

Título	Convenio sobre <i>Trusts</i> de 1985: Informe y propuesta de publicación
Documento	Doc. Prel. N.º 12B de enero de 2026
Autor	Oficina Permanente (OP) Grupo de Trabajo sobre el art. 2 del Convenio sobre <i>Trusts</i> de 1985 Presidenta del Grupo de Trabajo
Punto de la agenda	Punto III.3.b.
Mandatos	CyD N.º 70 a 72 del CAGP de 2025
Objetivo	Informar sobre la primera y segunda reunión del Grupo de Trabajo y obtener la aprobación de los Miembros de la HCCH para la propuesta de publicación
Acción requerida	Decisión <input checked="" type="checkbox"/> Aprobación <input checked="" type="checkbox"/> Discusión <input type="checkbox"/> Acción/finalización <input type="checkbox"/> A título informativo <input type="checkbox"/>
Anexos	<i>Annex I: Report of the first meeting</i> <i>Annex II: List of participants of the first meeting</i> <i>Annex III: Aide-mémoire of the second meeting prepared by the Chair</i> <i>Annex IV: List of participants of the second meeting</i> Anexo V: Nota sobre la aplicación e interpretación del artículo 2 del <i>Convenio de 1 de julio de 1985 sobre la Ley Aplicable al Trust y a su Reconocimiento</i> y sobre las instituciones análogas a los <i>trusts</i> , incluidos sus anexos A y B

Documentos relacionados

- [Doc. Prel. N.º 13B de enero de 2025](#) – Convenio sobre *Trusts* de 1985: Informe y propuesta de publicación
- [Prel. Doc. No 15B of February 2024](#) – 1985 *Trusts Convention: Update*
- [Prel. Doc. No 10A of February 2023](#) – 2006 *Securities Convention, 1985 Trusts Convention, 2015 Principles on Choice of Law: Update*
- [Prel. Doc. No 3A of January 2023](#) – *Digital Economy and the HCCH Conference on Commercial, Digital and Financial Law Across Borders (CODIFI Conference): Report*
- [Prel. Doc. No 10C of December 2022](#) – 1985 *Trusts Convention: Updates and possible future work*
- [Prel. Doc. No 14 of November 2021](#) – *The HCCH 1985 Trusts Convention: Updates and possible future work*
- [Prel. Doc. No 15 of December 2020](#) – *The HCCH 1985 Trusts Convention: Updates and possible future work*

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Convenio sobre *Trusts* de 1985: Informe y propuesta de publicación

I. Introducción

- 1 De conformidad con las Conclusiones y Decisiones (CyD) N.º 70 a 72 del Consejo de Asuntos Generales y Política (CAGP) de 2025¹, se creó un Grupo de Trabajo en marzo de 2025 para revisar y completar el estudio sobre la aplicación e interpretación del artículo 2 del Convenio sobre *Trusts* de 1985 y sobre las instituciones análogas a los *trusts*. El Grupo de Trabajo se reunió en línea en dos oportunidades, en mayo y octubre de 2025.
- 2 El Grupo de Trabajo se reunió por primera vez los días 6 y 7 de mayo de 2025. Asistieron a la reunión 26 delegados y otros expertos, en representación de 11 Miembros de la HCCH y cuatro Observadores, así como personal de la Oficina Permanente (OP). En su primera reunión, el Grupo de Trabajo examinó el proyecto preliminar de la propuesta de publicación, elaborado por la OP con anterioridad a la reunión, y deliberó sobre su objetivo, título, estructura, contenido y forma. Se acordó que la publicación se calificaría de “nota” y constaría de un documento principal y dos anexos. El informe de la primera reunión figura en el anexo I, y la lista de participantes, en el anexo II.
- 3 Durante el período entre reuniones comprendido entre mayo y octubre de 2025, los miembros del Grupo de Trabajo presentaron aportes especializados por escrito para facilitar la elaboración de la propuesta de publicación. El proyecto preliminar de la nota fue revisado por la OP a partir de los aportes recibidos en el período entre reuniones y distribuido al Grupo de Trabajo antes de su segunda reunión.
- 4 El Grupo de Trabajo se reunió por segunda vez los días 6 y 7 de octubre de 2025. Asistieron a la reunión 26 delegados y otros expertos, en representación de ocho Miembros de la HCCH y cinco Observadores, así como miembros de la OP. En su segunda reunión, el Grupo de Trabajo nombró Presidenta por consenso a la Dra. Roberta Nocella, delegada en representación de Italia. El Grupo de Trabajo revisó y analizó, párrafo por párrafo, el segundo proyecto preliminar de la “Nota sobre la aplicación e interpretación del artículo 2 del *Convenio de 1 de julio de 1985 sobre la Ley Aplicable al Trust y sobre su reconocimiento* y sobre las instituciones análogas a los *trusts*” (proyecto de nota), incluidos sus anexos A y B. El memorando de la segunda reunión elaborado por la Presidenta figura en el anexo III, y la lista de participantes, en el anexo IV.
- 5 Teniendo en cuenta los debates y aportes del Grupo de Trabajo durante sus dos reuniones y a lo largo del período entre reuniones, la OP elaboró y distribuyó el proyecto de nota y sus anexos para que el Grupo de Trabajo formulara comentarios al respecto. Al no recibir comentarios adicionales del Grupo de Trabajo, el 11 de noviembre de 2025, la OP distribuyó el proyecto de nota y sus anexos para que los Miembros de la HCCH formularan comentarios al respecto. De conformidad con la CyD N.º 71 del CAGP de 2025, se concedió a los Miembros de la HCCH un plazo de dos meses para presentar sus comentarios.
- 6 A la fecha límite de presentación de 12 de enero de 2026, la OP solo recibió comentarios no sustanciales de dos Miembros de la HCCH sobre el proyecto de nota y sus anexos. La OP revisó y ultimó el proyecto de nota y sus anexos en función de estos comentarios. La versión final del documento figura en el anexo V.
- 7 El Grupo de Trabajo invita al CAGP a tomar nota del informe y del memorando que figuran en los anexos I y III de este Documento Preliminar.

¹ “Conclusiones y Decisiones del CAGP de 2025 (4-7 de marzo de 2025)”, CyD N.º 71 (disponible en el sitio web de la HCCH (www.hcch.net) en “Gobernanza” => “Consejo de Asuntos Generales y Política” y “Archivo (2000-2025)”).

- 8 A la luz de que no se han recibido objeciones ni comentarios sustanciales de los Miembros al proyecto de nota y sus anexos durante el período de dos meses establecido en la CyD N.º 71 del CAGP de 2025, el Grupo de Trabajo recomienda lo siguiente:
- que el CAGP considere la versión final de la nota sobre la aplicación e interpretación del artículo 2 del *Convenio de 1 de julio de 1985 sobre la Ley Aplicable al Trust y a su Reconocimiento* y sobre las instituciones análogas a los *trusts*, incluidos sus anexos A y B, que figura en el anexo V de este Documento Preliminar, y la apruebe para su publicación.

II. Propuesta para el CAGP

- 9 Sobre la base de lo que antecede, la OP propone las siguientes CyD para la consideración del CAGP:
- El CAGP toma nota del informe de la primera reunión y del memorando de la Presidenta sobre la segunda reunión del Grupo de Trabajo.
 - El CAGP aprueba la versión final de la nota sobre la aplicación e interpretación del artículo 2 del *Convenio de 1 de julio de 1985 sobre la Ley Aplicable al Trust y a su Reconocimiento* y sobre las instituciones análogas a los *trusts*, incluidos sus anexos A y B, y encarga a la OP planificar su publicación.

