aux critères de l'article 2 de la Convention dans différents systèmes juridiques (voir section V) ;

iii. la législation et la jurisprudence concernant l'application et l'interprétation de la Convention ainsi que la reconnaissance transfrontière des trusts et des institutions analogues au trust (voir section VI).

4 Cette Note entend servir de référence aux praticiens du droit ayant à traiter des questions relatives à l'application et à l'interprétation de la Convention Trust et, en particulier, la question de savoir si une institution peut répondre aux critères de l'article 2 de la Convention. Les informations qu'elle contient ne constituent pas des conseils juridiques du Bureau Permanent (BP) de la HCCH. Les utilisateurs de cette Note doivent solliciter l'avis de praticiens agréés de l'État concerné.

II. Contexte de l'étude (2020-2025)

5 Les travaux sur la Convention Trust qui ont abouti à cette Note ont débuté en mars 2020, date à laquelle le Conseil sur les affaires générales et la politique (CAGP) de la HCCH a invité le Bureau Permanent à « entamer des recherches et des préparatifs en relation avec le questionnaire sur le droit commercial et financier et l'éventuelle conférence internationale qui se tiendra fin 2022, coïncidant avec le 30e anniversaire de l'entrée en vigueur de la Convention Trust »[2].

6 En 2021, un rapport décrivant les obstacles à une adoption plus large de la Convention Trust a été soumis au CAGP. Ce rapport relevait « la possibilité d'une incompréhension ou d'une incompatibilité

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1 Pour la liste à jour des Parties contractantes à la Convention Trust et les dates respectives d'entrée en vigueur, voir HCCH | #30 - État présent.

2 « Conclusions et Décisions du Conseil sur les affaires générales et la politique de la Conférence (3-6 mars) », C&D No 39, disponibles sur le site web de la HCCH à l'adresse www.hcch.net (sous les rubriques « Gouvernance » => « Conseil sur les affaires générales et la politique » => « Archives (2000-2025) »).

persistante entre les concepts de droit civil et de *common law* relatifs aux trusts et autres institutions analogues » et indiquait qu'« [u]ne enquête pourrait être nécessaire pour analyser dans quelle mesure ces questions interfèrent avec le champ d'application et la mise en œuvre de la Convention »[3].

7 Le Document préliminaire No 14 de novembre 2021[4], présenté au CAGP pour sa réunion de 2022, notait l'importance du concept d'« institutions analogues au trust ». Un tableau annexé à ce Document préliminaire présentait les informations émanant d'États représentant diverses traditions juridiques en privilégiant plus particulièrement les États de droit civil ayant adopté le trust ou ayant des institutions analogues au trust[5]. Les informations réunies dans cette annexe ont servi de base à l'étude conduite les années suivantes.

8 Les questions relatives à la Convention Trust ont été abordées lors de la Conférence de la HCCH sur le droit commercial, numérique et financier transfrontière (Conférence CODIFI) de 2022, organisée en ligne du 12 au 16 septembre 2022, dans un volet du programme dédié à la Convention Trust qui comprenait quatre sessions consacrées à cet instrument[6]. Lors de la Conférence CODIFI, des experts ont constaté une augmentation récente des initiatives dans des États tels que la République populaire de Chine, la Corée, la Hongrie, Israël, le Japon, la Suisse et divers États d'Amérique latine, qui ont mis au point des institutions analogues au trust après la conclusion de la Convention. Les experts ont relevé que des échanges avec ces États permettraient une meilleure compréhension des trusts et des institutions analogues et favoriseraient ainsi une application plus large de la Convention[7]. À la lumière de ces discussions, de nouveaux travaux sur le champ d'application et l'interprétation de l'article 2 de la Convention ont été jugés opportuns et souhaitables pour accroître l'intérêt porté à cet instrument. Lors des réunions du CAGP de 2023 et de 2024, le BP a reçu mandat de poursuivre les travaux.

9 En 2024, le BP et la *Society of Trust and Estate Practitioners* (« STEP ») ont discuté d'une possible coopération en lien avec les travaux sur la Convention Trust. Le BP a élaboré une enquête sur la Convention Trust (« enquête de la STEP ») en vue de recueillir des informations auprès des praticiens membres de la STEP. Cette enquête contenait des questions relatives aux domaines de travail actuels concernant l'article 2 de la Convention et les institutions pouvant être considérées comme analogues au trust aux fins de la Convention. Elle a été diffusée aux membres de la STEP en juillet 2024 et des réponses concernant six États, à savoir l'Argentine, Israël, l'Italie, Malte, le Royaume-Uni et Saint-Marin, avaient été reçues en date du 9 août 2024.

10 En 2025, le CAGP a accueilli favorablement le rapport des travaux entrepris par le BP en collaboration avec la STEP concernant l'étude sur l'application et l'interprétation de l'article 2 de la Convention Trust ainsi que sur les institutions analogues au trust. Le CAGP a également demandé l'établissement d'un groupe de travail (« Groupe de travail sur la Convention Trust ») pour

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3 « La Convention HCCH Trust de 1985 : Actualisations et éventuels travaux futurs », Doc. prél. No 15 de décembre 2020, disponible sur le site web de la HCCH à l'adresse www.hcch.net (sous les rubriques « Gouvernance » => « Conseil sur les affaires générales et la politique » => « Archives (2000-2025) », para. 8 et 9.

4 « La Convention HCCH Trust de 1985 : Actualisations et éventuels travaux futurs », Doc. prél. No 14 de décembre 2021, disponible sur le site web de la HCCH à l'adresse www.hcch.net (sous les rubriques « Gouvernance » => « Conseil sur les affaires générales et la politique » => « Archives (2000-2025) », para. 10.

5 *Ibid.*, Annexe I, « Liste des institutions potentiellement analogues au trust » (en anglais uniquement).

6 « Économie numérique et Conférence de la HCCH sur le droit commercial, numérique et financier transfrontière (Conférence CODIFI) : Rapport », Doc. prél. No 3A de janvier 2023, Annexe I « Rapport sur la Conférence inaugurale de la HCCH de 2022 sur le droit commercial, numérique et financier transfrontière (Conférence CODIFI) » (en anglais uniquement), disponible sur le site web de la HCCH à l'adresse www.hcch.net (sous les rubriques « Gouvernance » => « Conseil sur les affaires générales et la politique » => « Archives (2000-2025 »), para. 11 à 16.

7 « Convention Titres de 2006, Convention Trust de 1985, Principes sur le choix de la loi de 2015 : Actualisation, Doc. prél. No 10A de février 2023, disponible sur le site web de la HCCH à l'adresse www.hcch.net (sous les rubriques « Gouvernance » => « Conseil sur les affaires générales et la politique » => « Archives (2000-2025) », para. 15.

examiner et compléter cette étude, en tenant compte des implications éventuelles pour les Parties non contractantes et sous réserve des ressources disponibles.

11 Cette Note représente l'aboutissement de cinq années de travail de la HCCH sur cette étude.

12 Ses sources de référence sont au nombre de cinq :

i. le Rapport explicatif sur la Convention HCCH Trust de 1985[8] (« Rapport explicatif ») ;

ii. Le Rapport sur les trusts et institutions analogues[9] (« Rapport Dyer/Van Loon ») ;

iii. Les sources académiques ;

iv. Les réponses à l'enquête de la STEP ;

v. Les contributions des membres du Groupe de travail sur la Convention Trust.

III. Aperçu de la Convention Trust

13 La Convention Trust détermine la loi applicable au trust et régit sa reconnaissance au sein des Parties contractantes. Un trust est une institution juridique initialement élaborée dans la tradition de *common law*, par laquelle une personne, le constituant, place des biens sous le contrôle d'un *trustee* dans un but déterminé ou dans l'intérêt d'un bénéficiaire (art. 2). Le *trustee* est chargé de l'administration du trust et en répond. Gardant à l'esprit l'adoption de trusts et d'institutions analogues dans différents États et le caractère unique de cette institution de *common law*, la Convention instaure des dispositions communes aux trusts et jette des ponts entre des traditions juridiques différentes.

14 En facilitant la reconnaissance transfrontière des trusts, la Convention apporte de la prévisibilité et de la sécurité aux bénéficiaires des trusts et aux personnes concernées par les relations juridiques qu'ils créent. Elle renforce l'autonomie de la volonté en donnant la priorité à la loi choisie par le constituant et harmonise les dispositions conflictuelles de droit international privé entre les États qui reconnaissent l'institution du trust.

15 La Convention Trust est organisée en cinq chapitres. Le chapitre I, qui définit le champ d'application de la Convention, détermine les institutions couvertes et les délimite par rapport à d'autres institutions (art. 2). Le champ d'application de la Convention est limité en ce qu'il s'applique uniquement aux trusts créés volontairement et dont la preuve est apportée par écrit (art. 3). Par conséquent, les trusts créés par la loi n'entrent pas dans le champ d'application de la Convention, tandis que les trusts créés par une décision de justice n'entrent dans son champ d'application que si la Partie contractante le déclare. Les questions préliminaires relatives à la validité des testaments ou d'autres actes juridiques par lesquels des biens sont transférés au *trustee* sont elles aussi expressément exclues du champ d'application de la Convention (art. 4). En d'autres termes, la Convention n'est applicable qu'aux matières concernant le trust lui-même et seulement aux questions qui se posent après son établissement.

16 Le chapitre II de la Convention énonce les règles relatives à la loi applicable au trust. Il adopte un principe d'« autonomie de la volonté » pour le trust[10] : le choix de la loi par le constituant fournit le lien subjectif (art. 6) ; à titre subsidiaire, à défaut de choix par le constituant (ou si ce choix est inopérant), un lien objectif à la loi avec laquelle le trust a le lien le plus étroit (art. 7) est prévu aux

8 A. E. von Overbeck, « Rapport explicatif sur la Convention HCCH Trust de 1985 », in *Actes et documents de la Quinzième session (1984)*, tome II, *Trust - loi applicable et reconnaissance*, La Haye, Imprimerie Nationale, 1985, p. 370 à 415.

9 A. Dyer et H. van Loon, « Rapport sur les trusts et institutions analogues », Doc. prél. No 1 de mai 1982, in *Actes et documents de la Quinzième session (1984)*, tome II, *Trust – loi applicable et reconnaissance*, La Haye, Imprimerie Nationale, 1985, p. 10 à 108.

10 Rapport explicatif, p. 383, para. 63.

alinéas (a) à (d) selon une hiérarchie implicite[11]. Le dépeçage est envisagé (art. 9) en ce qu'un constituant peut choisir différentes lois pour régir différents aspects du trust.

17 Le chapitre III de la Convention précise en quoi consistera la reconnaissance au minimum (art. 11) et la forme sous laquelle le trust peut apparaître dans les registres publics (art. 12). Avec le chapitre IV, les dispositions de la Convention permettent la non-reconnaissance de certains trusts, s'ils apparaissent abusifs (art. 13, 15, 16 et 18), tout en préservant les règles de droit qui sont plus favorables à la reconnaissance des trusts que celles de la Convention (art. 14)[12].

18 Le chapitre V contient les dispositions habituelles des Conventions de la HCCH concernant la signature, la ratification, l'adhésion, l'entrée en vigueur et la dénonciation, ainsi que les dispositions relatives à la mise en œuvre de la Convention dans certaines unités territoriales des États comprenant plusieurs unités territoriales.

19 La version anglaise et la version française du texte de la Convention Trust font également foi (disposition finale).

IV. Interprétation de l'article 2 de la Convention Trust

20 L'article 2 de la Convention Trust décrit le champ d'application de la Convention.

21 Les versions anglaise et française de l'article 2 sont les suivantes :

Anglais	Français
« For the purposes of this Convention, the term 'trust' refers to the legal relationships created – inter vivos or on death – by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.	*"Aux fins de la présente Convention, le terme « trust » vise les relations juridiques créées par une personne, le constituant - par acte entre vifs ou à cause de mort - lorsque des biens ont été placés sous le contrôle d'un trustee dans l'intérêt d'un bénéficiaire ou dans un but déterminé.*
A trust has the following characteristics: –	*Le trust présente les caractéristiques suivantes: -*
a) the assets constitute a separate fund and are not a part of the trustee's own estate;	*a) les biens du trust constituent une masse distincte et ne font pas partie du patrimoine du trustee;*
b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;	*b) le titre relatif aux biens du trust est établi au nom du trustee ou d'une autre personne pour le compte du trustee;*
c) the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.	*c) le trustee est investi du pouvoir et chargé de l'obligation, dont il doit rendre compte, d'administrer, de gérer ou de disposer des biens selon les termes du trust et les règles particulières imposées au trustee par la loi.*
The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not	*Le fait que le constituant conserve certaines prérogatives ou que le trustee possède certains droits en qualité de bénéficiaire ne*

11 *Ibid.*, p. 374, 386 et 387, para. 20, 72 et 77.
12 *Ibid.*, p. 383, para. 21 et 22.

necessarily inconsistent with the existence of a trust."	*s'oppose pas nécessairement à l'existence d'un trust.* »

22 Les experts qui sont intervenus lors de la Conférence CODIFI avaient relevé qu'il importait de clarifier toute divergence d'interprétation entre les versions anglaise et française de l'article, notamment toute difficulté soulevée par l'emploi du terme français « patrimoine » et du terme anglais « *estate* »[13].

23 Un élément essentiel de la structure d'un trust aux fins de la Convention, comme le précise l'article 2(a) dans sa version anglaise, est que « *the assets constitute a separate fund and are not a part of the trustee's own estate* ». Le texte de la version française est le suivant : « les biens du trust constituent une masse distincte et ne font pas partie du patrimoine du *trustee*. » Le terme « *estate* » peut être compris comme un concept de *common law*, tandis que le terme « patrimoine » reflète une conception de droit civil des biens d'une personne.

24 Dans les États de *common law*, les biens du trust sont généralement divisés entre la propriété en droit (*legal ownership*) et la propriété en *equity* (*equitable ownership)*. En revanche, les systèmes de droit civil adhèrent traditionnellement au principe de l'unicité et de l'indivisibilité du patrimoine. Cette différence conceptuelle a historiquement posé des difficultés à la reconnaissance des trusts dans les systèmes de droit civil. Face à ces difficultés, plusieurs États de droit civil ont élaboré, ces dernières décennies, des mécanismes juridiques qui permettent la reconnaissance de patrimoines distincts ou l'appropriation d'un patrimoine dans une finalité précise. Citons par exemple le Québec (Canada), l'Italie et la République tchèque, qui ont tous introduit un cadre conciliant les structures assimilables au trust avec les principes de droit civil.

25 Tenant compte des différences entre les traditions juridiques, la Convention n'exige pas la présence d'une propriété en *equity* (*equitable ownership*) pour qu'une relation juridique soit qualifiée de trust. Elle s'attache plutôt à la séparation structurelle entre les biens du trust et les biens personnels du *trustee*. Cette exigence structurelle permet une application souple de la Convention dans les différentes traditions juridiques. Elle accueille à la fois le modèle de *common law* – dans lequel la propriété est divisée en propriété en droit et propriété en *equity* – et l'approche du droit civil, qui peut s'appuyer sur la notion d'un patrimoine séparé ou d'un patrimoine susceptible d'appropriation. Soulignons qu'à ce jour, cette divergence conceptuelle n'a pas créé de difficultés d'interprétation dans le cadre de la Convention.

26 En dépit de cette souplesse, l'emploi du terme « patrimoine » dans la version française de l'article 2 a fait craindre de possibles erreurs d'interprétation de la part des praticiens dans les systèmes de droit civil. Plus précisément, on craint que ce terme – et la notion plus large de patrimoines distincts – puisse conduire certaines personnes à considérer que les biens personnels d'un *trustee* sont automatiquement à l'abri des dettes exposées en leur qualité de *trustee*. Dans la pratique toutefois, l'existence de cette protection dépend de la loi applicable au trust, pas de la notion de « patrimoine » en elle-même.

27 En dernier ressort, l'accent placé par la Convention sur la séparation structurelle plutôt que sur les modèles conceptuels de propriété garantit sa compatibilité avec différents systèmes juridiques tout en laissant la résolution des questions de passif et de protection des actifs au droit interne.

13 Conférence CODIFI, F. Noseda, « Trusts / Closing Session », 16 septembre 2022, disponible à l'adresse https://youtu.be/emhIdcYSepE?si=bKUY_RoBxlufey6t.

V. Institutions répondant aux critères énoncés à l'article 2 de la Convention Trust

28 La Convention Trust ne définit pas le « trust », mais son article 2 énumère les caractéristiques du trust et le type de relations juridiques qu'il crée. Cela reflète l'intention des rédacteurs qui entendaient garantir la pertinence et l'applicabilité de la Convention en contexte international[14].

29 Les trusts de *common law* sont apparus en Angleterre vers le XII^e^ siècle afin de gérer des biens pour le compte de ceux qui n'étaient pas en mesure de le faire eux-mêmes, tels que les chevaliers partis guerroyer à l'étranger et les ordres mendiants catholiques auxquels le droit canonique interdisait de détenir des biens directement. Sachant que la *common law* pouvait être stricte et inflexible et qu'elle autorisait toute personne possédant des biens à en disposer à son gré dans le respect du droit, le seul moyen pour les bénéficiaires de contester les décisions de leurs *trustees* s'ils étaient en désaccord avec ceux-ci était d'adresser une requête au Monarque et, plus tard, au Lord chancelier.

30 Au fil du temps, cela a conduit au développement du droit de *l'equity*, qui n'est pas un système juridique distinct mais un ensemble de principes conçus pour atténuer la sévérité perçue de la *common law* et offrir des recours juridiques destinés à prévenir les injustices. Dans le cas des trusts, l'*equity* garantit qu'un trust est géré dans l'intérêt du bénéficiaire et non dans celui du *trustee*.

31 Un même bien peut également faire l'objet de droits distincts en droit et en *equity*, lorsqu'une personne a la propriété en droit d'un bien avec tous les droits que cela implique, et une autre a un droit en *equity* sur le même bien, ce qui lui donne le droit de jouir ou de profiter autrement du bien. Par exemple, si un *trustee* vend un bien détenu en trust, il doit transférer le produit de la vente au bénéficiaire (ou traiter d'une autre façon le produit de la vente dans l'intérêt du bénéficiaire conformément à ce qui est prévu par l'acte constitutif du trust) car le bénéficiaire a un droit en *equity* sur ce bien. Celui-ci est considéré comme un droit de propriété distinct plutôt que comme un droit spécifique vis-à-vis du *trustee*.

32 Il convient également de souligner qu'en Angleterre et au Pays de Galles et dans plusieurs autres systèmes juridiques de *common law*, un principe de droit ancien veut qu'en cas de conflit entre l'*equity* et la *common law*, l'*equity* prévaut.

33 Il ne fait guère de doute que les trusts de *common law*, tels qu'ils sont reconnus dans les États de *common law* comme l'Australie, le Canada et le Royaume-Uni, relèvent clairement du champ d'application de la Convention Trust. Cependant, la position est moins certaine au regard d'institutions, établies par la loi ou autrement, dans des États qui ne sont pas de tradition de *common law*. Il est parfois difficile de déterminer si ces institutions présentent les caractéristiques énumérées à l'article 2 de la Convention et, par conséquent, si elles peuvent entrer dans le champ d'application de la Convention. Cette section examine la nature de ces institutions et évalue leur inclusion possible dans le cadre de la Convention.

34 Les problèmes d'interprétation de la Convention avaient été reconnus au moment de la négociation de la Convention, notamment parce que celle-ci traite du trust, une institution qui découle des traditions de *common law*[15]. Il faut souligner que les délégations à la Quinzième session ont envisagé et recherché l'inclusion de certaines institutions qui ne sont pas des trusts de *common law* dans le périmètre de la Convention[16].

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14 Rapport explicatif, p.378, para. 36 et 37.
15 *Ibid.*, p. 372, para. 12.
16 *Ibid.*, p. 375, para. 26.

35 Le rapport Dyer/Van Loon déclarait que les systèmes de droit civil ont élaboré un bouquet d'institutions qui, prises soit seules, soit en les combinant entre elles, pourraient remplir les fonctions d'un trust, et notait qu'« [e]n instituant une entité juridique indépendante – une société ou une fondation –, en mettant en place un réseau de rapports contractuels, en transférant des droits réels, en reconnaissant certaines dispositions testamentaires, et, le plus souvent, en combinant deux ou plusieurs de ces procédés juridiques, il est possible d'arriver à des résultats très similaires à ceux que la *common law* obtient grâce au trust. Mais aucune de ces institutions *per* se ne peut être considérée comme une traduction adéquate de la notion de trust.[17] »

36 Le Rapport explicatif déclarait également que « la question de savoir si des institutions analogues existant dans certains pays de *civil law* répondent encore aux critères de la Convention sera plus difficile à résoudre [...]. [I]l faudra distinguer les institutions structurellement analogues au trust, qui tombent sous la Convention, de celles qui ne sont que fonctionnement analogues et qui ne sont pas réglées.[18] »

37 Pour référence, l'annexe A présente, sous forme de tableau, les institutions de divers États qui répondent ou non aux critères de l'article 2 de la Convention Trust, avec une description de leurs origines, leur configuration, leur nature juridique et leur fonction et, le cas échéant, les sources de la législation qui les établit, la jurisprudence et d'autres informations pertinentes.

38 Dans le cadre de la rédaction de cette Note, le Groupe de travail sur la Convention Trust a examiné en détail si certains accords contractuels, les institutions dotées de la personnalité juridique, les fondations et les *waqf*s peuvent remplir les critères énoncés à l'article 2 de la Convention Trust et tombent ainsi dans son champ d'application.

A. Accords contractuels

39 Certains États ont des accords contractuels qui produisent les mêmes effets que les trusts. Pour déterminer si ces créations satisfont aux critères de la Convention, il faut garder à l'esprit qu'une institution doit être structurellement analogue à un trust pour entrer dans le champ d'application de la Convention.

40 Le texte de l'article 2 n'inclut pas expressément les accords contractuels dans la Convention et ne les en exclut pas non plus. De ce point de vue, il est possible que des accords contractuels répondent aux exigences de la Convention, y compris l'exigence que les biens constituent une masse distincte, mais il ne faut pas partir du principe qu'il en est ainsi. Chaque type de relation contractuelle doit être évalué par rapport aux exigences de la Convention.

41 Il faut veiller en particulier au traitement des tiers dans ces relations, car en l'absence de mécanisme juridique additionnel, les accords purement contractuels peuvent être dépourvus de la capacité à reproduire les effets protecteurs qu'un trust offre contre les créances de tiers. Par exemple, dans les systèmes de *common law*, les biens du trust sont détenus par le *trustee*, mais ils restent distincts de ses biens personnels. Cette séparation garantit qu'en cas de faillite ou d'insolvabilité, le *trustee* ne peut se servir des biens du trust pour payer des dettes personnelles.

42 Selon la doctrine de l'effet relatif des contrats connue dans certains États, les droits et obligations contractuels ne lient généralement que les parties contractantes. Par conséquent, un accord purement contractuel par lequel la propriété d'un bien est transférée d'une partie à une autre ne peut généralement pas, sans autre opération de la loi, protéger ce bien des réclamations présentées par des créanciers tiers en cas d'insolvabilité du cessionnaire. Les accords contractuels

17 Rapport Dyer/Van Loon, p. 40, para. 57.

18 Rapport explicatif, p. 372, para. 13. Voir aussi « Conclusions tirées des discussions de la Commission spéciale de juin 1982 sur les trusts et institutions analogues », Doc. prél. No 6 de mai 1982, in *Actes et documents de la Quinzième session (1984)*, tome II, *Trust - loi applicable et reconnaissance*, La Haye, Imprimerie Nationale, 1985, p. 140, para. 12.

qui lient seulement les parties contractantes n'entreraient pas dans le champ d'application de la Convention.

43 Voir l'annexe A dans laquelle diverses relations contractuelles qui présentent des similitudes avec le trust sont examinées afin de déterminer si elles entrent dans le champ d'application de la Convention.

B. Institutions dotées de la personnalité juridique

44 Les institutions dotées d'une personnalité juridique distincte qui détiennent des biens ou en sont propriétaires en tant que personnes morales n'entrent pas dans le champ d'application de l'article 2 de la Convention. La raison en est que l'article 2 dispose que « des biens ont été placés sous le contrôle d'un *trustee* » et que « le titre relatif aux biens du trust est établi au nom du *trustee* ». C'est donc le *trustee* – plutôt que le trust lui-même en tant que personne morale – qui est considéré comme détenteur ou propriétaire des biens en question.

C. Fondations

45 Le Groupe de travail sur la Convention Trust a reconnu que la nature des fondations varie d'un État à l'autre et que leurs structures et leurs fonctions dépendent du cadre juridique applicable. Les fondations n'entrent pas nécessairement dans le champ d'application de la Convention Trust. Par exemple, les fondations dotées d'une personnalité juridique distincte en sont exclues (voir para. 44 ci-dessus). En conséquence, c'est au cas par cas que l'on détermine si une fondation remplit les critères énoncés à l'article 2 de la Convention.

D. *Waqfs*

46 Les *waqfs* sont des institutions qui trouvent leur source dans la tradition islamique. Tout en notant que le CAGP avait exprimé des préoccupations relatives à l'inclusion d'institutions religieuses[19] et qu'un grand nombre des États qui connaissent le *waqf* ne sont pas représentés au sein du Groupe de travail sur la Convention Trust, il a paru utile d'inclure une analyse du *waqf* dans cette section à titre d'information.

47 Notant qu'il existe plusieurs États dans le monde où le système juridique et le système religieux sont entremêlés, les préoccupations relatives à l'inclusion d'institutions religieuses peuvent être atténuées en appliquant la même analyse juridique que pour les autres institutions.

48 Un *waqf* a été défini comme « un acte de bienfaisance financière établi en plaçant sous séquestre des biens meubles et immeubles pour affecter perpétuellement leur revenu à la couverture de besoins publics ou familiaux, sur la base des préférences et des conditions fixées par le fondateur. »[20] Pour créer un *waqf*, le propriétaire du bien (*waqif*) déclare son intention de dédier les revenus de son bien à un bénéficiaire (*mawquf alayh*) et désigne un administrateur (*mutawalli*) pour ce bien. À première vue, le *waqf* pourrait apparaître comme une institution analogue au trust, mais l'étude de ses caractéristiques révèle plusieurs domaines clés de divergence entre le *waqf* et le trust :

i. *Propriété.* La structure du *waqf* se distingue de celle du trust en ce sens que les biens ne constituent pas une masse distincte du patrimoine du *trustee* et que la propriété des biens n'est pas transférée au *trustee*. Certains États, comme l'Égypte, considèrent que le

19 Rapport de la déclaration enregistré au Bureau Permanent.

20 S. Baqutayan *et al.*, « Waqf Between the Past and Present », *Mediterranean Journal of Social Sciences*, vol. 9 (4) 2018, p. 149. [Traduction du Bureau Permanent] Voir aussi https://fianz.com/our-community/#:~:text=Waqf%20is%20a%20financial%20charitable,conditions%20set%20by%20the%20founder.

waqif conserve la propriété et que seul l'usufruit est transféré[21]. D'autres, comme la Jordanie, considèrent qu'une fois le *waqf* créé, les biens ne peuvent plus appartenir à personne[22]. Les Émirats arabes unis[23], Oman[24] et le Qatar[25] considèrent le *waqf* comme une entité juridique distincte. Dans les trois cas, le titre de propriété des biens n'est pas établi « au nom du *trustee* ou d'une autre personne pour le compte du *trustee* », comme l'exige l'article 2(b) de la Convention. La Malaisie a, pour sa part, promulgué un modèle qui est plus proche du modèle des trusts de la *common law*, dans lequel la loi « exige que chaque *waqf* soit enregistré au nom du Conseil religieux islamique, qui en est propriétaire »[26]. Néanmoins, cette structure en Malaisie met en lumière une autre divergence entre les *waqf*s et les trusts, à savoir le rôle des organes gouvernementaux dans la gestion des biens.

ii. *Administration.* Dans un *waqf*, l'administrateur (*mutawalli*) est presque toujours une autorité gouvernementale appelée « ministère de l'*awqaf* » ou « Direction générale de l'*awqaf* », entre autres titres[27]. L'autorité compétente a le pouvoir d'un administrateur, ce qui implique « un droit de construire, préserver ou louer le bien, de cultiver le bien, percevoir et distribuer les revenus provenant du bien et d'exercer la représentation légale du bien »[28]. [Traduction du Bureau Permanent]

iii. *Objet.* Enfin, alors que le trust connaît diverses formes[29], le *waqf* ne peut être créé qu'à des fins charitables ou pieuses, soit au profit du grand public, soit pour des individus en particulier[30]. Ainsi, il n'existe que deux formes de *waqf* : « le *waqf Khairi* – une dotation effectuée dans un but à caractère religieux ou public – et le *waqf ahli* ou *dhurri* – une dotation familiale »[31].

VI. Législation et jurisprudence concernant l'application et l'interprétation de la Convention ainsi que la reconnaissance transfrontière des trusts et des institutions analogues au trust

49 Cette section présente la législation et la jurisprudence pouvant apporter un éclairage sur l'application de la Convention Trust par différents systèmes juridiques et sur leur approche des questions impliquant la reconnaissance transfrontière des trusts et des institutions pouvant être considérées comme analogues au trust. Elle peut en particulier apporter des éléments sur la manière dont les États qui reconnaissent l'institution du trust gèrent les affaires impliquant des trusts ou des institutions analogues émanant d'États qui, traditionnellement, ne connaissaient pas l'institution du trust. Elle peut aussi clarifier comment ces derniers réagissent aux trusts et institutions analogues étrangers, surtout lorsque les États dont ils émanent ne sont pas des Parties contractantes à la Convention.

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21 M. Papa et M. Santostasi, « Real Estate, Usufruct Right and the Issue of the Waqf Assets in Egypt », *European Journal of Islamic Finance*, 2019.

22 M. Al Manaseer et B. Matarneh, « Waqf and Its Role in the Social and Economic Development of the Hashemite Kingdom of Jordan », *European Journal of Economics, Finance and Administrative Sciences*, Issue 64, 2014, p. 59.

23 *Federal Law of the UAE No 5 of 2018*, art. 10.

24 *Omani Royal Decree 65/2000 on Awqaf*, art. 2.

25 *Qatari Law No 8 of 1996 with respect to Endowment (Waqf) 8/1996*, art. 7.