ANEXOS

Anexo I

WORKING GROUP ON TRUSTS

**REPORT OF THE FIRST
WORKING MEETING**

6-8 MAY 2025



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,

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

Anexo 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 Law/International, 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
Nosedà	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	Seconded (Hong Kong SAR)	In person
Villanueva	Samantha	HCCH	Intern	In person

Hague Conference on Private International Law
Conférence de La Haye de droit international privé
Conferencia de La Haya de Derecho Internacional Privado

www.hcch.net
secretariat@hcch.net
The Hague | Buenos Aires | Hong Kong SAR

Anexo 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 “*Waqfs*”, 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 *toiletage*. 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.

Anexo 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 Law International, Rights and Cr	Online

Farr	Peter	United Kingdom	Ministry of Justice	Online
Fullick	Martin	United Kingdom	Senior Policy Adviser, Private International Law, Ministry of Justice	Online
Keenan	Ian	United Kingdom	His Majesty's Revenue and Customs	Online
Paparakis	Michael	United Kingdom	Scottish Government	Online
Villegas	Candela Noelia	ASADIP	ASADIP member	Online
Fresnedo de Aguirre	Cecilia	ASADIP	ASADIP member	Online
Górniak	Kacper	CNUE	Notary and assistant professor in the Civil Law Department at the Faculty of Law, Jagiellonian University in Cracow	Online
Patrão	Afonso	EAPIL	Professor at the University of Coimbra, Member of the Constitutional Court of Portugal	Online
Cuniberti	Gilles	EAPIL	Professor at the University of Luxembourg	Online
Cirlig	Ramona	EAPIL		Online
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
Wen	Ying	HCCH	Intern	In person

Hague Conference on Private International Law
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www.hcch.net
secretariat@hcch.net
The Hague | Buenos Aires | Hong Kong SAR | Rabat

Anexo V

Nota sobre la aplicación e interpretación del artículo 2 del *Convenio de 1 de julio de 1985 sobre la Ley Aplicable al Trust y a su Reconocimiento y sobre las instituciones análogas a los trusts*

I. Introducción

- 1 El *Convenio de 1 de julio de 1985 sobre la Ley Aplicable al Trust y a su Reconocimiento* (“Convenio sobre *Trusts*”) se celebró el 1 de julio de 1985 y entró en vigor el 1 de enero de 1992¹.
- 2 Durante el período comprendido entre los años 2020 y 2025, la HCCH llevó a cabo un estudio sobre la aplicación e interpretación del artículo 2 del *Convenio sobre Trusts* y sobre las instituciones que pueden ser análogas a los *trusts* a los fines del *Convenio*. Esta Nota presenta los resultados del estudio con el objetivo de aumentar el conocimiento del *Convenio* a nivel mundial y la confianza en las instituciones que pueden ser análogas a los *trusts*, así como de destacar el potencial del *Convenio* para garantizar una mayor seguridad jurídica en el reconocimiento de los *trusts* y de las instituciones análogas a los *trusts*.
- 3 El objetivo de la presente Nota consiste en brindar orientación práctica sobre la aplicación del *Convenio sobre Trusts*. Adopta un enfoque comparativo respecto del tratamiento de los *trusts* y de las instituciones potencialmente similares a los *trusts* en distintos marcos jurídicos, tales como el *common law*, el derecho continental y el derecho islámico, entre otros. Se centra en las siguientes tres áreas principales:
 - i. la interpretación de las versiones en inglés y francés del artículo 2 del *Convenio* (véase la sección IV);
 - ii. las instituciones que pueden cumplir los criterios del artículo 2 del *Convenio* en distintas jurisdicciones (véase la sección V); y
 - iii. la legislación y la jurisprudencia sobre la aplicación e interpretación del *Convenio* y sobre el reconocimiento transfronterizo de los *trusts* y de las instituciones análogas a los *trusts* (véase la sección VI).
- 4 La presente Nota está destinada a servir de material de referencia a los profesionales del derecho que se ocupan de cuestiones relativas a la aplicación e interpretación del *Convenio sobre Trusts* y, en particular, de la cuestión que consiste en determinar si una institución puede cumplir los criterios del artículo 2 del *Convenio*. La información proporcionada en esta Nota no constituye asesoramiento jurídico de la Oficina Permanente (“OP”) de la HCCH. Los usuarios de esta Nota deben solicitar asesoramiento jurídico a profesionales autorizados de las jurisdicciones pertinentes.

II. Antecedentes del estudio (2020-2025)

- 5 Los trabajos sobre el *Convenio sobre Trusts* que derivaron en la presente Nota comenzaron en marzo de 2020 cuando el Consejo de Asuntos Generales y Política (“CAGP”) de la HCCH encomendó a la OP que “emprenda la investigación y los preparativos relacionados con el cuestionario sobre derecho comercial y financiero y la posible conferencia internacional que se

¹ Para la lista más actualizada de Partes contratantes del *Convenio sobre Trusts*, junto con las respectivas fechas de entrada en vigor, véase [HCCH | #30 - Estado actual](#).

celebrará a fines de 2022, coincidente con el 30.º aniversario de la entrada en vigor del Convenio sobre *Trusts*².

- 6 En 2021, se presentó al CAGP un informe en el que se describían los desafíos para una adopción más amplia del Convenio sobre *Trusts*. En el informe se señaló un posible y persistente malentendido o una incompatibilidad entre los conceptos de *trusts* y otras instituciones análogas en los sistemas de derecho continental y de *common law* y se sugirió que podría ser necesaria una encuesta para analizar en qué medida tales cuestiones interfieren en el alcance y la aplicación correctos del Convenio³.
- 7 En el Documento Preliminar N.º 14 de noviembre de 2021⁴, presentado al CAGP para su reunión de 2022, se señalaba la importancia del concepto de “instituciones análogas a los *trusts*”. Anexa a este Documento Preliminar se encontraba una tabla, que presentaba información de jurisdicciones que representan diversas tradiciones jurídicas con un enfoque particular en las jurisdicciones de derecho continental que han adoptado los *trusts* y/o tienen sus propias instituciones análogas a ellos⁵. La información recopilada en ese anexo sirvió de base para el estudio realizado en los años siguientes.
- 8 Las cuestiones relativas al Convenio sobre *Trusts* se discutieron en la Conferencia inaugural de la HCCH sobre Derecho Comercial, Digital y Financiero Transfronterizo (Conferencia CODIFI) de 2022, celebrada en línea del 12 al 16 de septiembre de 2022, en un segmento del programa dedicado al Convenio sobre *Trusts* que incluyó cuatro sesiones específicas sobre el instrumento⁶. Los expertos de la Conferencia CODIFI identificaron un crecimiento de iniciativas recientes en jurisdicciones como la República Popular China, Corea, Hungría, Israel, Japón, Suiza y en varias partes de América Latina, que han desarrollado instituciones análogas a los *trusts* en los años posteriores a la conclusión del Convenio. Los expertos señalaron que el vínculo con estas jurisdicciones contribuiría a una mayor comprensión de los *trusts* y de las instituciones análogas y, por lo tanto, a una aplicación más extendida del Convenio⁷. A la luz de esos debates, se consideró oportuno y conveniente continuar trabajando sobre el ámbito de aplicación y la interpretación del artículo 2 del Convenio para aumentar el interés en este. En las reuniones del CAGP de 2023 y 2024, la OP recibió el mandato de proseguir los trabajos.
- 9 En 2024, la OP y la *Society of Trust and Estate Practitioners* (“STEP”) analizaron una posible cooperación en relación con los trabajos en el Convenio sobre *Trusts*. La OP elaboró una encuesta sobre el Convenio sobre *Trusts* (“Encuesta STEP”) dirigida a recopilar información de los profesionales que sean miembros de STEP. La Encuesta STEP contenía preguntas relacionadas con los ámbitos de trabajo actuales con respecto al artículo 2 del Convenio y a las instituciones que pueden ser análogas a los *trusts* a los fines del Convenio. La Encuesta STEP se distribuyó a

² “*Conclusions and Decisions of the Council on General Affairs and Policy of the Conference (3-6 March 2020)*”, CyD N.º 39, disponible en el sitio web de la HCCH en www.hcch.net (“Gobernanza” => “Consejo de Asuntos Generales y Política” => “Archivo (2000-2025)”).

³ “*The HCCH 1985 Trusts Convention: Updates and possible future work*”, *Prel. Doc. No 15 of December 2020*, disponible en el sitio web de la HCCH en www.hcch.net (“Gobernanza” => “Consejo de Asuntos Generales y Política” y luego “Archivo (2000-2025)”), párrs. 8 y 9.

⁴ “*The HCCH 1985 Trusts Convention: Updates and possible future work*”, *Prel. Doc. No 14 of November 2021*, disponible en el sitio web de la HCCH en www.hcch.net (“Gobernanza” => “Consejo de Asuntos Generales y Política” y luego “Archivo (2000-2025)”), párr. 10.

⁵ *Ibid.*, Anexo I, “*List of Institutions Potentially Analogous to Trusts*”.

⁶ “*Digital Economy and the HCCH Conference on Commercial, Digital and Financial Law Across Borders (CODIFI Conference): Report*”, *Prel. Doc. No 3A of January 2023, Annex I, “Report of the 2022 inaugural HCCH Conference on Commercial, Digital and Financial Law Across Borders (CODIFI Conference)”*, disponible en el sitio web de la HCCH en www.hcch.net (“Gobernanza”, “Consejo de Asuntos Generales y Política” y luego “Archivo (2000-2025)”), párrs. 11 a 16.

⁷ “*2006 Securities Convention, 1985 Trusts Convention, 2015 Principles on Choice of Law: Update*”, *Prel. Doc. No 10A de febrero de 2023*, disponible en el sitio web de la HCCH en www.hcch.net (“Gobernanza” y luego “Consejo de Asuntos Generales y Política” => “Archivo (2000-2025)”), párr. 15.

los miembros de STEP en julio de 2024, y, al 9 de agosto de 2024, se recibieron respuestas vinculadas a seis jurisdicciones, a saber, Argentina, Israel, Italia, Malta, Reino Unido y San Marino.

- 10 En 2025, el CAGP acogió favorablemente el informe de los trabajos realizados por la OP en colaboración con STEP acerca del estudio sobre la aplicación e interpretación del artículo 2 del Convenio sobre *Trusts* y sobre las instituciones análogas a los *trusts*. El CAGP también encargó la creación de un Grupo de Trabajo (“Grupo de Trabajo sobre *Trusts*”) para revisar y completar el estudio sobre la aplicación e interpretación del artículo 2 del Convenio sobre *Trusts* y sobre las instituciones análogas a los *trusts*, teniendo debidamente en cuenta las posibles implicancias para las Partes no contratantes y en función de los recursos disponibles.
- 11 Esta Nota es el resultado de cinco años de trabajo en la HCCH sobre este estudio.
- 12 Las principales fuentes de referencia de esta Nota son cinco:
 - i. el Informe Explicativo sobre el Convenio de La Haya sobre *Trusts* de 1985⁸ (“Informe Explicativo”);
 - ii. el Informe sobre *Trusts* e Instituciones Análogas⁹ (“Informe Dyer/Van Loon”);
 - iii. fuentes académicas;
 - iv. respuestas a la Encuesta STEP; y
 - v. aportes de los miembros del Grupo de Trabajo sobre *Trusts*.

III. Esquema del Convenio sobre *Trusts*

- 13 El Convenio sobre *Trusts* determina la ley aplicable al *trust* y regula su reconocimiento en las Partes contratantes. Un *trust* es una institución jurídica desarrollada originalmente en la tradición del *common law*, en la que una persona, el constituyente, coloca bienes bajo el control de un *trustee* para cumplir un fin predeterminado o en interés de un beneficiario (art. 2). El *trustee* es responsable de la administración del *trust* y debe rendir cuenta de ella. Teniendo en cuenta tanto la adopción de los *trusts* y de las instituciones análogas en distintas jurisdicciones como la singularidad de esta institución de *common law*, el Convenio establece disposiciones comunes a los *trusts* y tiende puentes entre distintas tradiciones jurídicas.
- 14 Al facilitar el reconocimiento transfronterizo de los *trusts*, el Convenio brinda previsibilidad y seguridad a los beneficiarios de los *trusts* y a aquellos que intervienen en las relaciones jurídicas creadas por ellos. Refuerza la autonomía de la voluntad de las partes dando prioridad al derecho elegido por el constituyente y armoniza las disposiciones contradictorias de derecho internacional privado entre las jurisdicciones que reconocen la institución del *trust*.
- 15 El Convenio sobre *Trusts* se divide en cinco capítulos. En el capítulo I, donde se define el ámbito de aplicación del Convenio, se determinan las instituciones que están abarcadas y se las delimita en relación con otras instituciones (art. 2). El ámbito de aplicación del Convenio es limitado, en tanto se aplica únicamente a los *trusts* creados voluntariamente y cuya prueba conste por escrito (art. 3). Por lo tanto, los *trusts* creados de pleno derecho no se encuentran dentro del ámbito de aplicación del Convenio, y los *trusts* creados por decisiones judiciales solo se encuentran dentro del ámbito de aplicación del Convenio si la Parte contratante así lo declara. También se excluyen expresamente del ámbito de aplicación del Convenio las cuestiones preliminares relativas a la

⁸ A.E. von Overbeck, “Explanatory Report on the 1985 Hague Trusts Convention”, en *Proceedings of the Fifteenth Session (1984)*, Tome II, *Trusts – applicable law and recognition*, La Haya, Imprimerie Nationale, 1985, págs. 370 a 415.

⁹ A. Dyer y H. van Loon, “Report on trusts and analogous institutions”, Prel. Doc. No 1 of May 1982, en *Proceedings of the Fifteenth Session (1984)*, Tome II, *Trusts – applicable law and recognition*, La Haya, Imprimerie Nationale, 1985, págs. 10 a 108.

validez de los testamentos u otros actos jurídicos en los cuales se transfieren bienes al *trustee* (art. 4). En otras palabras, el Convenio resulta aplicable únicamente a las cuestiones que afectan al propio *trust* y solo a las cuestiones que surgen luego de su constitución.

- 16 El capítulo II del Convenio establece las normas relativas a la ley aplicable a los *trusts*. Adopta un principio de “autonomía de la voluntad de las partes” para los *trusts*¹⁰: la elección del derecho por parte del constituyente proporciona la conexión subjetiva (art. 6); en subsidio, a falta de elección por parte del constituyente (o si tal elección es ineficaz), se establece en los apartados (a) a (d) una conexión objetiva con el derecho con la que el *trust* está más estrechamente vinculado (art. 7) en una jerarquía implícita¹¹. Se prevé el *dépeçage* (art. 9) en el sentido de que un constituyente puede elegir entre distintos derechos para regir distintos aspectos del *trust*.
- 17 El capítulo III del Convenio establece en qué consistirá como mínimo el reconocimiento (art. 11) y especifica la forma en que el *trust* podrá figurar en los registros públicos (art. 12). Junto con el capítulo IV, las disposiciones del Convenio permiten el no reconocimiento de determinados *trusts*, si parecen improcedentes (arts. 13, 15, 16 y 18), preservando al mismo tiempo las normas que sean más favorables al reconocimiento de un *trust* que aquellas del Convenio (art. 14)¹².
- 18 El capítulo V contiene las disposiciones habituales de los Convenios de la HCCH sobre firma, ratificación, adhesión, entrada en vigor y denuncia, así como aquellas relativas a la implementación del Convenio en determinadas unidades territoriales de los Estados compuestos de varias unidades.
- 19 Las versiones en inglés y francés del texto del Convenio sobre *Trusts* son igualmente auténticas (Disposición final).