26 M. Obaidullah *et al*., *Islamic Social Finance Report*, Thompson Reuters, 2014, Ch. 4.

27 M. Kahf, « The role of waqf in improving the ummah welfare », in *International Seminar on Waqf as a Private Legal Body*, Islamic University of North Sumatra, Medan, Indonésie, 2003, p. 1 à 26.

28 I. Sandor, *Fiduciary Property Management and the Trust: Historical and Comparative Law Analysis*, Budapest, Hvg-orac Publishing Ltd., 2015.

29 I. Gvelesiani, « The Trust and the Waqf (Comparative Analysis) », *Trusts & Trustees*, vol. 26 (8-9) 2020, p. 737.

30 *Ibid*. p. 742.

31 M. Gaudiosi, « The Influence of the Islamic Law of Waqf on the Development of the Trust in England: The Case of Merton College », *University of Pennsylvania Law Review*, vol. 136 (4) 1988, p. 1233.

50 Il convient de souligner que certaines parties non contractantes cherchent à appliquer la Convention Trust en l'incorporant dans leur cadre juridique national par des dispositions similaires à celles de la Convention. C'est le cas, par exemple, de la Belgique [32], du Québec (Canada)[33], de la République tchèque [34] et de la Roumanie [35]. La conséquence pratique est que ces États reconnaissent les trusts de la même manière que les Parties contractantes à la Convention.

51 La liste des textes législatifs pertinents et la jurisprudence figurent à l'annexe B.

32 Loi de la Belgique du 16 juillet 2004 portant le Code de droit international privé, chapitre XII (Trust), art. 122 à 125 (disponible à l'adresse : https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2004071631&table_name=loi).

33 Code civil du Québec, Livre dixième (Du droit international privé), Titre deuxième (Des conflits de lois), art. 3107 et 3108 (disponible à l'adresse : https://www.legisquebec.gouv.qc.ca/fr/document/lc/CCQ-1991) (note : bien que le Canada soit partie à la Convention Trust, son application ne s'étend pas au Québec).

34 Loi de la République tchèque du 25 janvier 2012 sur le droit international privé, Livre quatrième (Dispositions relatives aux différents types de relations de droit privé), Titre VII (Droits de propriété), Section 73 (Fonds fiduciaire ou dispositif similaire) (disponible à l'adresse 91/2012 Sb., 23. 9. 2023, aktuální znění, informativní znění systému e-Sbírka).

35 Code civil de la Roumanie, Livre VII (Dispositions de droit international), Titre II (Conflits de lois), chapitre VIII (Fiducie), art. 2.659 à 2.662 (disponible à l'adresse : COD CIVIL (A) 04/02/2016 - Portal Legislativ).

Annex A to Note (for Section V) - Institutions Meeting the Criteria in Article 2 of the Trusts Convention

1 This Annex sets out, in table form, institutions in various jurisdictions that may or may not meet the criteria of Article 2 of the Trusts Convention, including descriptions of their origins, configuration, legal nature and function and, where relevant, the sources of the establishing legislation, case law, and other pertinent information. The information presented in the tables below is not intended to be exhaustive.

2 The tables below indicate whether an institution may fall under Article 2 for purposes of the Trusts Convention. However, the indication is not conclusive. It is based on the sources described in paragraph 12 of the Note including the statements made by delegations representing the relevant jurisdictions at the Fifteenth Session and the input from members of the WG on Trusts. It should be noted that, while the statements made by the delegations at the Fifteenth Session may have a significant referential value, the applicable laws and practices in the respective jurisdictions may have evolved since that time. Also, as not all jurisdictions set out in the tables are represented in the WG, the information may not have been verified by the representatives of the respective jurisdictions.

3 Additionally, the information presented in the tables involves legal sources from different jurisdictions in different languages. Translations will, consequently, be required in some cases. When an official translation of the formal name of an institution is available, that name will be translated into the language of the publication. When no such translation is available, the name of the institution will remain in its original language. For example, the term "*fideicomiso*" will be used in the English publication when no official translation exists in the jurisdiction with this institution that is being referenced. Legislative sources will be set out in the language of this publication relying on official translations where available and using the translation capabilities of the PB when official translations are unavailable.

1. Argentina

Country (Region)	Argentina
Institution:	(1) Trust
Legal Basis / Origin:	Under Section 1666 of Law No. 26,994[1], which amended the old Argentinian Trust Law (Law No. 26,4441), a trust is defined as: "There is a trust agreement when a party, called trustor, transfers or undertakes to transfer ownership of assets to another party called trustee, who undertakes to exercise it for the benefit of another party called beneficiary, who is appointed therein, and to transfer it to the residual beneficiary within a specific term or under a certain condition.".
Whether the institution may potentially meet the criteria of Article 2:	Yes[2]
Institution:	(2) *Fideicomiso*
Legal Basis / Origin:	Under Chapter IV, Section 1, Article 1 of Resolution 622/2013, a *fideicomiso financiero* is defined as:[3] "There will be a *fideicomiso financiero* contract when one or more persons (*fiduciante*) transfer the fiduciary ownership of certain assets to another (*fiduciaro*), who must exercise it for the benefit of the holders of the certificates of participation in the ownership of the transferred assets or of the holders of debt securities guaranteed by the assets thus transferred (beneficiaries) and transfer it to the trustor, the beneficiaries or third parties *(fideicomisarios)* upon fulfillment of the terms or conditions provided for in the contract." (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes[4] According to N. Malumian, the Latin American *fideicomiso* fulfills the three criteria of a trust by Lewin as follows:

1 Law No. 26,994, available at https://servicios.infoleg.gob.ar/infolegInternet/anexos/235000-239999/235975/texact.htm (original text) and https://www.argentina.gob.ar/sites/default/files/law_no._26.994_articles_1.666_to_1.707.pdf (official English translation).

2 *Ibid.*

3 Resolution 622/2013, available at https://servicios.infoleg.gob.ar/infolegInternet/anexos/215000-219999/219405/norma.htm (original text).

4 N. Malumian, "Conceptualization of the Latin American Fideicomiso: is it actually a trust?", *Trusts & Trustees*, vol. 19 (7) 2013, pp. 720-729.

	"First, the control and management of the trust property is separated from its enjoyment and vested in the trustee, who yet is not an agent of the beneficiaries or of the settlor (the founder of the trust). Secondly, the beneficiaries have proprietary interests in the trust property, concurrent with the proprietary interest of the trustees, which confers control of the property on the trustees. The beneficiaries' concurrent interest prevails over those of the trustee, and also over everyone else claiming through or under the trustees, including their creditors and heirs, indeed even third parties generally other than purchasers of the trust property in good faith. Thirdly, the trust property is a fund, in the sense that the trustees have power to sell its constituent parts free of the beneficiaries' proprietary rights, and reinvest the proceeds in other assets, which thereupon automatically become subject to those rights. […]"

2. Austria

Country (Region)	Austria
Institution:	*Privatstiftungen* (Private Foundation)
Legal Basis / Origin:	Private Foundations Act of 1993[5] Article 1 of the Act provides that "[a] private foundation, within the meaning of this Federal Act, is a legal entity to which the founder has dedicated assets to serve, through their use, administration, and exploitation, the fulfillment of a permissible purpose determined by the founder; it enjoys legal personality and must have its registered office in the country."(unofficial translation) Article 7 of the Act provides that "[a] private foundation shall be established by a declaration of foundation; it shall come into existence upon registration in the commercial register." (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	No Private foundations are functionally analogous to trust but not structurally analogous to trust (noting that they have separate legal personalities). In "*Sommerer v The Queen*—the Canadian common law and tax treatment of an Austrian private foundation", Martin J Rochwerg and Rahul Sharma stated that "[i]n spite of the decision of the Tax Court of Canada (the 'TCC') to treat the Foundation as a trust (and not as a corporation) for Canadian legal and tax purposes, significant comments made by the FCA [Canada's Federal Court of Appeal] suggest that the TCC's conclusion is a 'doubtful proposition'". While "[t]he TCC concluded that a trust relationship existed between the taxpayer's father (as settlor), the Foundation (as trustee), and the taxpayer and his family members (as beneficiaries)", "the FCA was doubtful that a trust actually existed in this case, noting, in particular, that the law of Austria does not recognize trusts as understood under the common law". It is noted that "[i]ntrinsic to the FCA's statements was the fact that the Foundation was registered as a corporation for Austrian legal purposes, with a governing board similar to the board of directors of a Canadian corporation. The property owned by the Foundation was its own and, in this respect, the

[5] Private Foundations Act of 1993, available at https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10003154&FassungVom=2023-01-19 (original text).

	Foundation had the same legal rights as a Canadian corporation to deal with its property as it saw fit. The FCA pointed out that a Canadian corporation does not hold property in trust for its shareholders, except to the extent that a trust arrangement has been specifically drawn out (by deed or otherwise), and which arrangement establishes the legal and equitable obligations of a trustee. This was not the case with the Foundation. Indeed, as trust arrangements are foreign to Austrian law (and to the laws of other European civil law jurisdictions), it is questionable if '*Privatstiftungen*' can be reasonably classified as trusts for Canadian common law purposes.".[6]

6 M.J. Rochwerg & R. Sharma, "Sommer v The Queen—the Canadian common law and tax treatment of an Austrian private foundation", *Trusts & Trustees*, vol. 20 (6) 2014, pp. 556-560.

3. Bahrain

Country (Region)	Bahrain[7]
Institution:	Trust
Legal Basis / Origin:	Article 2.1. of the Bahraini Legislative Decree No 23 of 2016[8] provides: "A Trust is a legal relationship created by a Settlor whereby a Trust Property is held in the name of the Trustee, or another Person on behalf of the Trustee, to exercise in relation thereto the duties and powers in accordance with the provisions of the proper law of the Trust and the Terms of the Trust for any of the following: a. the benefit of a Beneficiary whether or not yet ascertained or in existence, b. any valid Charitable or Non-Charitable Purpose which is not for the benefit only of the Trustee; or c. both such benefit as is mentioned under paragraph (a) of this sub-section and any such purpose as is mentioned under paragraph (b) of this sub-section.".
Whether the institution may potentially meet the criteria of Article 2:	Yes Article 2.2 of the Bahraini Legislative Decree No 23 of 2016 [9] provides that a Trust has the following characteristics: "a. the Trust Property constitutes a separate fund and is not a part of the Trustee's own estate; b. title to the Trust Property is held in the name, or under the control of the Trustee whereby it is held in the name of another Person on behalf of the Trustee; and c. the Trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the Trust Property in accordance with the Terms of the Trust and the duties imposed upon him by any law applicable thereto.".

7 As Bahrain is not a Member of the HCCH, the information in this table was based on research conducted by the PB.

8 Bahraini Legislative Decree No. 23 of 2016, available at https://www.mola.gov.bh/MediaManager/Media/Documents/Laws/Batch3/L2316.pdf (official English translation).

9 *Ibid.*

4. Bangladesh

Country (Region)	Bangladesh[10]
Institution:	*Waqf*
Legal Basis / Origin:	The Waqfs Ordinance of 1962, Chapter I, section 2(10)[11] defines a *waqf* as "the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by Muslim Law as pious, religious or charitable, and includes any other endowment or grant for the aforesaid purposes, a *waqf* by user, and a *waqf* created by a non-Muslim".
Whether the institution may potentially meet the criteria of Article 2:	No[12] According to M. Obaidullah and others, "[t]he situation is quite different in India, Pakistan and Bangladesh where the state plays a supervisory role devoid of actual ownership or direct management of *waqf* assets.".

10 As Bangladesh is not a Member of the HCCH, the information in this table was based on research conducted by the PB.
11 The Waqfs Ordinance (1962), available at http://bdlaws.minlaw.gov.bd/act-details-326.html (official English translation).
12 M. Obaidullah et al., *Islamic Social Finance Report*, Thompson Reuters, 2014, Ch. 4.

5. Brazil

Country (Region)	Brazil
Institution:	*Fideicomisso* (“*Substituição Fideicomissária*”)
Legal Basis / Origin:	Articles 1.951-1.960 of the Brazilian Civil Code[13] provide for the “*substituição fideicomissária*”: According to Article 1.951: “The testator may establish heirs or legatees, stipulating that, at the time of his/her death, the inheritance or legacy will be transmitted to the *fiduciário*, resolving the right of the latter, by his/her death, at a certain time or under a certain condition, in favor of someone else, who qualifies as *fideicomissário*.” (unofficial translation) Article 1.952 further provides: “The *substituição fideicomissária* is only permitted in favour of those not conceived at the time of the testator’s death. Sole paragraph: If, at the time of the testator’s death, the *fideicomissário* has already been born, the *fideicomissário* will acquire the ownership of the assets that were “*fideicometidos*”, and the right of the *fiduciário* will be converted into usufruct.” (unofficial translation) Concerning the distribution of the property in this arrangement, Article 1.953 establishes that: “The *fiduciário* has ownership of the inheritance or legacy, but it is restricted and resolvable. Sole paragraph: The *fiduciário* is obliged to carry out an inventory of the assets encumbered, and to give security to return them if required by the *fideicomissário*.” (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes[14] According to J. Martins-Costa, “60. Among the various institutions within Brazilian law that perform functions analogous to those of trusts, particularly the discretionary trust, is the *fideicomisso* (*substituição fideicomissária*). Although the specific legal framework governing *fideicomisso* does not apply in full to trusts (either because the settlor’s intention did not result in such a structure, or because it may conflict with mandatory rules of domestic law), its invocation is nonetheless pertinent to demonstrate both the theoretical acceptability of such

13 Brazilian Civil Code, Law 10.406/2002, available at https://www.planalto.gov.br/ccivil_03/LEIS/2002/L10406compilada.htm (original text).

14 J. Martins-Costa, "O Trust e o Direito Brasileiro", *Revista de Direito Civil Contemporâneo*, vol. 12, 2017, pp. 165-209, para. 60-65.

	functions and to outline interpretative guidelines for evaluating a trust under Brazilian law. 61. Where the disposition arises from a testamentary act, the closest figure will be the *fideicomisso* (Civil Code, arts. 1.951 to 1.960). Among the broad lines within which analogy is appropriate, attention must be paid to the legal relationship between the *fiduciário* and the *fideicomissário* during the existence of the fiduciary arrangement. […] 65. As can be seen, although discretionary trusts are not expressly regulated under Brazilian law, the legal system does recognise functionally analogous structures that permit analogical interpretation where appropriate. Such analogy serves to demonstrate that fiduciary arrangements do not inherently exclude discretionary powers, provided these are consistent with the functions and nature of the fiduciary relationship. As Pontes de Miranda observes, 'the similarity between legal categories serves only to resolve specific issues, given that legal rules have analogical scope.'". (unofficial translation)

6. Canada

Country (Region)	Canada (other than Quebec)
Institution:	Trust
Legal Basis / Origin:	Common law Trusts in Canada (other than Quebec) stem from the common law of England as received into the common law of Canada. See, for example, *Valard Construction Ltd. v. Bird Construction Co.,* 2018 SCC 8[15] and *Canada (Attorney General) v. British Columbia Investment Management Corp.*, 2019 SCC 63[16], for an indication of the principles of equity underlying trusts in common law Canada and for statements of some of the institution's characteristics. See Donovan W.M. Waters et al., *Waters' Law of Trusts in Canada*, 5th ed (Toronto: Carswell, 2021) for a more comprehensive explanation of the institution.
Whether the institution may potentially meet the criteria of Article 2:	Yes The trust found in common law Canada is an example of the trust developed in courts of equity as referenced in the preamble to the Convention. That the common law trust fell within the scope of the Convention was not doubted at the time of the finalisation of the Convention.[17] This institution likely meets the criteria of Article 2 of the Convention because (i) the funds are generally required to be kept separate and are not part of the trustee's own estate,[18] (ii) title to the trust assets stands in the name of the trustee,[19] and (iii) the trustee has the powers of an administrator to manage, employ and dispose of the assets in accordance with the terms of the trust.[20]
Country (Region)	Canada (Quebec)
Institution:	Trust

15 Available at https://canlii.ca/t/hqf44,
16 Available at https://canlii.ca/t/j3xhq,
17 A.E. von Overbeck, "Explanatory Report on the 1985 Hague Trusts Convention" at para 13.
18 Donovan W.M. Waters, Mark R. Gillen & Lionel D. Smith, *Waters' Law of Trusts in Canada*, 5th ed (Toronto: Carswell, 2021) at 3.III.
19 *Ibid.* at 3.I.
20 *Ibid.* at 3.VII.