IV. Interpretación del artículo 2 del Convenio sobre *Trusts*

- 20 El artículo 2 del Convenio sobre *Trusts* indica el ámbito de aplicación del Convenio.
- 21 Las versiones en inglés y francés del artículo 2 rezan lo siguiente:

EN	FR
<p><i>“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.</i></p> <p><i>A trust has the following characteristics: -</i></p> <p><i>a) the assets constitute a separate fund and are not a part of the trustee’s own estate;</i></p> <p><i>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;</i></p> <p><i>c) the trustee has the power and the duty, in respect of which he is accountable, to</i></p>	<p><i>“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.</i></p> <p><i>Le trust présente les caractéristiques suivantes: -</i></p> <p><i>a) les biens du trust constituent une masse distincte et ne font pas partie du patrimoine du trustee;</i></p> <p><i>b) le titre relatif aux biens du trust est établi au nom du trustee ou d’une autre personne pour le compte du trustee;</i></p>

¹⁰ Informe Explicativo, pág. 383, párr. 63.

¹¹ *Ibid.*, págs. 374, 386 y 387, párrs. 20, 72 y 77.

¹² *Ibid.*, pág. 383, párrs. 21 y 22.

<p><i>manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.</i></p> <p><i>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 necessarily inconsistent with the existence of a trust.”</i></p>	<p><i>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.</i></p> <p><i>Le fait que le constituant conserve certaines prérogatives ou que le trustee possède certains droits en qualité de bénéficiaire ne s'oppose pas nécessairement à l'existence d'un trust.”</i></p>
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- 22 Los expertos que disertaron en la Conferencia CODIFI habían señalado la importancia de aclarar las divergencias de interpretación entre las versiones en inglés y francés del artículo, entre ellas, los desafíos planteados por el uso del término francés “*patrimoine*” y del término inglés “*estate*”¹³.
- 23 Un elemento esencial de la estructura de un *trust* a los fines del Convenio, según lo dispuesto en el artículo 2(a), es que “*the assets constitute a separate fund and are not a part of the trustee's own estate*”. En la versión en francés el texto reza lo siguiente: “*les biens du trust constituent une masse distincte et ne font pas partie du patrimoine du trustee*”. El término “*estate*” puede entenderse como un concepto propio del *common law*, mientras que “*patrimoine*” refleja una concepción del *civil law* sobre los bienes de una persona.
- 24 En las jurisdicciones de *common law*, los bienes del *trust* suelen dividirse entre la propiedad legal (*legal ownership*) y la propiedad en *equity* (*equitable ownership*). Por el contrario, los sistemas de *civil law* han adherido tradicionalmente al principio de que una persona posee un patrimonio único e indivisible. Esta diferencia conceptual ha planteado históricamente desafíos para el reconocimiento de los *trusts* en los marcos jurídicos de *civil law*. En respuesta a ello, varias jurisdicciones de *civil law* han desarrollado, en las últimas décadas, mecanismos jurídicos que permiten el reconocimiento de patrimonios diferenciados o la afectación de un patrimonio con un fin determinado. Entre los ejemplos se encuentran Quebec (Canadá), Italia y República Checa, cada uno de los cuales han introducido marcos que armonizan estructuras similares a los *trusts* con los principios del *civil law*.
- 25 Para tener en cuenta las diferencias entre tradiciones jurídicas, el Convenio no exige la presencia de propiedad en *equity* (*equitable ownership*) para que una relación jurídica califique como *trust*. En su lugar, se centra en la separación estructural entre los bienes del *trust* y los bienes personales del *trustee*. Este requisito estructural permite aplicar el Convenio de manera flexible en distintas tradiciones jurídicas. Tiene en cuenta tanto al modelo del *common law* —en el que la propiedad se divide entre la propiedad legal y la propiedad en *equity*— como al enfoque del *civil law*, que puede basarse en la noción de un patrimonio separado o de un patrimonio afectado con un fin determinado. Es importante señalar que esta divergencia conceptual no ha generado, a la fecha, dificultades interpretativas en el marco del Convenio.
- 26 A pesar de esta flexibilidad, el uso de “*patrimoine*” en la versión en francés del artículo 2 ha suscitado inquietudes sobre una posible interpretación errónea por parte de profesionales del derecho en jurisdicciones de *civil law*. En particular, preocupa que el término —y la noción más amplia de patrimonios diferenciados— pueda inducir a algunos a suponer que los bienes personales del *trustee* se encuentran automáticamente resguardados de las obligaciones que

¹³ Conferencia CODIFI, F. Nosedá, “*Trusts/Closing Session*”, 16 de septiembre de 2022, disponible en https://youtu.be/emh1dcYSepE?si=bKUY_RoBxlufey6t.

asuma en el ejercicio de sus funciones como tal. En la práctica, sin embargo, la existencia de esta protección depende del derecho aplicable al *trust*, y no del concepto de “*patrimoine*” en sí mismo.

- 27 En última instancia, el énfasis del Convenio en la separación estructural, y no en modelos conceptuales de propiedad, garantiza su compatibilidad con distintos sistemas jurídicos y libra la determinación de las cuestiones de responsabilidad y protección de los bienes al derecho interno.

V. Instituciones que cumplen los criterios del artículo 2 del Convenio sobre *Trusts*

- 28 El Convenio sobre *Trusts* no define el término “*trusts*”. En cambio, el artículo 2 del Convenio enumera las características de un *trust* y el tipo de relaciones jurídicas que crea. Esto refleja la intención de los redactores de garantizar que el Convenio resultara pertinente y aplicable en un contexto internacional¹⁴.
- 29 Los *trusts* del *common law* tuvieron sus orígenes en Inglaterra alrededor del siglo XII como un mecanismo para administrar bienes en nombre de quienes no podían hacerlo por sí mismos, como los caballeros que combatían en el extranjero y las órdenes mendicantes católicas, a las que el Derecho Canónico les prohibía ser titulares directas de bienes. Dado que el sistema del *common law* podía resultar estricto e inflexible, y que permitía a cualquier persona que ostentara la posesión de bienes disponer de ellos como estimara conveniente, la única vía que tenían los beneficiarios para impugnar las decisiones de sus *trustees* cuando discrepaban de ellas era presentar una petición al monarca —y, más tarde, al *Lord Chancellor*— en busca de reparación.
- 30 Con el tiempo, ello condujo al desarrollo del derecho de *equity*, que no constituye un sistema jurídico separado, sino un conjunto de principios destinados a mitigar la percepción de severidad del *common law* y a ofrecer recursos jurídicos orientados a evitar la injusticia. En el caso de los *trusts*, el *equity* garantiza que el *trust* se administre en beneficio del beneficiario y no del *trustee*.
- 31 También es posible que existan, sobre un mismo bien, derechos derivados de la ley y derechos derivados del *equity*, de modo que una persona tenga la propiedad legal del bien, con todos los derechos que ello conlleva, y otra tenga un derecho de *equity* sobre ese mismo bien, que le otorgue la facultad de gozar o beneficiarse de otro modo de él. Por ejemplo, si un *trustee* vende un bien que posee en virtud de un *trust*, debe entregar las ganancias de la venta al beneficiario (o, en su caso, administrar el producido en beneficio del beneficiario conforme a lo previsto en el contrato de *trust*), dado que el beneficiario tiene un derecho de *equity* sobre ese bien. Cabe destacar que esto se considera un derecho de propiedad independiente y no un derecho específico frente al *trustee*.
- 32 También cabe señalar que, en Gales e Inglaterra, así como en muchos otros sistemas jurídicos de *common law*, rige desde hace mucho tiempo el principio jurídico en virtud del cual, cuando el *equity* y el *common law* entran en conflicto, prevalece el *equity*.
- 33 No cabe duda de que los *trusts* del *common law*, tal como se reconocen en jurisdicciones de *common law* como Australia, Canadá y el Reino Unido, encajan plenamente dentro del ámbito de aplicación del Convenio sobre *Trusts*. Sin embargo, la situación es más incierta respecto de las instituciones —creadas por ley o de otro modo— existentes en jurisdicciones fuera de la tradición del *common law*. En ocasiones, no queda claro si tales instituciones presentan las características enumeradas en el artículo 2 del Convenio y, en consecuencia, si pueden quedar comprendidas dentro de su ámbito de aplicación. En esta sección se considera la naturaleza de estas instituciones y se evalúa su posible inclusión dentro del ámbito del Convenio.

¹⁴ Informe Explicativo, pág. 378, párrs. 36 y 37.

- 34 En el momento en que se negoció el Convenio sobre *Trusts*, se reconocieron los desafíos que planteaba su interpretación, especialmente debido a que el Convenio trata sobre los *trusts*, institución que surge específicamente de las tradiciones de *common law*¹⁵. Cabe destacar que, durante la Decimoquinta Sesión, las delegaciones consideraron determinadas instituciones que no constituyen *trusts* del *common law* y procuraron su inclusión dentro del ámbito de aplicación del Convenio¹⁶.
- 35 En el Informe Dyer/Van Loon se señalaba que los sistemas de derecho continental han desarrollado un conjunto de instituciones que, ya sea individualmente o en combinación, pueden cumplir las funciones de un *trust*, y observaba que, al crear una entidad jurídica independiente (una sociedad o fundación), al establecer una red contractual de relaciones, al transferir derechos de propiedad, mediante determinadas disposiciones testamentarias y, con mayor frecuencia, mediante una combinación de dos o más de estos mecanismos jurídicos, es posible arribar a resultados muy similares a los que los sistemas de *common law* han logrado a través del *trust*. Sin embargo, ninguna de estas instituciones puede considerarse en sí misma una traducción adecuada del concepto de *trust*¹⁷.
- 36 En el Informe Explicativo también se señalaba que la cuestión que consiste en determinar si las instituciones análogas existentes en ciertos países de derecho continental cumplen igualmente los criterios del Convenio resultará más difícil de resolver [...]. Será necesario distinguir aquellas instituciones que son estructuralmente análogas al *trust*, y que quedan comprendidas en el Convenio, de aquellas que solo son funcionalmente análogas y que no están incluidas¹⁸.
- 37 A título de referencia, el anexo A presenta, en forma de tabla, las instituciones de diversas jurisdicciones que pueden —o no— cumplir los criterios del artículo 2 del Convenio sobre *Trusts*, con descripciones de su origen, configuración, naturaleza jurídica y función y, cuando corresponde, las fuentes de la legislación que las establece, jurisprudencia y otra información pertinente.
- 38 Al redactar esta Nota, el Grupo de Trabajo sobre *Trusts* analizó en detalle si determinados acuerdos contractuales, instituciones con personalidad jurídica, fundaciones y *waqfs* pueden cumplir los criterios establecidos en el artículo 2 del Convenio sobre *Trusts* y, por lo tanto, quedar comprendidos dentro de su ámbito de aplicación.

A. Acuerdos contractuales

- 39 Algunas jurisdicciones cuentan con acuerdos contractuales cuyos efectos son similares a aquellos de los *trusts*. Al evaluar si estas figuras cumplen los criterios del Convenio, cabe recordar que una institución debe ser estructuralmente análoga a un *trust* para quedar comprendida dentro del ámbito de aplicación del Convenio.
- 40 El texto del artículo 2 no incluye ni excluye expresamente a los acuerdos contractuales del alcance del Convenio. Desde esta perspectiva, es posible que los acuerdos contractuales cumplan los requisitos del Convenio —entre ellos, el requisito de que los fondos del *trust* constituyan un fondo separado—, pero no debe suponerse que ello sea necesariamente así. Cada tipo de relación contractual debe evaluarse a la luz de los requisitos del Convenio.

¹⁵ *Ibid.*, pág. 372, párr. 12.

¹⁶ *Ibid.*, pág. 375, párr. 26.

¹⁷ Informe Dyer/Van Loon, pág. 40, párr. 57.

¹⁸ Informe Explicativo, pág. 372, párr. 13. Véase también “Conclusions drawn from the discussion of the Special Commission of June 1982 on trusts and analogous institutions”, Prel. Doc. No 6 of September 1982, en *Proceedings of the Fifteenth Session (1984)*, Tome II, *Trusts – applicable law and recognition*, La Haya, Imprimerie Nationale, 1985, pág. 140, párr. 12.

- 41 Debe prestarse especial atención al tratamiento de los terceros en estas relaciones, puesto que los acuerdos puramente contractuales pueden carecer de la capacidad de reproducir los efectos protectores que un *trust* ofrece frente a las reclamaciones de terceros sin mecanismos jurídicos adicionales. Por ejemplo, en los sistemas de *common law*, los bienes del *trust* están en manos del *trustee*, pero permanecen separados de sus bienes personales. Esa separación garantiza que, en caso de quiebra o insolvencia, los bienes del *trust* no estén disponibles para saldar las deudas personales del *trustee*.
- 42 En virtud de la teoría del efecto relativo de los contratos (*privity of contract*), conocida en algunas jurisdicciones, los derechos y obligaciones contractuales vinculan, por regla general, únicamente a las partes contratantes. Por lo tanto, un acuerdo puramente contractual en el que el título de propiedad se transfiere de una parte a otra, por lo general, no puede —sin alguna operación adicional de la ley— proteger esos bienes frente a las reclamaciones de terceros acreedores en caso de insolvencia del cesionario. Los acuerdos contractuales que solo vinculan a las partes contratantes no quedarían comprendidos dentro del ámbito de aplicación del Convenio.
- 43 Véase el anexo A, donde se evalúan diversas relaciones contractuales que presentan ciertas similitudes con los *trusts* para determinar si se encuentran comprendidas dentro del ámbito de aplicación del Convenio.

B. Instituciones con personalidad jurídica

- 44 Las instituciones con personalidad jurídica propia que poseen o son propietarios de bienes en calidad de personas jurídicas quedan fuera del ámbito de aplicación del artículo 2 del Convenio. Ello se debe a que el artículo 2 establece “la colocación de bienes bajo el control de un *trustee*” y que “el título sobre los bienes del *trust* se establece en nombre del *trustee*”. Por lo tanto, es el *trustee* —y no el propio *trust* como persona jurídica— quien se considera poseedor o propietario de los bienes correspondientes.

C. Fundaciones

- 45 El Grupo de Trabajo sobre *Trusts* reconoció que la naturaleza de las fundaciones varía entre jurisdicciones, así como que sus estructuras y funciones dependen de los marcos jurídicos aplicables. Las fundaciones no necesariamente quedan comprendidas en el ámbito de aplicación del Convenio sobre *Trusts*. Por ejemplo, las fundaciones con personalidad jurídica propia no se encuentran dentro del ámbito de aplicación del Convenio (véase el párr. 44 más arriba). En consecuencia, la determinación de si un tipo específico de fundación cumple los criterios establecidos en el artículo 2 del Convenio es una cuestión que debe evaluarse caso por caso.