Legal Basis / Origin:	Articles 1260 and following of the Civil Code of Québec[21] provide the foundation for trusts in Quebec law. **1260.** A trust results from an act whereby a person, the settlor, transfers property from his patrimony to another patrimony constituted by him which he appropriates to a particular purpose and which a trustee undertakes, by his acceptance, to hold and administer. **1261.** The trust patrimony, consisting of the property transferred in trust, constitutes a patrimony by appropriation, autonomous and distinct from that of the settlor, trustee or beneficiary and in which none of them has any real right.
Whether the institution may potentially meet the criteria of Article 2:	Yes Article 1278 of the Civil Code of Québec provides that the trustee has the control and the exclusive administration of the trust patrimony, that the titles relating to the property of the trust patrimony are drawn-up in the trustee's name, and that the trustee acts, with respect to the trust property, as the "administrator of the property of others charged with full administration". The powers and duties of the trustee as an administrator of the property of others are specified in Articles 1299 and following of the Civil Code of Québec. Thus, since (i) the assets of the trust patrimony are not part of the trustee's own estate; (ii) the title to the trust assets stands in the name of the trustee; and (iii) the trustee has the powers of an administrator to manage, employ and dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him, Quebec's trust seems to satisfy the criteria of Article 2 of the Convention.

21 Civil Code of Québec, CQLR c CCQ-1991, available at ccq-1991 - Civil Code of Quebec.

7. Chile

Country (Region)	Chile
Institution:	*Fideicomiso*
Legal Basis / Origin:	Articles 733 and 734 of the Chilean Civil Code[22] provides that: "Article 733. Fiduciary property is that which is subject to the encumbrance of passing to another person, due to the verification of a condition. The constitution of fiduciary property is called a *fideicomiso.* This name is also given to things constituted as *propiedad fiduciara*. The transfer of property to the person in whose favor the *fideicomiso* has been established is called restitution. Article 734. A *fideicomiso* may not be established except for the entirety of an inheritance or for a specific share of it, or for one or more specific amounts." (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	No[23] According to N. Malumian: "Based on the Mexican experience, the express trust has made its way from north to south into the laws of most Latin American countries, with the exception of a few countries, such as Chile."

22 Chilean Civil Code, available at https://www.bcn.cl/leychile/navegar?idNorma=172986&idParte=&idVersion= (original text).

23 N. Malumian, "Trust in Latin America: A Brief Comparison with European Civil Law Countries", *Trusts e attività fiduciarie*, 2011, pp. 499-506.

8. People's Republic of China

Country (Region)	People's Republic of China
Institution:	Trusts
Legal Basis / Origin:	Article 2 of the Trust Law of the People's Republic of China provides:[24] Trust refers to that the settler, based on his faith in trustee, entrusts his property rights to the trustee and allows the trustee to, according to the will of the settler and in the name of the trustee, administer or dispose of such property in the interest of a beneficiary or for any intended purposes.
Whether the institution may potentially meet the criteria of Article 2:	Yes[25] D. Clarry in "Fiduciary Ownership and Trusts in a Comparative Perspective" stated: "The idea that the settlor reserves ownership of trust property is perhaps supported by certain provisions of the Chinese Trust Law providing for the segregation of trust property from other property of the settlor and empowering the trustee to 'entrust' another to handle trust business—if the latter 'entrust' does not convey ownership to a third party then the initial entrusting by a settlor ought not convey ownership to a trustee either, if 'entrust' has a consistent meaning… a strained interpretation of ownership arises in the Chinese trust, with ownership being in the settlor, rather than any fiduciary ownership in the trustee, even though the broad term 'entrusts' in Article 2 of the Chinese Trust Law supports that conclusion and avoids those ambiguities.".

24 Trust Law of the People's Republic of China promulgated by the Standing Committee of the National People's Congress, 28 April 2001, effective 1 October 2001, available at http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/10/content_1383444.htm (official English translation).

25 *Ibid.*; D. Clarry, "Fiduciary Ownership and Trusts in a Comparative Perspective", *International and Comparative Law Quarterly*, vol. 63, 2014, pp. 915-916.

9. Colombia

Country (Region)	Colombia[26]
Institution:	*Fiducia*
Legal Basis / Origin:	Article 1226 of the Commercial Code of Colombia [27] provides: "A commercial *fiducia* is a legal transaction by virtue of which one person, called the settlor or grantor, transfers one or more specified assets to another, called the trustee, who is obligated to manage or transfer them to fulfill a purpose determined by the settlor, for the benefit of the settlor or a third party called the beneficiary or *fideicomisario*. A person can be both the settlor and the beneficiary. Only credit institutions and trust companies, specifically authorized by the Banking Superintendency, may have the status of trustees." (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes[28] D. Clarry in "Fiduciary Ownership and Trusts in a Comparative Perspective" stated: "In Colombia, a trustee cannot acquire definitely the possession of [trust] assets', with possession of trust assets returning to the '*fiduciant* or his heirs' unless some other provision is made for conveyance to some other person."[29]

26 As Colombia is not a Member of the HCCH, the information in this table was based on research conducted by the PB.

27 The Commercial Code of Colombia, Articles 1226-1244, available at http://www.suin-juriscol.gov.co/viewDocument.asp?id=1833376 (original text).

28 D. Clarry, "Fiduciary Ownership and Trusts in a Comparative Perspective", *International and Comparative Law Quarterly*, vol. 63, 2014, p. 912.

29 *Ibid.*

10. Czech Republic

Country (Region)	Czech Republic
Institution:	Trust
Legal Basis / Origin:	Section 1448 of the Civil Code of the Czech Republic[30] provides that: "(1) A trust is created by setting aside part of the property owned by the founder in such a way that the owner entrusts the administrator with the property for a particular purpose through a contract or disposition mortis causa, and the trustee undertakes to keep and administer the property. (2) The creation of a trust establishes separate and independent ownership of the part of property and the trustee is obliged to assume the property and its administration. (3) The rights arising from the right of ownership in the property in a trust are exercised by the trustee in his own name and on the account of the trust; however, the property in a trust is not owned by the administrator or the founder, or the person entitled to receive a performance from the trust.".
Whether the institution may potentially meet the criteria of Article 2:	Yes[31] L. Tichy in "Recognition of a Trust as a Specific Problem in Private International Law" explained: "The Civil Code of the Czech Republic (Act. No. 89/2012 Coll., § 1448–1474) adopted in 2012 is, inter alia, distinctive in its regulation of a legal institution that may be unconditionally qualified as 'trust'."[32]

30 Sections 1448 to 1474, Civil Code of the Czech Republic (Act No 89/2012), available at http://obcanskyzakonik.justice.cz/images/pdf/Civil-Code.pdf (official English translation).

31 L. Tichy, "Recognition of a Trust as a Specific Problem in Private International Law", *European Review of Private Law - Revue Europeenne de Droit Privé*, vol. 24 (6) 2016, pp. 1165-1166.

32 *Ibid.*

11. Egypt

Country (Region)	Egypt
Institution:	(1) Charitable trust
Legal Basis / Origin:	
Whether the institution may potentially meet the criteria of Article 2:	Yes At the Fifteenth Session, the delegation representing this country sought inclusion of this local institution within the scope of "analogous institution" of the Convention.
Institution:	(2) *Waqf*
Legal Basis / Origin:	
Whether the institution may potentially meet the criteria of Article 2:	No[33] M. Papa and M. Santostasi stated: "A particular case of usufruct is the "*waqf*" or religious endowment, consisting of income-producing property whose usufruct is assigned by its original owner to a mosque or to carry out charitable works (e.g. building schools, orphanages and hospitals). The original owner of an endowed property retains his or her ownership in it, but the usufruct right is conveyed to an endowment authority.".

33 M. Papa & M. Santostasi, "Real Estate, Usufruct Right and the Issue of the Waqf Assets in Egypt", *European Journal of Islamic Finance*, 2019, p. 1.

12. Ethiopia

Country (Region)	Ethiopia[34]
Institution:	*Fideicommis*
Legal Basis / Origin:	Article 516 of the Civil Code of Ethiopia[35] provides that: "A trust is an institution by virtue of which specific property is constituted in an autonomous entity to be administered by a person, the trustee, in accordance with the instructions given by the person constituting the trust."
Whether the institution may potentially meet the criteria of Article 2:	Yes[36]

34 As Ethiopia is not a Member of the HCCH, the information in this table was based on research conducted by the PB.

35 The Federal Negarit Gazeta, Year No 2, Proclamation No 165 of 1960, Civil Code of Ethiopia (1960), Articles 516-544, available at http://hrlibrary.umn.edu/research/Civil%20Code%20(English).pdf (official English translation).

36 M. Lupoi, *Trusts: A Comparative Study*, Cambridge University Press, 2000, Ch. 6, footnote 99.

13. France

Country (Region)	France
Institution:	(1) *Fiducie*
Legal Basis / Origin:	Articles 2011-2031 of the French Civil Code[37] Article 2011 of the French Civil Code provides: "The *fiducie* is the process by which one or more entities transfer property, rights or securities, or a combination of property, rights or securities, present or future, to one or more fiduciaries who hold them separately from their own property, acting with a specific purpose for the benefit of one or more beneficiaries.".
Whether the institution may potentially meet the criteria of Article 2:	Yes[38] J. Douglas stated in his article: "[The *fiducie* in French law] … was originally proposed there in the 1990s but was opposed by the fiscal authorities and did not proceed. It seems likely that the proposal was partly influenced by the Hague Convention. The *fiducie*'s structure fits with the Convention's definition of a trust."
Institution:	(2) *Prête Nom*
Legal Basis / Origin:	
Whether the institution may potentially meet the criteria of Article 2:	Yes[39] Dyer and Van Loon found that "The *fiducia* is virtually absent in France. There is a practice there known as *prête nom,* which is a very weak institution however.".

37 French Civil Code, Articles 2011-2031, available at https://www.legifrance.gouv.fr/codes/id/LEGIARTI000006445338/2007-02-21 (original text); J. Douglas, "Trusts and Their Equivalents in Civil Law Systems: Why Did the French Introduce the Fiducie into the Civil Code in 2007? What Might its Effects Be?", *QUT Law Review*, vol. 13 (1) 2013, p. 20.

38 J. Douglas, "Trusts and Their Equivalents in Civil Law Systems: Why Did the French Introduce the *Fiducie* into the Civil Code in 2007? What Might its Effects Be?", *QUT Law Review*, vol. 13 (1) 2012, p. 28.

39 The Dyer/Van Loon Report, p. 37.

14. Germany

Country (Region)	Germany
Institution:	*Fiduziarische Treuhand* or *Ermächtigungs- oder Vollmachtstreuhand*
Legal Basis / Origin:	*Fiduziarische Treuhand* is a contractual obligation. In the contract, the *Treugeber* undertakes to transfer assets to the *Treuhänder*. The *Treuhänder* undertakes to manage the *Treuhandvermögen*, of which he becomes the full owner, separately from his own assets for the *Treugeber* or a third party.
Whether the institution may potentially meet the criteria of Article 2:	No *Fiduziarische Treuhand* and *Ermächtigungs- oder Vollmachtstreuhand* are not equivalent to trusts, as they do not meet all the requirements of Article 2. A *fiduziarische Treuhand* can only be established by contract between the *Treugeber* and the *Treuhänder* and not solely by an act of the *Treugeber*. The agreement and the transfer of assets agreed therein do not guarantee that the special fund provided for in Article 2, sentence 2, letter b will be created. This only arises if and as long as the *Treuhänder* manages the assets transferred by the *Treugeber* (*Treuhandvermögen*) separately from his own assets. Unlike in a trust, assets acquired with funds from the trust assets do not automatically become trust assets. There are no subrogation provisions in this respect. As the legal owner, the *Treuhänder* can freely dispose of the *Treuhandvermögen*. Even if he violates obligations under the agreement between the *Treugeber* and the *Treuhänder*, his dispositions are still effective. In the event of the *Treuhänder*'s insolvency, the *Treugeber* can only separate certain items of the *Treuhandvermögen* if the trustee has managed the trust assets separately from his own assets and the assets have been transferred directly from the *Treugeber* to the *Treuhänder*. In the event of the trustee's insolvency, the *Treuhandvermögen* are therefore considerably less protected than trust assets, as the *fiduziarische Treuhand* does not have comparable effects in rem as the trust.

	However, the German legal system gives *Treugeber* an opportunity to make the safer agreement (the so-called *Ermächtigungstreuhand* or *Vollmachtstreuhand*), "under which he (she) does not transfer the full right in rem to *Treuhänder*, but simply authorizes him (her) to manage or dispose of the assets in a specific manner. When the *Treuhänder* exceeds his authorization the disposal of the assets is not valid no real separation of property takes place and the protection of the *Treugeber* is of minor importance because he is still the legal owner with all of his power."[40] As a contractual obligation, the *Ermächtigungs- oder Vollmachtstreuhand* also does not meet the requirements of Article 2. In particular, this form of *Treuhand* lacks a special fund, as the assets to be managed by the *Treuhänder* remain in the *Treugeber*'s assets and are not transferred to the *Treuhänder.* Therefore, an *Ermächtigungs- oder Vollmachtstreuhand* does not meet the requirements of Article 2, which requires that the trust assets be held by the trustee.

40 I. Gvelesiani, "German "Treuhand" vis-á-vis Austrian "Treuhand" (Terminological Study)", *European Scientific Journal*, 2015, p. 135.