D. Waqfs

- 46 Los *waqfs* son instituciones arraigadas en la tradición islámica. Si bien se toma nota de que el CAGP expresó inquietudes respecto de la inclusión de instituciones religiosas¹⁹ y de que muchas de las jurisdicciones relevantes en las que existen *waqfs* no están representadas en el Grupo de Trabajo sobre *Trusts*, se considera útil incluir en esta sección un análisis de los *waqfs*.
- 47 Dado que, en varias jurisdicciones del mundo, los sistemas jurídicos y religiosos se encuentran interconectados, las inquietudes relativas a la inclusión de instituciones religiosas pueden atenuarse aplicando el mismo análisis jurídico que se aplica a otras instituciones.
- 48 Se ha definido un *waqf* como un acto caritativo de carácter financiero realizado mediante la inmovilización de bienes muebles e inmuebles, destinado a emplear perpetuamente sus ingresos

¹⁹ Informe de la declaración en los registros de la OP.

para satisfacer necesidades públicas o familiares, conforme a las preferencias y condiciones establecidas por el fundador²⁰. Para crear un *waqf*, el propietario del bien (*waqif*) declara su intención de destinar los ingresos de su propiedad a un beneficiario (*mawquf alayh*) y designa a un administrador (*mutawalli*) de esos bienes. Si bien, a primera vista, esta institución podría parecer análoga, un análisis más detenido de sus características revela varias áreas clave de divergencia entre los *waqfs* y los *trusts*, a saber:

- i. *Propiedad*: La estructura del *waqf* difiere de aquella del *trust* en que los bienes no constituyen un fondo separado del patrimonio del *trustee* y la propiedad de los bienes no se transfiere al *trustee* como tal. Algunos Estados, como Egipto, consideran que la propiedad es conservada por el *waqif* mientras que solo se cede el derecho de usufructo²¹. Otros Estados, como Jordania, consideran que, una vez creado el *waqf*, los bienes ya no pueden ser propiedad de nadie²². Emiratos Árabes Unidos²³, Omán²⁴ y Qatar²⁵ consideran al *waqf* una entidad jurídica independiente. En los tres casos, los bienes no se encuentran “en nombre del *trustee* o de otra persona por cuenta del *trustee*”, tal como exige el artículo 2(b) del Convenio. Por otro lado, Malasia ha promulgado un modelo más cercano al modelo de *trusts* del *common law*, en el cual la legislación exige que todo *waqf* sea inscrito a nombre del Consejo Religioso Islámico en calidad de propietario²⁶. Sin embargo, esta estructura en Malasia pone de relieve otra divergencia entre los *waqfs* y los *trusts*, a saber, la función que desempeñan los organismos gubernamentales en la gestión de los bienes dotados.
- ii. *Administración*: En un *waqf*, el administrador (*mutawalli*) es casi siempre una autoridad gubernamental, bajo denominaciones como “Ministerio de *Awqaf*” o “Dirección General de *Awqaf*”, entre otros títulos²⁷. La autoridad competente ejerce las facultades propias de un administrador, lo que implica “el derecho a construir, conservar o arrendar el bien, plantar, recaudar y distribuir los ingresos provenientes del bien, y ejercer la representación jurídica del bien”²⁸.
- iii. *Objeto*: Por último, si bien los *trusts* pueden adoptar diversas formas²⁹, el *waqf* solo puede crearse con fines caritativos o piadosos, ya sea en beneficio del público en general o de personas determinadas³⁰. Por ende, solo existen dos formas de *waqf*: el *waqf Khairi* — una dotación destinada a un fin de carácter religioso o público— y el *waqf ahli* o *dhurri* — una dotación familiar³¹.

²⁰ S. Baqutayan et al., “Waqf Between the Past and Present”, *Mediterranean Journal of Social Sciences*, vol. 9 (4) 2018, pág. 149. Véase también <https://fianz.com/our-community/#:~:text=Waqf%20is%20a%20financiar%20charitable.conditions%20set%20by%20the%20founder>.

²¹ M. Papa y 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 y 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*, número 64, 2014, pág. 59.

²³ Ley Federal de los EAU N.º 5 de 2018, artículo 10.

²⁴ Real Decreto 65/2000 de Omán sobre *Awqaf*, artículo 2.

²⁵ Ley qatarí N.º 8 de 1996 con respecto a la Dotación (*Waqf*) 8/1996, artículo 7.

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

²⁷ M. Kahf, “The role of waqf in improving the ummah welfare”, en *International Seminar on Waqf as a Private Legal Body*, Islamic University of North Sumatra, Medan, Indonesia, 2003, págs. 1 a 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, pág. 737.

³⁰ *Ibid.*, pág. 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, pág. 1233.

VI. Legislación y jurisprudencia sobre la aplicación e interpretación del Convenio sobre *Trusts* y sobre el reconocimiento transfronterizo de los *trusts* e instituciones análogas a los *trusts*

- 49 El objetivo de esta sección es presentar legislación y jurisprudencia que puedan aportar elementos para comprender de qué manera distintos sistemas jurídicos aplican el Convenio sobre *Trusts* y cómo abordan cuestiones relativas al reconocimiento transfronterizo de los *trusts* y las instituciones que pueden ser análogas a los *trusts*. En particular, esta sección puede arrojar luz sobre cómo las jurisdicciones que reconocen la institución del *trust* abordan casos que involucran *trusts* o instituciones análogas provenientes de jurisdicciones que tradicionalmente no han contado con dicha institución. También puede aclarar cómo estas últimas jurisdicciones responden a los *trusts* y a las instituciones análogas extranjeros, especialmente cuando provienen de Estados que no son Partes contratantes del Convenio.
- 50 Cabe señalar que algunas Partes no contratantes procuran aplicar el Convenio sobre *Trusts* incorporándolo a sus marcos jurídicos internos mediante disposiciones similares a aquellas previstas en el propio Convenio. Algunos ejemplos son Bélgica³², Quebec (Canadá)³³, la República Checa³⁴ y Rumanía³⁵. El efecto práctico es que estas jurisdicciones reconocen los *trusts* de manera similar a las Partes contratantes del Convenio.
- 51 Las listas de legislación y jurisprudencia por jurisdicción se presentan en el anexo B a título de referencia.

³² Ley de 16 de julio de 2004 de Bélgica por la que se establece el Código de Derecho Internacional Privado, Capítulo XII (*Trust*), artículos 122 a 125 (disponible en https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2004071631&table_name=loi).

³³ Código Civil de Quebec de Canadá, Libro Décimo (Derecho Internacional Privado), Título Segundo (Conflicto de Leyes), artículos 3107 y 3108 (disponible en https://www.legisquebec.gouv.qc.ca/en/document/cs/ccq-1991/20170616?langCont=en#ga:l_ten-gb:l_two-h1) (nota: si bien Canadá es parte en el Convenio sobre *Trusts*, su aplicación no se extiende a Quebec).

³⁴ Ley de 25 de enero de 2012 de República Checa sobre Derecho Internacional Privado, Libro Cuarto (Disposiciones para Tipos Individuales de Relaciones de Derecho Privado), Título VII (Derechos de Propiedad), artículo 73 (Fondo Fiduciario o Mecanismo Similar) (disponible en [91/2012 Sb., 23. 9. 2023, aktuální znění, informativní znění systému e-Sbírka](https://www.zbcr.cz/aktualni-zneni-informativni-zneni-sytemu-e-sbirka)).