15. Hungary

Country (Region)	Hungary
Institution:	(1) Fiduciary asset management contract
Legal Basis / Origin:	Act V of 2013 on the Civil Code, Book Six (Law of Obligations), Title XVI (Agency-type Contracts), Chapter XLIII (Fiduciary asset management contract), Sections 6:310-330[41] Section 6:310(1) of the Act provides that "[u]nder a fiduciary asset management contract, the trustee shall manage on his own behalf and for the benefit of the beneficiary the things transferred to his ownership, as well as the rights and obligations transferred to him by the settlor (hereinafter "trust property"), and the settlor shall pay the fee.". Section 6:312(1) of the Act provides that "[t]he trust property shall form property separated from the property of the trustee and from other properties managed by him, and the trustee shall keep a separate record of it. Any provision by the parties derogating from this shall be null and void." Section 6:318 of the Act provides that: "(1) Management of assets shall include the exercise of rights arising from the ownership and other rights and claims transferred to the trustee, and the fulfilment of obligations arising from them. (2) The trustee may avail of the assets that are part of the trust property under the terms and limitations determined in the contract. (3) If the trustee breaches his obligation under paragraph (2) and carries out the unauthorised transfer of any asset that is part of the trust property to a third party, the settlor and the beneficiary may claim that the asset be returned to the trust property if the third party has not been acting in good faith or has not acquired the asset reciprocally. This rule shall apply accordingly to the unauthorised encumbrance of an asset in the trust property.".
Whether the institution may potentially meet the criteria of Article 2:	Yes
Institution:	(2) Trust foundation
Legal Basis / Origin:	Act XIII of 2019 on Trust[42] Section 2(1) of the Act provides that "[a] trust foundation may be established for the purpose of managing the assets assigned by the founder and using the income derived therefrom to carry out the tasks specified in the founding

41 Act V of 2013 on Civil Code, available at https://njt.hu/jogszabaly/en/2013-5-00-00 (official English translation).
42 Act XIII of 2019 on Trust Foundations, available at https://njt.hu/jogszabaly/2019-13-00-00 (original text).

	document, and to provide financial benefits to the person or persons designated as beneficiaries." and section 2(2) of the Act provides that "[a] trust foundation may carry out, as an economic activity, the management of assets assigned to its benefit or placed in trust for the purpose referred to in paragraph (1).". Section 5(1) provides that "[t]he founder of a trust foundation may appoint a board of trustees of the foundation in the foundation's charter to exercise the founder's rights, and the founder of a non-public interest trust foundation may appoint a foundation auditor pursuant to Section 7 instead of the board of trustees, or if he has reserved his founder's rights in the foundation's charter or has not provided for them in it, he may transfer these rights to the foundation. The founder may also provide in the foundation's charter that his founder's rights shall pass to the foundation in the event of his death, termination without legal successor or the occurrence of a condition specified in the foundation's charter.".
Whether the institution may potentially meet the criteria of Article 2:	No Trust foundations are functionally analogous to trust but not structurally analogous to trust (noting that they have separate legal personalities).

16. Indonesia

Country (Region)	Indonesia[43]
Institution:	*Wakaf*
Legal Basis / Origin:	Law No. 41 of 2004 of Indonesia.[44] M. Obaidullah and others noted the following: [45] - Indonesian law provides a comprehensive definition of *waqf* that includes both permanent and temporary *waqf*. However, once the *waqf* has been declared, it is irrevocable. [Articles 1.1 and 3 of the Law No. 41 of 2004] - Indonesian law recognizes a *waqf* by an individual, organization as well as by a legal institutions. [Article 7 of the Law] - Indonesian law clearly states that an asset can be converted to *waqf* if it is legally owned and authorized by the waqif [endower]. It recognizes both movable and immovable assets as *mawquf* [endowed asset] [Articles 15 and 16 of the Law] - Indonesian law specifies the purpose of *waqf* as ibadah and/or public welfare and therefore, does not recognize family *waqf*. [Articles 1.1 and 5 of the Law] - The central authority responsible for all aspects of *awqaf* in Indonesia is called the Badan Wakaf Indonesia, which does not own or directly manage the *waqf* assets, but plays a supervisory role. [Article 47 of the Law]. - Indonesian law permits an individual, or an organization or a legal institution to be stipulated as nazir. [Article 9 of the Law] - Indonesian law clearly defines the tasks of nazir as: administering the *waqf* asset(s); managing and developing the same in accordance with the objective, benefit and designation of *waqf*; controlling and protecting the *waqf* asset(s); and submitting the report of *waqf* administration to Badan Wakaf, the central body created for the purpose of supervision of all Indonesian *awqaf*. [Articles 11 and 42 of the Law] - The Indonesian law explicitly prohibits the *waqf* asset from being used as a mortgage, confiscated, given away, sold, inherited, exchanged or being alienated into any form of right. The waqf asset may however be exchanged as an exception to the above general rule, when this is deemed to be in the public interest. Such

43 As Indonesia is not a Member of the HCCH, the information in this table was based on research conducted by the PB.
44 Law No. 41 of 2004, available at https://www.bwi.go.id/wp-content/uploads/2019/09/Undang-undang-No.-41-2004-Tentang-Wakaf.pdf (original text).
45 M. Obaidullah et al., Islamic Social Finance Report, Thompson Reuters, 2014, Ch. 4.

	exchange would however, require prior permission from both the Ministry and the Badan Wakaf with an additional condition that the asset exchange must be against another asset of equal or higher value. [Articles 40 and 41 of the Law] - Indonesian law requires that in managing and developing the *waqf* asset, a nazir is not permitted to alienate the designation of *waqf* asset, except if he has received a written permission from the Badan Wakaf Indonesia. Such permission is given if the asset concerned is no longer beneficial as had been assigned in the *waqf* deed. [see Articles 44 of the Law]
Whether the institution may potentially meet the criteria of Article 2:	No

17. Israel

Country (Region)	Israel
Institution:	Trust
Legal Basis / Origin:	Section 1 of the Israeli Trust Law 5739-1979[46] provides a legal framework for private and public trusts in general and defines a trust as "a relationship to property by virtue of which a trustee is bound to hold the same or to act in respect thereof in the interest of a beneficiary or some other purpose". (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes[47] Dyer and Van Loon stated: "Even before the Trust Code 1979 came into force, early in 1980, trusts were already a common phenomenon in Israël. Charitable trusts had always been known under the English Charitable Trust Ordinance, 1924, which was in force until the new Trust Code became effective. Likewise, the English unit trusts had been adopted under the Joint Investments Trust Code 1961. Uncertainty reigned, however, in respect of the legal basis of other private trusts such as trusts for bonds and pension trusts. But this legal uncertainty did not prevent such trusts from flourishing in Israel."

46 Israeli Trust Law 5739-1979, available at https://www.nevo.co.il/law_html/law00/72996.htm (original text).
47 The Dyer/Van Loon Report, p. 33 (footnotes in the original text omitted).

18. Italy

Country (Region)	Italy
Institution:	(1) *Contratto di affidamento fiduciario*
Legal Basis / Origin:	Created by private parties in form of a fiduciary contract where one party, the "*affidante*", allocates certain assets for the benefit of one or more persons, the beneficiaries, in accordance with a plan that the other party, "*affidatario*", undertakes to implement. The fiduciary contract is generally accepted as meeting the condition prescribed in Article 1322(2) of the Italian Civil Code and fall under the general rules on contracts specified in Book IV of the Italian Civil Code.
Whether the institution may potentially meet the criteria of Article 2:	Yes
Institution:	(2) Bond of purpose
Legal Basis / Origin:	Article 2645-ter of the Italian Civil Code provides that: "Deeds, made by public act, by means of which movable and immovable assets, recorded in public registers, are allocated, for not longer than ninety (90) years or for the beneficiary's lifetime, to realise interests worthy of protection according to the legal order with regard to disabled people, administration or other corporations or natural persons pursuant to the second paragraph of Article 1322 of the Italian Civil Code, may be recorded in Public Registers in order to separate the dedicated assets from third parties; any other interested party, beside the settlor, may act in order to achieve those interests, also during the settlor's lifetime. The dedicated assets and their increases may be used only for the intended purpose and may be the object of enforcement proceedings only for debts incurred for that specific purpose, save what is provided under first paragraph of Article 2915 of the Italian Civil Code."[48]
Whether the institution may potentially meet the criteria of Article 2:	Yes[49] In Order No. 6146 of 24 February 2022, the Italian Supreme Court of Cassation noted the similarities between bonds of purpose created under Article 2645-ter of the

48 Article 2645-ter, Italian Civil Code, available at https://academic.oup.com/tandt/article-abstract/12/7/21/1649566?redirectedFrom=PDF (unofficial English translation).

49 L. Franciosi, "Italy: Trust and the Italian Legal System: Why Menu Matters", *Journal of Civil Law Studies*, vol. 6(2), 2013.

	Italian Civil Code and trusts as understood under the Trusts Convention. The Court observed that "having regard to the non-specific concept of trust endorsed by the [Hague Trusts] Convention in its Article 2", Article 2645 ter of the Italian Civil Code can be relied upon to give (improved) effect to institutions that are already known to the Italian domestic legal system. Article 264-ter of the Italian Civil Code makes it possible to create, albeit to some extent ("*in parte*"), "the effects of a trust as understood under the Convention". The Court added that bonds of purposes share "significant common features with the trust as known in the Anglo-Saxon legal tradition" ("*notevoli tratti comuni con il trust di diritto anglosassone*"), so much so that Article 2645 ter appears to provide a legal basis to domestic trusts ("*offr[e] anche copertura normativa al trust interno*"), the only limitation being that a bond of purpose may only be created with a view to realising lawful interests under Italian law, that is, not prohibited by mandatory rules. Bond of purpose under Article 264-ter is likely to fall within Article 2 of the Trusts Convention because: (1) the assets that are made subject to the bond are effectively segregated; (2) the assets are held in the name of the "*affidatario*" (whether or not the latter is also the "*affidante*"); and (3) the "*affidatario*" has the power and the duty, for which he must account, to administer, manage or dispose of property in accordance with the terms of the deed whereby the bond was established.

19. Japan

Country (Region)	Japan
Institution:	*Shintaku*
Legal Basis / Origin:	The Trust Act of Japan[50] provides: Article 2(1). “The term "Trust" as used in this Act means an arrangement in which a specific person, by employing any of the means listed in the items of the following Article, administers or disposes of property in accordance with a certain purpose (excluding the purpose of exclusively promoting the person's own interests; the same applies in the following Article) and conducts any other acts that are necessary to achieve said purpose.” (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes[51] At the Fifteenth Session, the delegation representing this country sought inclusion of this local institution within the scope of “analogous institution” of the Convention. M. Arai in his article stated: “Japan was probably the first amongst East Asian civil law jurisdictions to enact a trust statute. The techniques it used to accommodate the common law trust concept in a civil law framework had subsequently become the model for other trust laws in Asia.” [52] Dyer and Van Loon also found: “The Japanese Civil Code, influenced by civil law concepts, does not know the trust. A 1905 Act, however, permitted trusts for bond holders in respects of mortgages securing corporate bonds. Many trust companies, formed after the American model, flourished though apparently not always in the interest of their client beneficiaries. In order to protect these better, in 1922 a Trust and Trust-Company Statute was enacted. Since that time it does not seem, however, that the trust, which is called *'shintaku' in* Japanese, has found wide application in Japan.” [53]

50 Trust Act of Japan (Act No. 108 of 2006), available at https://www.japaneselawtranslation.go.jp/en/laws/view/2476/en (official English translation).

51 M. Arai, "Trust law in Japan: inspiring changes in Asia, 1922 and 2006", L. Ho & R. Lee (eds.), *Trust Law in Asian Civil Law Jurisdictions a Comparative Analysis*, Cambridge, Cambridge University Press, 2013, pp. 27-31.

52 Ibid at p. 28.

53 The Dyer/Van Loon Report, pp. 33-34.

20. Jordan

Country (Region)	Jordan
Institution:	*Waqf*
Legal Basis / Origin:	The Jordanian Waqf Law[54] provides: Article 2. Definition of *Waqf*: "withholding the property of the owner for Allah the Almighty in order to allocate its benefits for charity and for good deeds".
Whether the institution may potentially meet the criteria of Article 2:	No[55] M. Al Manaseer, M and Matarneh, B. stated: "As for Jordanian civil law based on the Islamic Shari'a law, *waqf* was defined in Article 1233 as "withholding the property owned from being disposed of and allocating its benefits for charity". This means removing ownership of this particular property such that it cannot be owned by anyone; it is intended for Allah only."

54 The Jordanian Waqf Law No. 32/2001.

55 M. Al Manaseer & B. Matarneh, "Waqf and Its Role in the Social and Economic Development of the Hashemite Kingdom of Jordan", *European Journal of Economics, Finance and Administrative Sciences*, Issue 64, 2014, p. 59.

21. Republic of Korea

Country (Region)	Republic of Korea
Institution:	Trusts
Legal Basis / Origin:	Article 2 of Trust Act (as revised by Act No 10924 of 2011)[56] defines "trust" as: "a legal relation that a person who creates a trust (hereinafter referred to as "truster") transfers a specific piece of property (including part of business or an intellectual property right) to a person who accepts the trust (hereinafter referred to as "trustee"), establishes a security right or makes any other disposition, and requires the trustee to manage, dispose of, operate, or develop such property or engage in other necessary conduct to fulfill the purpose of the trust, for the benefit of a specific person (hereinafter referred to as "beneficiary") or for a specific purpose, based on a confidence relation between the truster and the trustee.". (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes[57] Wu in his article explained: "The first Korean Trust Act was enacted in 1961. However, in enacting the Trust Act of the Republic of Korea in 1961, the government had not directly transplanted the English or US law of trusts. Instead, the Japanese Trust Act 1922 was the main source of reference. The Japanese Act was in essence a codification of English trust principles derived from a body of case law. Perhaps due to constraints in translating case law, drafters of the Japanese Act relied heavily on trust statutes such as the Trust Act of India and the provisions on trusts in the California State Civil Code at the initial stage. Nonetheless, the importance of the Indian Act and the Californian Code diminished in the drafting process. When the Japanese Trust Act was nally promulgated in 1922, common law principles in English law were the most important reference material. Thus, when South Korea drew upon the Japanese Trust Act 1922 in introducing its own trust statute, it can be said that the English trust was imported into South Korea via Japan."[58]

56 Article 2 of Trust Act (as revised by Act No 10924 of 2011), available at https://www.law.go.kr/lsSc.do?menuId=1&subMenuId=15&tabMenuId=81&query=%EC%8B%A0%ED%83%81%EB%B2%95#undefined (original text) and https://www.law.go.kr/engLsSc.do?menuId=1&subMenuId=21&tabMenuId=117&query=%EC%8B%A0%ED%83%81%EB%B2%95# (unofficial English translation)

57 Y.-C. Wu, "Trust Law in South Korea: Developments and Challenges", L. Ho & R. Lee (eds.), Trust Law in Asian Civil Law Jurisdictions – a Comparative Analysis, Cambridge, Cambridge University Press, 2013, pp. 46-62.

58 *Ibid.* at pp. 46-37.