³⁵ Código Civil de Rumanía, Libro VII (Disposiciones de Derecho Internacional Privado), Título II (Conflictos de Leyes), Capítulo VIII (Fiducia), artículos 2.659 a 2.662 (disponible en [COD CIVIL \(A\) 04/02/2016 - Portal Legislativ](https://www.legislativ.ro/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) <i>Fideicomiso</i>
Legal Basis / Origin:	Under Chapter IV, Section 1, Article 1 of Resolution 622/2013, a <i>fideicomiso financiero</i> is defined as: ³ “There will be a <i>fideicomiso financiero</i> contract when one or more persons (<i>fiduciante</i>) transfer the fiduciary ownership of certain assets to another (<i>fiduciario</i>), 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 (<i>fideicomisarios</i>) upon fulfillment of the terms or conditions provided for in the contract.” (unofficial translation)

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).

<p>Whether the institution may potentially meet the criteria of Article 2:</p>	<p>Yes¹</p> <p>According to N. Malumian, the Latin American <i>fideicomiso</i> fulfills the three criteria of a trust by Lewin as follows:</p> <p>“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. [...]”</p>
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¹ N. Malumian, "Conceptualization of the Latin American Fideicomiso: is it actually a trust?", *Trusts & Trustees*, vol. 19 (7) 2013, pp. 720-729.

2. Austria

Country (Region)	Austria
Institution:	<i>Privatstiftungen</i> (Private Foundation)
Legal Basis / Origin:	<p>Private Foundations Act of 1993¹</p> <p>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)</p> <p>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)</p>
Whether the institution may potentially meet the criteria of Article 2:	<p>No</p> <p>Private foundations are functionally analogous to trust but not structurally analogous to trust (noting that they have separate legal personalities).</p> <p>In “<i>Sommerer v The Queen</i>—the Canadian common law and tax treatment of an Austrian private foundation”, Martin J Rochweg 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</p>

¹ 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).

	<p>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 '<i>Privatstiftungen</i>' can be reasonably classified as trusts for Canadian common law purposes."²</p>
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² M.J. Rochweg & 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 ¹
Institution:	Trust
Legal Basis / Origin:	<p>Article 2.1. of the Bahraini Legislative Decree No 23 of 2016² provides:</p> <p>“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:</p> <p>a. the benefit of a Beneficiary whether or not yet ascertained or in existence,</p> <p>b. any valid Charitable or Non-Charitable Purpose which is not for the benefit only of the Trustee; or</p> <p>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.”.</p>
Whether the institution may potentially meet the criteria of Article 2:	<p>Yes</p> <p>Article 2.2 of the Bahraini Legislative Decree No 23 of 2016³ provides that a Trust has the following characteristics:</p> <p>“a. the Trust Property constitutes a separate fund and is not a part of the Trustee's own estate;</p> <p>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</p> <p>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.”.</p>

¹ As Bahrain is not a Member of the HCCH, the information in this table was based on research conducted by the PB.

² Bahraini Legislative Decree No. 23 of 2016, available at <https://www.mola.gov.bh/MediaManager/Media/Documents/Laws/Batch3/L2316.pdf> (official English translation).

³ *Ibid.*

4. Bangladesh

Country (Region)	Bangladesh ¹
Institution:	<i>Waqf</i>
Legal Basis / Origin:	The Waqfs Ordinance of 1962, Chapter I, section 2(10) ² defines a <i>waqf</i> 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 <i>waqf</i> by user, and a <i>waqf</i> created by a non-Muslim”.
Whether the institution may potentially meet the criteria of Article 2:	No ³ 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 <i>waqf</i> assets.”.

¹ As Bangladesh is not a Member of the HCCH, the information in this table was based on research conducted by the PB.
² The Waqfs Ordinance (1962), available at <http://bdlaws.minlaw.gov.bd/act-details-326.html> (official English translation).
³ M. Obaidullah et al., *Islamic Social Finance Report*, Thompson Reuters, 2014, Ch. 4.

5. Brazil

Country (Region)	Brazil
Institution:	<i>Fideicomisso</i> (“ <i>Substituição Fideicomissária</i> ”)
Legal Basis / Origin:	<p>Articles 1.951-1.960 of the Brazilian Civil Code¹ provide for the “<i>substituição fideicomissária</i>”:</p> <p>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 <i>fiduciário</i>, 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 <i>fideicomissário</i>.” (unofficial translation)</p> <p>Article 1.952 further provides: “The <i>substituição fideicomissária</i> 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 <i>fideicomissário</i> has already been born, the <i>fideicomissário</i> will acquire the ownership of the assets that were “<i>fideicometidos</i>”, and the right of the <i>fiduciário</i> will be converted into usufruct.” (unofficial translation)</p> <p>Concerning the distribution of the property in this arrangement, Article 1.953 establishes that: “The <i>fiduciário</i> has ownership of the inheritance or legacy, but it is restricted and resolvable. Sole paragraph: The <i>fiduciário</i> is obliged to carry out an inventory of the assets encumbered, and to give security to return them if required by the <i>fideicomissário</i>.” (unofficial translation)</p>
Whether the institution may potentially meet the criteria of Article 2:	<p>Yes²</p> <p>According to J. Martins-Costa,</p> <p>“60. Among the various institutions within Brazilian law that perform functions analogous to those of trusts, particularly the discretionary trust, is the <i>fideicomisso</i> (<i>substituição fideicomissária</i>). Although the specific legal framework governing <i>fideicomisso</i> 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</p>

¹ Brazilian Civil Code, Law 10.406/2002, available at https://www.planalto.gov.br/ccivil_03/LEIS/2002/L10406compilada.htm (original text).

² J. Martins-Costa, “O Trust e o Direito Brasileiro”, *Revista de Direito Civil Contemporâneo*, vol. 12, 2017, pp. 165-209, para. 60-65.

	<p>demonstrate both the theoretical acceptability of such functions and to outline interpretative guidelines for evaluating a trust under Brazilian law.</p> <p>61. Where the disposition arises from a testamentary act, the closest figure will be the <i>fideicomisso</i> (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 <i>fiduciário</i> and the <i>fideicomissário</i> during the existence of the fiduciary arrangement. [...]</p> <p>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)</p>
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6. Canada

Country (Region)	Canada (other than Quebec)
Institution:	Trust
Legal Basis / Origin:	<p>Common law</p> <p>Trusts in Canada (other than Quebec) stem from the common law of England as received into the common law of Canada.</p> <p>See, for example, <i>Valard Construction Ltd. v. Bird Construction Co.</i>, 2018 SCC 8¹ and <i>Canada (Attorney General) v. British Columbia Investment Management Corp.</i>, 2019 SCC 63², 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., <i>Waters’ Law of Trusts in Canada</i>, 5th ed (Toronto: Carswell, 2021) for a more comprehensive explanation of the institution.</p>
Whether the institution may potentially meet the criteria of Article 2:	<p>Yes</p> <p>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.³</p> <p>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,⁴ (ii) title to the trust assets stands in the name of the trustee,⁵ 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.⁶</p>
Country (Region)	Canada (Quebec)
Institution:	Trust

¹ Available at <https://canlii.ca/t/hqf44>,

² Available at <https://canlii.ca/t/j3xhg>,

³ A.E. von Overbeck, “Explanatory Report on the 1985 Hague Trusts Convention” at para 13.

⁴ Donovan W.M. Waters, Mark R. Gillen & Lionel D. Smith, *Waters’ Law of Trusts in Canada*, 5th ed (Toronto: Carswell, 2021) at 3.III.

⁵ *Ibid.* at 3.I.

⁶ *Ibid.* at 3.VII.