22. Kuwait

Country (Region)	Kuwait[59]
Institution:	*Waqf*
Legal Basis / Origin:	Kuwaiti Law of Waqf al-Istirshadi 2014
Whether the institution may potentially meet the criteria of Article 2:	No[60]

59 As Kuwait is not a Member of the HCCH, the information in this table was based on research conducted by the PB.

60 Kuwaiti Law of Waqf al-Istirshadi 2014, Article 23. (“Once created, *waqf* becomes a legal entity.”)

23. Liechtenstein

Country (Region)	Liechtenstein[61]
Institution:	(1) *Treuhänderschaft*
Legal Basis / Origin:	Article 897 of the Liechtenstein Law on Persons and Companies (PGR)[62] provides that: "A trustee for the purposes of this Act is a natural person, firm, or legal person to whom another (the settlor) transfers movable or immovable property or a right (as trust property) of whatever kind with the obligation to administer or use such property in the trustee's own name as an independent legal owner for the benefit of one or several third persons (beneficiaries) with effect towards all other persons.".
Whether the institution may potentially meet the criteria of Article 2:	Yes At the Fifteenth Session, the delegation representing this country sought inclusion of this local institution within the scope of "analogous institution" of the Convention. Liechtenstein ratified the Hague Trusts Convention on 13 December 2004. For that purpose, the Government of Liechtenstein submitted to the Parliament of Liechtenstein, together with a request to ratify the Convention, a report in support of the request. In that report, the Government made clear that it considered that a local institution which has existed since 1926, the *Treuhänderschaft*, corresponded to the concept of trust within the meaning of Hague Trusts Convention and that, in particular, the *Treuhänderschaft* met the requirements in Article 2 of the Convention.[63]
Institution:	(2) *Stiftung* (Foundation)
Legal Basis / Origin:	Section 1 of Article 552 of the PGR[64] provides that: "A foundation as referred to in this section consists in legally and economically independent special-purpose assets which are formed as a legal person through the unilateral declaration of intent of the founder. The founder allocates the specifically designated foundation assets,

61 As Liechtenstein is not a Member of the HCCH, the information in this table was provided by expert practitioners familiar with the situation in Liechtenstein.

62 Law on Persons and Companies (PGR) of 20 January 1926, available at https://www.regierung.li/files/attachments/216-0-01-02-2025-en.pdf (official English translation).

63 Regierung des Fürstentums Liechtenstein, *Bericht und Antrag betreffend das Übereinkommen über das auf die Anerkennung von trusts anzuwendende Recht (Haager Trust-Übereinkommen)*, Vaduz, Regierung des Fürstentums Liechtenstein, 2004, p. 4, available at https://bua.regierung.li/BuA/default.aspx?nr=84&year=2004&erweitert=true.

64 *Ibid.*

	stipulates the purpose of the foundation, which must be entirely non self-serving and specifically designated, and also stipulates the beneficiaries.”.
Whether the institution may potentially meet the criteria of Article 2:	No *Stiftung* are functionally analogous to trust but not structurally analogous to trust (noting that they have separate legal personalities).
Institution:	(3) *Anstalt* (Establishment)
Legal Basis / Origin:	Article 534 of the PGR[65] provides that: “An establishment within the meaning of this title and pursuant to the following regulations is a legally autonomous and organised, permanent undertaking dedicated to economic or other objects and entered in the Commercial Register serving as the Establishment Register, which has holdings of material and possibly personal resources and does not have the character of an institution under public law or any other form of legal person.”.
Whether the institution may potentially meet the criteria of Article 2:	No *Anstalt* are functionally analogous to trust but not structurally analogous to trust (noting that they have separate legal personalities). Domenik Vogt stated that “The Liechtenstein *Anstalt* is a unique and highly flexible legal entity under Liechtenstein law, regulated by Articles 534ff of the Persons and Companies Act (PGR). It can be structured to resemble either a corporation or a foundation, or take on hybrid forms.”. (unofficial translation) [66]
Institution:	(4) *Treuunternehmen*
Legal Basis / Origin:	Article 932a of the PGR[67] provides that: “A trust enterprise (a business trust) may be formed and operated pursuant to the following provisions: 1) A trust enterprise as a business trust without legal personality pursuant to the law is an undertaking managed or further operated on the basis of the

65 *Ibid.*
66 D. Vogt, "Die liechtenstteinishe privatrechtliche Anstalt", *PSR – Politische Studeien und Recht*, Issue 1, 2020.
67 *Ibid.*

	trust articles by one or several trustees (as fiduciary owners), under their own name or legal name which, as a legally autonomous undertaking, pursues organised, economic or other objects and is endowed with its own assets, without legal personality, whose liability for its obligations shall be pursuant to this Act (trust enterprise without legal personality), and which does not have any character under public law or any other legal form under private law. 2) Where, applying the preceding paragraph mutatis mutandis, an undertaking is expressly created as a trust enterprise with legal personality in accordance with the trust articles (deed of formation) drawn up pursuant to the provisions of this Act, the provisions governing the business trust without legal personality shall apply mutatis mutandis to this trust enterprise with legal personality, in particular the provisions governing liability for obligations.”.
Whether the institution may potentially meet the criteria of Article 2:	No The Swiss Federal Supreme Court held in a case[68] that *Treuunternehmen* under Article 932 of the Liechtenstein Law on Persons and Companies (PGR) falls outside the scope of the Trusts Convention because of its legal personality.

68 Swiss Federal Tribunal, 16.12.2024, Case no. 5A_89/2024.

24. Luxembourg

Country (Region)	Luxembourg
Institution:	(1) *Contrat fiduciaire*
Legal Basis / Origin:	Law of 27 July 2003 on Trusts and Fiduciary Contracts, Title II (Fiduciary Contracts), Articles 4 to 9[69] Article 5 defines "*contrat fiduciaire*" as "a contract by which a person, the trustor (*fiduciant*), agrees with another person, the trustee (*fiduciaire*), that the latter, under the obligations determined by the parties, becomes the owner of property forming a trust (*patrimoine fiduciaire*)". (unofficial translation) Article 6 further provides that: "(1) The trust estate is separate from the trustee's personal estate, as from any other trust estate. The assets comprising it may only be seized by creditors whose rights arose from the trust estate. They do not form part of the trustee's personal estate in the event of liquidation or bankruptcy of the trustee or any other situation of competition between his personal creditors. (2) The trustee must account for the trust assets separately from his personal assets and other trust assets." (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes Paolo Panico noted that "[a] total overhaul of the regulation of fiduciary contracts took place under the same statute that ratified the Hague Convention on the Law Applicable to Trusts and on their Recognition. An express purpose of this legislative exercise was to recast the Luxembourg fiduciary contract according to the definition of 'trust' under Article 2 of the Hague Trusts Convention. As a result, it was hoped, a Luxembourg fiduciary contract could be readily recognised and enforced as a civil law trust-like arrangement in any other jurisdiction where the Hague Trusts Convention was in force." [70]
Institution:	(2) Patrimonial foundation
Legal Basis / Origin:	Draft bill no. 6595 on Patrimonial Foundations[71]

69 Law of 27 July 2003 on Trusts and Fiduciary Contracts, available at http://data.legilux.public.lu/eli/etat/leg/loi/2003/07/27/n4/jo (original text).

70 P. Panico, "Luxembourg – fiduciary contracts and trusts", A. Kaplan & B.R. Hauser (eds.), *Trusts in Prime Jurisdictions*, 5th ed., Vol. 1, Globe Law and Business, 2019.

71 Draft bill no. 6596 on Patrimonial Foundations, available at https://wdocs-pub.chd.lu/docs/Dossiers_parlementaires/6595/20250515_Dep%C3%B4t.pdf (original text).

	Article 1 of the draft bill provides that "[a]ny natural person or patrimonial entity acting within the scope of managing the assets of one or more natural persons may allocate assets to the creation of a patrimonial foundation, which acquires legal personality from the date of the constitutive act, unless that act specifies a later date" and Article 4(2) of the draft bill provides that "[t]he assets allocated to a patrimonial foundation become the exclusive property of the foundation from the day of their allocation and constitute the foundation's estate."(unofficial translation) It is noted that the draft bill was filed with the Luxembourg Parliament on 22 July 2013 but it has not been passed yet. [72]
Whether the institution may potentially meet the criteria of Article 2:	No Patrimonial foundations are functionally analogous to trust but not structurally analogous to trust (noting that they have separate legal personalities).

72 Details of the legislative procedure of the draft bill no. 6596 on Patrimonial Foundations, available at https://www.chd.lu/fr/dossier/6595

25. Malaysia

Country (Region)	Malaysia
Institution:	(1) Trusts
Legal Basis / Origin:	Trust Companies Act 1949 (Malaysian Act 100)[73] Trustee Act 1949 (Malaysian Act 208)[74]
Whether the institution may potentially meet the criteria of Article 2:	Yes
Institution:	(2) *Wakaf* / charitable trusts
Legal Basis / Origin:	Sections 61 and 62 of the Administration of Islamic Law (Federal Territories) of 1993 (Malaysian Act 505) [75] provides: "***Wakaf* and *nazr*** **61.** Notwithstanding any provision to the contrary contained in any instrument or declaration creating, governing or affecting the same, the Majlis shall be the sole trustee of all *wakaf*, whether *wakaf 'am* or *wakaf khas*, of all *nazr 'am*, and of all trusts of every description creating any charitable trust for the support and promotion of the Muslim religion or for the benefit of Muslims in accordance with Islamic Law, to the extent of any property affected thereby and situated in the Federal Territories and, where the settlor or other person creating the trust, *wakaf* or *nazr 'am* was domiciled in the Federal Territories, to the extent of all properties affected thereby wherever situated. **Vesting** **62** (1) All properties subject to the provisions of section 61 and situated in the Federal Territories shall without any conveyance, assignment or transfer whatsoever, and, in the case of immovable property, upon registration under the relevant written laws relating to land, vest in the Majlis, for the purposes of the trust, *wakaf* or *nazr 'am* affecting the same.

73 Trust Companies Act 1949 (Malaysian Act 100), available at https://www.ssm.com.my/Pages/Legal_Framework/Document/Act%20100.pdf (official English translation).

74 Trustee Act 1949 (Malaysian Act 208), available at https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20%20208%20-%2031.3.2016.pdf (official English translation).

75 Administration of Islamic Law (Federal Territories) Act 1993 (Malaysian Act 505), available at https://lom.agc.gov.my/ilims/upload/portal/akta/outputaktap/517_BI/ACT%20505.pdf (official English translation).

	(2) The Majlis shall take all necessary steps to vest in itself for the like purposes any such property situated elsewhere than in the Federal Territories.”.
Whether the institution may potentially meet the criteria of Article 2:	No[76] M. Obaidullah and others stated: “Malaysian law requires that every *waqf* shall be registered in the name of the Islamic Religious Council as proprietor”. The concept of trustee under *waqf* is different from the trustee under the law of trusts. For instance, section 2(1) of the Pahang Wakaf Enactment 2022[77] provides that “sole trustee” means “the only institution responsible for administering all *wakaf* property under Islamic Law, but does not mean a trustee as defined under the Trustees Act 1949 [Act 208]”. Since the *waqf* property is registered in the name of the respective Islamic Religious Councils, it allows the respective Islamic Religious Councils to manage and develop the *waqf* property and ensure that it brings benefit to the beneficiaries. In doing so, the respective Islamic Religious Councils will ensure that the intention and wishes of the *waqif* (donor) will be fulfilled utmost. As the Islamic Religious Council is registered as the proprietor of the *waqf* properties, *waqf* is not considered analogous to trusts and would therefore fall outside the scope of Article 2. Furthermore, *waqf* and trusts are different in terms of the administration and purpose as has been highlighted in the Note.

76 M. Obaidullah et al., Islamic Social Finance Report, Thompson Reuters, 2014, Ch. 4.

77 Pahang Wakaf Enactment 2022, available at http://library.jksm.gov.my/cgi-bin/koha/opac-retrieve-file.pl?id=045d85412638783bed4d2513e46ea2bc.

26. Republic of Moldova

Country (Region)	Republic of Moldova
Institution:	*Fiducia*
Legal Basis / Origin:	Moldovan Civil Code, Book III (Obligations), Title IV (Trust), Articles 2055-2161[78]
Whether the institution may potentially meet the criteria of Article 2:	Yes Violeta Cojocaru and Irina Digori stated that "[t]he amendments to the Civil Code of the Republic of Moldova (hereinafter referred to as the Civil Code or CC), made by the Law on the Modernization of the Civil Code and Amendments to Certain Legislative Acts, No. 133 of 15.11.2018 (hereinafter referred to as Law No. 133/2018), and entered into force on 1 March 2019 (with some exceptions), have modernized the private law of the Republic of Moldova by aligning it with international trends … according to art. 2055 CC, trust (*fiducia*) is a legal relationship in which a party (trustee) is obliged to become the owner of a patrimonial mass (fiduciary patrimonial mass), to administer it and dispose of it, in accordance with the conditions governing the relationship (conditions of the trust), for the benefit of a beneficiary or to promote a public utility purpose" and "the legislator opted for regulations similar to those contained in the DCFR [Draft Common Frame of Reference of the European Union], which are closer in essence and variety of applicability to the common law trust, unlike the norms regulating fiduciary in Romania or France". (unofficial translation) [79] Veronica Pozneacova noted that "[t]he effect of the trust (*fiduciei*) on the patrimony is manifested by the isolation of the patrimony and the creation of two distinct patrimony masses: the fiduciary patrimony mass and the personal patrimony mass of the fiduciary. The fiduciary patrimony mass consists of the assets transferred in trust and is characterized by the fact that it cannot be pursued by the creditors of the settlor of the trust, the fiduciary, the beneficiary. Only the creditors of the fiduciary patrimony mass can pursue the trust assets". [80] (unofficial translation)

78 Moldovan Civil Code, available at https://www.legis.md/cautare/getResults?doc_id=112573&lang=ro (original text).
79 V. Cojocaru & I. Digori, "Fiducia – A Novelty in the Civil Code of the Republic of Moldova", *Journal of the National Institute of Justice*, vol. 4 (51) 2019, p. 10.
80 V. Pozneacova, "Fiducia in the Modernized Civil Code of the Republic of Moldova: Quo Vadis", *Law Journal, Faculty of Law, Moldova State University*, 2021, p. 237.

27. Monaco

Country (Region)	Monaco
Institution:	Trust
Legal Basis / Origin:	Law No. 214 of 27 February 1936 revising Law No. 207 of 12 July 1935 on Trusts[81] Article 1 of the Sovereign Ordinance No. 8.635 of 29 April 2021 implementing Law No. 214 of 27 February 1936 revising Law No. 207 of 12 July 1935 on Trusts provides that "a legal structure is considered similar to trusts when it allows a person to create legal relationships which place assets under the control of a third party in the interest of a beneficiary or for a specific purpose, when it has the following characteristics: 1) the assets placed under the control of the third party constitute a separate mass and are not part of the third party's assets; 2) the title relating to the goods placed under the control of the third party is established in the name of the third party or of another person on behalf of the third party; 3) the third party is invested with the power and charged with the obligation, for which he must account, to administer, manage or dispose of the assets placed under his control according to the terms of the legal structure and the specific rules imposed on the third party by law." [82] (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes

81 Monaco Law No. 214 of 27 February 1936, available at Loi n° 14 du 27 février 1936 portant révision de la loi n° 207 du 12 juillet 1935 sur les trusts [Legimonaco]

82 Monaco Sovereign Ordinance No. 8.635 of 29 April available at https://legimonaco.mc/tnc/ordonnance/2021/04-29-8.635/

28. Netherlands

Country (Region)	Netherlands
Institution:	*Bewind*
Legal Basis / Origin:	Title 3.6 of the Dutch Civil Code[83]
Whether the institution may potentially meet the criteria of Article 2:	No[84] According to the Dyer/Van Loon Report, the *bewind* is different from the trust because ownership is vested in the beneficiaries.

83 The Dyer/Van Loon Report, p. 39; Title 3.6, Dutch Civil Code (Title 3.6 of the New Dutch Civil Code contains the general provisions for all types of (protective) administration of property by an appointed legal administrator. The enactment of this Title, however, has been postponed and probably a new draft will have to be made before it may be introduced ever.), available at http://www.dutchcivillaw.com/legislation/dcctitle33055.htm#title36

84 The Dyer/Van Loon Report, p. 39.

29. Oman

Country (Region)	Oman[85]
Institution:	*Waqf*
Legal Basis / Origin:	Article 2 of Omani Royal Decree 65/2000 on Awqaf[86] provides that "once created, the *waqf* has its own legal personality. The ownership of the assets is transferred from the *waqif* (settlor) to the *waqf*.". (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	No[87]

85 As Oman is not a Member of the HCCH, the information in this table was based on research conducted by the PB.
86 Omani Royal Decree 65/2000, available at https://qanoon.om/p/2000/rd2000065/ (original text).
87 *Ibid.*

30. Pakistan

Country (Region)	Pakistan[88]
Institution:	(1) Trust
Legal Basis / Origin:	The Trust Act of 1882, Chapter 1, section 3[89] provides the following interpretations: - "trust" is an obligation annexed to the ownership of property, and rising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner; - the person who reposes or declares the confidence is called the "author of the trust"; - the person who accepts the confidence is called the "trustee"; - the person whose benefit the confidence is accepted is called the "beneficiary"; - the subject-matter of the trust is called "trust-property" or "trust-money". - the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property: and - the instrument, if any, by which the trust is declared is called the "instrument of the trust": a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust".
Whether the institution may potentially meet the criteria of Article 2:	Yes
	(2) *Waqf*
Legal Basis / Origin:	The Islamabad Capital Territory Waqf Properties Act, 2020, Section 2(n)[90] defines "waqf property" as "property of any kind permanently dedicated by a person professing Islam for any purpose recognized by Islam as religious, pious or charitable".
Whether the institution may potentially meet the criteria of Article 2:	No[91] According to M. Obaidullah and others, "[t]he situation is quite different in India, Pakistan and Bangladesh where the

88 As Pakistan is not a Member of the HCCH, the information in this table was based on research conducted by the PB.

89 The Trust Act of 1882, available at https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-bpg%3D-sg-jjjjjjjjjjjj (official English translation).

90 The Islamabad Capital Territory Waqf Properties Act, 2020, available at https://na.gov.pk/uploads/documents/1601023429_848.pdf (original text).

91 M. Obaidullah et al., *Islamic Social Finance Report*, Thompson Reuters, 2014, Ch. 4.

	state plays a supervisory role devoid of actual ownership or direct management of *waqf* assets.”.

31. Peru

Country (Region)	Peru
Institution:	*Fideicomiso*
Legal Basis / Origin:	Article 241 of the Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros[92] reads: "Article 241. Concept of *fideicomiso* - A *fideicomiso* is a legal relationship by which the *fideicomitente* transfers assets in trust to another person, called the *fiduciario*, for the establishment of a *patrimonio fideicometido*, subject to the latter's fiduciary control and intended to fulfill a specific purpose in favor of the settlor or a third party called the *fideicomisario*. The *patrimonio fideicometido* is distinct from the estate of the *fiduciario*, the *fideicomitente*, or the *fideicomisario*, and, where applicable, the recipient of the remaining assets. The assets comprising the independent *patrimonio fideicometido* do not generate charges against the corresponding effective assets of the *empresa fiduciaria*, except in the case where a judicial resolution has assigned liability for mismanagement and for the amount of the corresponding damages. The liquid portion of the *fideicomiso* funds is not subject to reserve requirements. The Superintendency issues general regulations on the various types of *negocios fiduciarios*." (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes[93]

92 Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros, available at https://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/7B3154074498CD5E05257F030072F042/$FILE/26702.pdf (original text).

93 M. Lupoi, "The Shapeless Trust", *Trusts & Trustees*, vol. 1 (3) 1995, pp. 15-18.

32. Poland

Country (Region)	Poland
Institution:	Family foundations
Legal Basis / Origin:	Act of 26 January 2023 on Family Foundation[94] Article 2 of the Act provides that "[t]he family foundation is a legal person established for the purposes of property accumulation and management in the interest of the beneficiaries and of providing the benefits to the beneficiaries. The founder lays down a specific objective of the family foundation in its statute." (unofficial translation) Article 4 of the Act provides that "[t]he family foundation acquires a legal personality upon being entered into the register of family foundations." (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	No Family foundations are functionally analogous to trust but not structurally analogous to trust (noting that they have separate legal personalities).

94 Act of 26 January 2023 on Family Foundation, available at https://api.sejm.gov.pl/eli/acts/DU/2023/326/text.pdf (original text).

33. Qatar

Country (Region)	Qatar[95]
Institution:	*Waqf*
Legal Basis / Origin:	Article 7 of the Law No. 8 of 1996 with respect to Endowment (Waqf) provides[96]: "The Endowment shall have a legal personality from inception, and shall enjoy the rights and duties of a legal person in accordance with the Law."
Whether the institution may potentially meet the criteria of Article 2:	No[97]

95 As Qatar is not a Member of the HCCH, the information in this table was based on research conducted by the PB.

96 Law No 8 of 1996 with respect to Endowment (Waqf) 8/1996, available at https://www.icnl.org/wp-content/uploads/Qatar_8_Qatar_Waqf_1996.pdf (official English translation).

97 *Ibid.*

34. Romania

Country (Region)	Romania
Institution:	*Fiducia*
Legal Basis / Origin:	Civil Code, Book III (Goods), Title IV (Fiducia), Articles 773 to 791[98] Article 773 of the Civil Code provides that "*fiducia* is a legal transaction by which one or more settlors transfer real rights, claims, guarantees or other patrimonial rights or a set of such rights, present or future, to one or more trustees who exercise them for a specific purpose, for the benefit of one or more beneficiaries. These rights constitute an autonomous patrimonial mass, distinct from the other rights and obligations in the patrimonies of the trustees." (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes Anduena Maria Illinca Mehedinti Sandru noted that "Romania's new Civil Code, which came into effect on October 1, 2011, serves as the capstone of many years of assiduous work. Among its progressive changes, the New Code establishes trusts as a legal instrument for the first time under Romanian law." [99]

98 Romania Civil Code, available at COD CIVIL (A) 04/02/2016 - Portal Legislativ

99 A.M.I. Mehedinti Sandru, "The Institution of Trust under Romania's New Civil Code and Common Law System", *Journal of Law and Administrative Sciences*, Special Issue, 2015, p. 884.

35. San Marino

Country (Region)	San Marino[100]
Institution:	(1) Trust
Legal Basis / Origin:	Article 2 of Law No. 42 of 1 March 2010 provides that "[a] trust exists when a person holds property in the interest of one or more beneficiaries, or for a specific purpose under this Law" and Article 12 of that Law states that "[t]he trust fund shall be separate from the personal assets of the trustee and those relating to other persons or other trusts".[101]
Whether the institution may potentially meet the criteria of Article 2:	Yes
Institution:	(2) *Contratto di affidamento fiduciario*
Legal Basis / Origin:	Article 1 of Law No. 43 of 1 March 2010 provides that "[a] fiduciary agreement is an agreement by which a settlor and a trustee agree on the program that assigns some assets and their yields for the benefit of one or more beneficiaries, whether or not parties to the agreement, within a time limit not exceeding 90 years." [102]
Whether the institution may potentially meet the criteria of Article 2:	Yes[103] M. Lupoi stated: "The San Marino statute is strictly civilian in as much as it applies civil law concepts, taken, as we have seen, from German and Italian law and from the ius commune, to govern functions that were hitherto seen as typical trust functions."

100 As San Marino is not a Member of the HCCH, the information in this table was provided by expert practitioners familiar with the situation in San Marino.

101 Law March 1, 2010, No. 42, available at https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17024916.html (original text) and at https://www.consigliograndeegenerale.sm/on-line/documento17134204.html (official English translation).

102 Law March 1, 2010, No. 43, available at https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17024917.html (original text), https://www.consigliograndeegenerale.sm/on-line/documento17134205.html (official English translation).

103 M. Lupoi, "The new law of San Marino on the 'affidamento fiducario'", *Studi in onore di Aldo Frigani*, Napoli, 2011, p. 9.

36. South Africa

Country (Region)	South Africa
Institution:	Trust
Legal Basis / Origin:	Trust Property Control Act 57 of 1988[104] defines a trust as "the arrangement through which the ownership in property of one person is by virtue of a trust instrument made over or bequeathed-- (a) to another person, the trustee, in whole or in part, to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument or for the achievement of the object stated in the trust instrument; or (b) to the beneficiaries designated in the trust instrument, which property is placed under the control of another person, the trustee, to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument or for the achievement of the object stated in the trust instrument, but does not include the case where the property of another is to be administered by any person as executor, tutor or curator in terms of the provisions of the Administration of Estates Act, 1965 (Act No. 66 of 1965)[.]"
Whether the institution may potentially meet the criteria of Article 2:	Yes[105] D. Clarry in "Fiduciary Ownership and Trusts in a Comparative Perspective" stated: "[T]he South African experience of the trust provides an excellent example of a jurisdiction that has not only embraced the trust, but has made the trust its own by accommodating it within the broader schema of South African law."[106]

104 Trust Property Control Act 57 of 1988, available at https://www.gov.za/sites/default/files/gcis_document/201505/act-57-1988_0.pdf (official English translation).
105 The Dyer/Van Loon Report, p. 34.
106 D. Clarry, "Fiduciary Ownership and Trusts in a Comparative Perspective", *International and Comparative Law Quarterly*, vol. 63, 2014, p. 911.

37. Sri Lanka

Country (Region)	Sri Lanka
Institution:	Trust
Legal Basis / Origin:	The Trusts Ordinance[107] provides: "(a) "Trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another person, or of another person and the owner, of such a character that, while the ownership is nominally vested in the owner, the right to the beneficial enjoyment of the property is vested or to be vested in such other person, or in such other person concurrently with the owner; (b) a Trust does not include a fideicommissum;"
Whether the institution may potentially meet the criteria of Article 2:	Yes[108]

107 Trust Ordinance No 9 of 1917, L.E. Cap 89, amended by Acts No 7 of 1968 and No 30 of 1971, available at https://www.srilankalaw.lk/t/1314-trusts-ordinance.html (official English translation).

108 *Ibid.*

38. Switzerland

Country (Region)	Switzerland
Institution:	(1) *Treuhand / fiducie / fiducia*
Legal Basis / Origin:	
Whether the institution may potentially meet the criteria of Article 2:	No Under Swiss law, *Treuhand* is an institution of a contractual nature and does not provide for a general segregation of assets in the event of insolvency. The Swiss Federal Supreme Court (BGE 117 II 429 E. 3.b) has held that "under Swiss law, the fiduciary is considered to be the full owner of the entrusted assets. Property and rights that belong to him in his fiduciary capacity can therefore in principle be seized from him and, in the event of general enforcement, fall into his bankruptcy estate, even if, from an economic point of view, they belong to someone else.".
Institution:	(2) *Stiftung / fondation / fondazione*
Legal Basis / Origin:	Article 80 of the Swiss Civil Code states that "a foundation is established by the endowment of assets for a particular purpose." (This provision is placed in Title Two of the Code, "Legal Entities"). Article 53 of the Swiss Civil Code states that "legal entities have all the rights and duties other than those which presuppose intrinsically human attributes, such as sex, age or kinship.". [109]
Whether the institution may potentially meet the criteria of Article 2:	No Under Swiss law, *Stiftung* has a separate legal personality[110] and does not satisfy Article 2(b) of the Trusts Convention.

109 Swiss Civil Code, available at https://www.fedlex.admin.ch/eli/cc/24/233_245_233/en.

110 The Swiss Federal Supreme Court has held that *Treuunternehmen* under Article 932 of the Liechtenstein Law on Persons and Companies (PGR) falls outside the scope of the Trusts Convention because of its legal personality. Please refer to Swiss Federal Tribunal, 16.12.2024, Case no. 5A_89/2024.

39. United Arab Emirates

Country (Region)	United Arab Emirates[111]
Institution:	(1) Trusts
Legal Basis / Origin:	The Federal Decree by Law No (31) of 2023[112] regarding trusts provides under Article 1 the following definitions: Trust: The legal person established by virtue of the Trust Instrument in accordance with the provisions of this Law by Decree to achieve the purpose of the Trust. Settlor: A natural or legal person who creates the Trust and transfers its property thereto in accordance with the provisions of this Law by Decree. Trustee: A natural person, including the Professional Trustee, or a profession legal person, appointed in accordance with the Trust Instrument, to whom the authorities and powers identified in the Trust Instrument and the provisions of this Law by Decree are transferred to achieve the purpose of the Trust. Trust Property: Any movable or immovable property owned by the Trust, including any interests related thereto or deemed a part thereof and any existing or possible right, inside or outside State. The Trust Property includes Dividends of the Trust in accordance with what is specified by the Trust Instrument. Beneficiary: The person entitled to a personal right by virtue of the Trust Instrument, including the person entitled to or may be entitled to, in accordance with the Trust Instrument obtaining dividends or property of the Trust; and any person to whom the trustee has the power to grant the dividends of the trust, including granting the security right in his favour on the property of the Trust.
Whether the institution may potentially meet the criteria of Article 2:	Yes[113] Russell in his article “Trust and foundations move onshore in the Gulf” cited Article 3 of the old UAE Trust Law, which provides “The Trust shall acquire a legal personality and

111 As the United Arab Emirates is not a Member of the HCCH, the information in this table was based on research conducted by the PB.

112 Federal Decree by Law No (31) of 2023 Concerning Trust, available at https://uaelegislation.gov.ae/en/legislations/2120 (official English translation).

113 D. Russell QC, "Trusts and Foundations Move Onshore in the Gulf", *Trusts & Trustees*, vol. 27 (4) 2021, pp. 315-316. (Note that the article cites the old UAE Trust Law. The current applicable law on trusts in the UAE is the Federal Decree by Law No (31) of 2023 as cited above.)

	have financial and administrative independence and the right of litigation in this capacity, and shall be represented by the Trustee" and Articles 23(1) and 25(1, 2, 4, 6, and 9) to show the "traditional common law position" of trusts in the UAE.[114] Russell concluded that Articles 23(1) and 25(1, 2, 4, 6, and 9) on the authorities and powers and obligations of the trustee "reflect the fact that the Arabic word used in Article 3 does not connote legal personality in the sense of a body corporate under English law. It follows that a valid trust under the [...] Law clearly satisfies the requirements of the Hague Convention[.]"[115] Article 3 of the old UAE Trust Law is substantially replicated in Article 3 of the Federal Decree by Law No (31) of 2023 (new UAE Trust Law).[116] Articles 23 and 25 of the old UAE Trust Law are substantially replicated in Articles 21 and 23 of the new UAE Trust Law.[117]
Institution:	(2) *Waqf*
Legal Basis / Origin:	Article 10 of the Federal Law of the UAE No 5 of 2018[118] provides for the effects of Registration of Endowment. The registration of the Endowment in the Record shall entail the following: 1- Acquisition of legal entity, financial and administrative independence, and right of litigation in this capacity. 2- Transfer of ownership and possession of the Endowed to the Endowment and it shall not be disposed of throughout the period of Endowment in any type of disposal of transfer of property or restriction of the benefit of its revenues, such as sale, mortgage or donation.
Whether the institution may potentially meet the criteria of Article 2:	No

114 *Ibid.* at p. 315.
115 *Ibid.*
116 Federal Decree by Law No (31) of 2023 Concerning Trust, available at https://uaelegislation.gov.ae/en/legislations/2120 (official English translation).
117 *Ibid.*
118 Federal Law of the UAE No 5 of 2018, available at https://uaelegislation.gov.ae/en/legislations/1237/download (official English translation).

40. United Kingdom of Great Britain and Northern Ireland

Country (Region)	The United Kingdom of Great Britain and Northern Ireland i) England and Wales ii) Scotland iii) Northern Ireland
Institution:	Trusts
Legal Basis / Origin:	Trusts law in all UK jurisdictions is based on a mixture of common law and statute. Notable cases and legislation include: i) For England and Wales, the case of *Knight v Knight* [1840] 49 ER 58 sets out the requirements for a trust to be recognised as valid. The Trustee Act 1925, the Trusts of Land and Appointment of Trustees Act 1996 and the Trustee Act 2000 codify the appointment, resignation and powers of trustees. ii) The key legislation governing the Scots law of trusts is as follows: • The Trusts (Scotland) Act 1921; • The Trusts (Scotland) Act 1961; • The Trustee Investments Act 1961; • The Law Reform (Miscellaneous Provisions) (Scotland) Act 1968; • The Charities and Trustee Investment (Scotland) Act 2005; and • The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. • It is noted that the Trusts (Scotland) Act 1921 will be replaced by the Trusts and Succession (Scotland) Act 2024 once this enters into force. • There are also several cases that establish further rules governing trusts, notably *M'Caig's Trs v Kirk-Session of United Free Church of Lismore* 1915 SC 426 (the purpose of a trust cannot be contrary to public policy), *Inland Revenue v Clark's Trs* 1939 SC 11 (which sets out the dual patrimony theory) and *Gillespie v City of Glasgow Bank* (1879) 6 R. (H.L.) 104 (confirming that no special form of words is needed to create a trust). iii) For Northern Ireland, the Trustee Act (Northern Ireland) 2001 governs the rights and duties of trustees and beneficiaries, the Settled Land Acts 1882-1890 governs trusts involving lands and the Charities Act (Northern Ireland) 2013 governs charitable trusts.
Whether the institution may potentially meet the criteria of Article 2:	Yes (except for trusts in Northern Ireland governed by the Settled Land Acts 1882-1890 as their structure and the powers granted to the tenant for life may not match the definition of Article 2).

41. Uruguay

Country (Region)	Uruguay
Institution:	(1) *Fideicomiso*
Legal Basis / Origin:	Under Article 1 of Act Nº 17.703 (*Ley de Fideicomiso*), 27 October 2003[119], "*fideicomiso*" is defined as "the legal transaction through which fiduciary ownership of a set of property rights or other real or personal rights is established. These rights are transferred by the settlor to the trustee for the trustee to administer or exercise in accordance with the instructions contained in the trust, for the benefit of a person (beneficiary) designated therein, and for the settlor to return them to the settlor upon fulfillment of the term or condition, or to transfer them to the beneficiary. There may be multiple trustees and beneficiaries.". "Article 2. (Constitution).- A "*fideicomiso*" (trust) may be established by an act *inter vivos* or by will. A trust by act *inter vivos* is an unnamed contract that must be executed in writing under penalty of nullity, regardless of the subject matter. A public deed is required in cases where such solemnity is required by law. Public disclosure to third parties shall be governed by the provisions of the Public Registry Law. A trust by act *inter vivos* is a valid instrument for producing the transfer of ownership or title to the real or personal rights that constitute its subject matter. A testamentary trust may be established by open or closed will. The certificate of succession must record the establishment of the trust property and must be registered in the cases provided for in the Public Registry Law. A testamentary trust grants the trustee the personal right to claim from the heirs the delivery of the assets and rights that constitute its purpose, except in the case of a specific type. In such a case, the trustee acquires ownership of the trust upon the death of the deceased, in accordance with Articles 937 and 938 of the Civil Code. The heir-trustee succeeds according to the general principles." "Article 8. (Scope of liability).- The trustee's assets will not be liable for the obligations incurred in the execution of the trust, which will only be satisfied from the assets in trust. (...)"

119 Available at https://www.impo.com.uy/bases/leyes/17703-2003.

Whether the institution may potentially meet the criteria of Article 2:	Yes
Institution:	(2) *Fideicomiso financiero*
Legal Basis / Origin:	Under chapter IV, Act N° 17.703, Article 25, the *fideicomiso financiero* is defined as "...Any trust transaction whose beneficiaries are holders of certificates of participation in the trust domain, debt securities secured by the assets comprising the trust, or mixed securities granting credit rights and participation rights over the remainder. The certificates of participation and debt securities shall be governed by Decree-Law No. 14,701 of September 12, 1977, as applicable." "A financial trust may be established by unilateral act, in which the settlor and the fiduciary agree, when authorization is requested to publicly offer (Article 28 of this law) the participation certificates, debt securities, or mixed securities referred to in the preceding paragraph."
Whether the institution may potentially meet the criteria of Article 2	Yes
Institution:	(3) *Fideicomiso de garantía* (Guarantee Trust)
Legal Basis / Origin:	Under Article 42 of Act N° 17.703, "Transfers of taxed assets made in compliance with a guarantee trust are exempt from the Property Transfer Tax. This exemption will apply to both the transferring party and the acquiring party, both in the original transfer of the assets to the trust and in the subsequent transfer to the settlor."
Whether the institution may potentially meet the criteria of Article 2:	Yes
Institution:	(4) *Fideicomiso de inversion*
Legal Basis / Origin:	Under Article 3 of Act N° 17.703, "(Investment Authorization).- When the trust is intended to carry out a municipal public work, the Municipal Intendances may establish it by transferring departmental tax credit rights, notifying the Departmental Board. The Notarial Retirement and Pension Fund, the Retirement and Pension Fund for University Professionals, the Bank Retirement and Pension Fund, and the Pension Savings Fund Administrators may invest in trusts, provided that their purpose relates to activities carried out, assets located, or rights used economically in the Republic, as well as credits originating from exports made from Uruguay."
Whether the institution may potentially meet the criteria of Article 2:	Yes

42. Venezuela (Bolivarian Republic of)

Country (Region)	Venezuela (Bolivarian Republic of)
Institution:	(1) Trust
Legal Basis / Origin:	"[I]n 1956, Venezuela sought to 'introduced a notion of trust with no restrictions as to its range of applications'. The civil code *fideicomiso* continued to exist, but the 1956 law permitted banks, insurance companies, and financial companies to perform as fiduciaries for certain operations within their respective industries."[120]
Whether the institution may potentially meet the criteria of Article 2:	Yes
Institution:	(2) *Fideicomiso*
Legal Basis / Origin:	Article 1 of the Law of *Fideicomisos*[121] states that: "A *fideicomiso* is a legal relationship by which a person, called the *fideicomitente*, transfers one or more assets to another person, called the *fiducario*, who is obligated to use them for the benefit of the *fideicomitente* or a third party, called beneficiary." (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes At the Fifteenth Session, the delegation representing this country sought inclusion of this local institution within the scope of "analogous institution" of the Convention.

120 D. Figueroa, "Civil Trusts in Latin America: Is the Lack of Trusts an Impediment for Expanding Business Opportunities in Latin America", *J. Ariz, Int'l & Comp. L.*, vol. 24, 2007, p. 740 (citing Lupoi, "Trusts, A Comparative Study", Simon Dix trans., Cambridge University Press 2000, pp. 290-291).

121 Venezuela, Ley de Fideicomisos, No 496 of 17 August 1956, available at https://docs.venezuela.justia.com/federales/leyes/ley-de-fideicomisos.pdf

Annex B to Note (for Section VI) - Selected Legislation and Cases on the Application and Interpretation of the Trusts Convention and on Cross-border Recognition of Trusts and Institutions Analogous to Trusts

1 This Annex sets out lists of legislation and cases, by jurisdictions, that are considered relevant to the application and interpretation of the Trusts Convention and cross-border recognition of trusts and institutions analogous to trusts.

2 The information presented in the lists below is not intended to be exhaustive.

3 The formal names of the legislation and cases are set out in the language of this publication relying on official translations where available and using the translation capabilities or other assistance of the PB where official translations are otherwise unavailable.

1. Australia

Legislation

Trusts (Hague Convention) Act 1991 (Cth)[1]

Cases

Bligh v James [2018] FamCA 187 (Family Court of Australia)

El-Semarani (By His Tutor Samarani) v El Samrani [2020] NSWSC 1724 (Supreme Court of New South Wales, Equity Division)

Hiralal v Hiralal (2013) 10 ASTLR 300 (Supreme Court of New South Wales, Equity Division)

Hutchinson v Bank of Scotland [2012] QSC 028 (Supreme Court of Queensland)

In the Estate of Webb; Webb v Rogers (1992) 57 SASR 193 (Supreme Court of South Australia)

Lever v Attorney-General of NSW [2018] NSWSC 838 (Supreme Court of New South Wales, Equity Division)

Piatek v Piatek (2010) 245 FLR 137 (Supreme Court of Queensland)

2. Belgium

Legislation

Law of 16 July 2004 establishing the Code of Private International Law, Chapter XII (Trust), Articles 122 to 125[2]

3. (A) Canada (other than Quebec)

Cases

Chan v. Chan, 2012 BCSC 192[3]

Everest Canadian Properties Ltd. v. CIBC World Markets Inc., 2008 BCCA 276[4]

Killam v. Killam, 2018 BCCA 64[5]

Re Jagos (Estate of), 2007 ABQB 56[6]

Ritter v. Hoag, 2003 ABQB 88[7]

Rowland v. Vancouver College Ltd., 2001 BCCA 527[8]

Royal Trust Corporation of Canada v. A.S. (W.) S., 2004 ABQB 284[9]

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1 Available at Trusts (Hague Convention) Act 1991 - Federal Register of Legislation
2 Available at https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2004071631&table_name=loi
3 Available at https://canlii.ca/t/fpwbs
4 Available at https://canlii.ca/t/1z8wf
5 Available at https://canlii.ca/t/hqxkq
6 Available at https://canlii.ca/t/1qdvw
7 Available at https://canlii.ca/t/5dhr
8 Available at https://canlii.ca/t/4z8b
9 Available at https://canlii.ca/t/1gw6v

Sevy v. Sevy, 2013 BCSC 2255[10]

Sommer v. The Queen, 2012 FCA 207[11]

Webster-Tweel v. Royal Trust Corporation of Canada, 2010 ABQB 139[12]

4. (B) Canada (Quebec)

Legislation

Civil Code of Québec of Canada, Book Ten (Private International Law), Title Two (Conflict of Laws), Articles 3107 and 3108[13]

Cases

Dubeau c. Lessard, 2015 QCCS 6144[14]

5. Czech Republic

Legislation

Law of 25 January 2012 on Private International Law, Book Four (Provisions for Individual Types of Private Law Relationships), Title VII (Property Rights), Section 73 (Trust Fund or Similar Device)[15]

6. Hong Kong, China

Legislation

Recognition of Trusts Ordinance (Cap. 76)[16]

7. Italy

Legislation

Law of 16 October 1989 on Ratification and Implementation of the Convention on the Law Applicable to Trusts and on their Recognition[17]

8. Luxembourg

Legislation

Law of 27 July 2003 on Trusts and Fiduciary Contracts, Title I (Law Applicable to the Trust and its Recognition), Articles 1 to 3[18]

Cases

Luxembourg court of appeal, 16 October 2014, case no 37374

10 Available at https://canlii.ca/t/g29t9
11 Available at Canada v. Sommerer - Federal Court of Appeal
12 Available at https://canlii.ca/t/28c4d
13 Available at https://www.legisquebec.gouv.qc.ca/en/document/cs/ccq-1991?langCont=fr#se:3107
14 Available at https://canlii.ca/t/gmt97
15 Available at 91/2012 Sb., 23. 9. 2023, aktuální znění, informativní znění systému e-Sbírka
16 Available at Cap. 76 Recognition of Trusts Ordinance
17 Available at LAW no. 364 of 16 October 1989 - Normattiva
18 Available at http://data.legilux.public.lu/eli/etat/leg/loi/2003/07/27/n4/jo

Luxembourg court of appeal, 18 March 2020, case no CAL-2018-00261

Luxembourg district court, 12 November 2008, case no 107177

Luxembourg district court, 17 December 2024, case no TAL-2018-04103

9. Monaco

Legislation

Law No. 1.448 of 28 June 2017 on Private International Law, Title V (Trusts), Articles 98 to 100[19]

10. Netherlands

Legislation

Civil Code, Book 10, Title 11 (Trust Law), Articles 142 to 144[20]

The Convention on the Law Applicable to Trusts and on their Recognition, concluded at The Hague on 1 July 1985 (Trb. 1985 141) (effective from 1 February 1996)[21]

11. Portugal

Cases

Decision from the Notaries and Registry Board - R.P. 244-2008, 26.02.2009

Decision from the Notaries and Registry Board - R.P. 81-2020, 27.07.2021

Ruling of Coimbra Court of Appeal 09-01-2024, proc. 83940-18.3YIPRT.C1

Ruling of Evora Court of Appeal, 25-06- 2015, proc. 3405-12.0TBSTB.E1

Ruling of Porto Court of Appeal, 28.11.2017 - proc. 1050-06.9TVPRT.P1

Ruling of the Supreme Court of Justice - 18.06-2024, proc. 820-21.2T8TVD-A.L1 .S1

12. Romania

Legislation

Civil Code, Book VII (Provisions of Private International Law), Title II (Conflicts of Laws), Chapter VIII (Fiducia), Articles 2.659 to 2.662[22]

13. San Marino

Legislation

Law No. 42 of 1 March 2010 on Trust, Article 4[23]

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19 Available at https://legimonaco.mc/code/code-droit-international-prive/

20 Available at wetten.nl - Regeling - Burgerlijk Wetboek Boek 10 - BWBR0030068

21 Available at wetten.nl - Regeling - Verdrag inzake het recht dat toepasselijk is op trusts en inzake de erkenning van trusts - BWBV0002005

22 Available at COD CIVIL (A) 04/02/2016 - Portal Legislativ

23 Available at https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17024916.html (original text) and at https://www.consigliograndeegenerale.sm/on-line/documento17134204.html (official English translation).

14. Spain

Cases

ATS 1731/2018 - ECLI:ES:TS:2018:1731A

STS 1632/2008 - ECLI:ES:TS:2008:1632

15. Switzerland

Legislation

Federal Act of 18 December 1987on Private International Law, Chapter 9a (Trusts)[24]

Federal Act of 20 December 2006 on the Approval and Implementation of the Hague Convention on the Law Applicable to Trusts and on their Recognition[25]

Cases

Administrative Tribunal, Canton of Bern, 08.08.2024, case no. 100 22 174

Court of Appeals, Canton of Ticino, 27.03.2018, case no. 14.2017.176

Swiss Federal Tribunal, 16.12.2024, case no. 5A_89/2024

Swiss Federal Tribunal, 17.11.2022, case no. 1B_319/2022

16. United Kingdom of Great Britain and Northern Ireland

Legislation

Recognition of Trusts Act 1987[26]

24 Available at SR 291 - Bundesgesetz vom 18. Dezember 1987 über... | Fedlex
25 Available at AS 2007 2849 - Bundesbeschluss über die Genehmig... | Fedlex
26 Available at https://www.legislation.gov.uk/ukpga/1987/14