<p>Legal Basis / Origin:</p>	<p>Articles 1260 and following of the Civil Code of Québec⁷ provide the foundation for trusts in Quebec law.</p> <p>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.</p> <p>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.</p>
<p>Whether the institution may potentially meet the criteria of Article 2:</p>	<p>Yes</p> <p>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.</p> <p>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.</p>

⁷ Civil Code of Québec, CQLR c CCQ-1991, available at [ccq-1991 - Civil Code of Quebec](#).

7. Chile

Country (Region)	Chile
Institution:	<i>Fideicomiso</i>
Legal Basis / Origin:	<p>Articles 733 and 734 of the Chilean Civil Code¹ provides that:</p> <p>"Article 733. Fiduciary property is that which is subject to the encumbrance of passing to another person, due to the verification of a condition.</p> <p>The constitution of fiduciary property is called a <i>fideicomiso</i>. This name is also given to things constituted as <i>propiedad fiduciara</i>.</p> <p>The transfer of property to the person in whose favor the <i>fideicomiso</i> has been established is called restitution.</p> <p>Article 734. A <i>fideicomiso</i> 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)</p>
Whether the institution may potentially meet the criteria of Article 2:	<p>No²</p> <p>According to N. Malumian:</p> <p>"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."</p>

¹ Chilean Civil Code, available at <https://www.bcn.cl/leychile/navegar?idNorma=172986&idParte=&idVersion=> (original text).

² 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:	<p>Article 2 of the Trust Law of the People's Republic of China provides:¹</p> <p>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.</p>
Whether the institution may potentially meet the criteria of Article 2:	<p>Yes²</p> <p>D. Clarry in "Fiduciary Ownership and Trusts in a Comparative Perspective" stated:</p> <p>"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."</p>

¹ 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).

² *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 ¹
Institution:	<i>Fiducia</i>
Legal Basis / Origin:	<p>Article 1226 of the Commercial Code of Colombia ² provides:</p> <p>“A commercial <i>fiducia</i> 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 <i>fideicomisario</i>.</p> <p>A person can be both the settlor and the beneficiary.</p> <p>Only credit institutions and trust companies, specifically authorized by the Banking Superintendency, may have the status of trustees.” (unofficial translation)</p>
Whether the institution may potentially meet the criteria of Article 2:	<p>Yes³</p> <p>D. Clarry in “Fiduciary Ownership and Trusts in a Comparative Perspective” stated:</p> <p>“In Colombia, a trustee cannot acquire definitely the possession of [trust] assets’, with possession of trust assets returning to the ‘<i>fiduciant</i> or his heirs’ unless some other provision is made for conveyance to some other person.”⁴</p>

¹ As Colombia is not a Member of the HCCH, the information in this table was based on research conducted by the PB.

² The Commercial Code of Colombia, Articles 1226-1244, available at <http://www.suin-juriscol.gov.co/viewDocument.asp?id=1833376> (original text).

³ D. Clarry, "Fiduciary Ownership and Trusts in a Comparative Perspective", *International and Comparative Law Quarterly*, vol. 63, 2014, p. 912.

⁴ *Ibid.*

10. Czech Republic

Country (Region)	Czech Republic
Institution:	Trust
Legal Basis / Origin:	<p>Section 1448 of the Civil Code of the Czech Republic¹ provides that:</p> <p>“(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.</p> <p>(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.</p> <p>(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.”.</p>
Whether the institution may potentially meet the criteria of Article 2:	<p>Yes²</p> <p>L. Tichy in “Recognition of a Trust as a Specific Problem in Private International Law” explained:</p> <p>“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’.”³</p>

¹ 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).

² 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.

³ *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) <i>Waqf</i>
Legal Basis / Origin:	
Whether the institution may potentially meet the criteria of Article 2:	No ¹ M. Papa and M. Santostasi stated: “A particular case of usufruct is the “ <i>waqf</i> ” 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.”.

¹ 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 ¹
Institution:	<i>Fideicommis</i>
Legal Basis / Origin:	Article 516 of the Civil Code of Ethiopia ² 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 ³

¹ As Ethiopia is not a Member of the HCCH, the information in this table was based on research conducted by the PB.

² 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](http://hrlibrary.umn.edu/research/Civil%20Code%20(English).pdf) (official English translation).

³ M. Lupoi, *Trusts: A Comparative Study*, Cambridge University Press, 2000, Ch. 6, footnote 99.

13. France

Country (Region)	France
Institution:	(1) <i>Fiducie</i>
Legal Basis / Origin:	Articles 2011-2031 of the French Civil Code ¹ Article 2011 of the French Civil Code provides: “The <i>fiducie</i> 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 ² J. Douglas stated in his article: “[The <i>fiducie</i> 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 <i>fiducie</i> 's structure fits with the Convention's definition of a trust.”
Institution:	(2) <i>Prête Nom</i>
Legal Basis / Origin:	
Whether the institution may potentially meet the criteria of Article 2:	Yes ³ Dyer and Van Loon found that “The <i>fiducia</i> is virtually absent in France. There is a practice there known as <i>prête nom</i> , which is a very weak institution however.”.

¹ 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.

² 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.

³ The Dyer/Van Loon Report, p. 37.

14. Germany

Country (Region)	Germany
Institution:	<i>Fiduziarische Treuhand</i> or <i>Ermächtigungs- oder Vollmachtstreuhand</i>
Legal Basis / Origin:	<i>Fiduziarische Treuhand</i> is a contractual obligation. In the contract, the <i>Treugeber</i> undertakes to transfer assets to the <i>Treuhänder</i> . The <i>Treuhänder</i> undertakes to manage the <i>Treuhandvermögen</i> , of which he becomes the full owner, separately from his own assets for the <i>Treugeber</i> or a third party.
Whether the institution may potentially meet the criteria of Article 2:	<p>No</p> <p><i>Fiduziarische Treuhand</i> and <i>Ermächtigungs- oder Vollmachtstreuhand</i> are not equivalent to trusts, as they do not meet all the requirements of Article 2.</p> <p>A <i>fiduziarische Treuhand</i> can only be established by contract between the <i>Treugeber</i> and the <i>Treuhänder</i> and not solely by an act of the <i>Treugeber</i>. 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 <i>Treuhänder</i> manages the assets transferred by the <i>Treugeber</i> (<i>Treuhandvermögen</i>) separately from his own assets.</p> <p>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.</p> <p>As the legal owner, the <i>Treuhänder</i> can freely dispose of the <i>Treuhandvermögen</i>. Even if he violates obligations under the agreement between the <i>Treugeber</i> and the <i>Treuhänder</i>, his dispositions are still effective.</p> <p>In the event of the <i>Treuhänder's</i> insolvency, the <i>Treugeber</i> can only separate certain items of the <i>Treuhandvermögen</i> if the trustee has managed the trust assets separately from his own assets and the assets have been transferred directly from the <i>Treugeber</i> to the <i>Treuhänder</i>. In the event of the trustee's insolvency, the <i>Treuhandvermögen</i> are therefore considerably less protected than trust assets, as the <i>fiduziarische Treuhand</i> does not have comparable effects in rem as the trust.</p>

	<p>However, the German legal system gives <i>Treugeber</i> an opportunity to make the safer agreement (the so-called <i>Ermächtigungstreuhand</i> or <i>Vollmachtstreuhand</i>), “under which he (she) does not transfer the full right in rem to <i>Treuhänder</i>, but simply authorizes him (her) to manage or dispose of the assets in a specific manner. When the <i>Treuhänder</i> exceeds his authorization the disposal of the assets is not valid no real separation of property takes place and the protection of the <i>Treugeber</i> is of minor importance because he is still the legal owner with all of his power.”¹</p> <p>As a contractual obligation, the <i>Ermächtigungs- oder Vollmachtstreuhand</i> also does not meet the requirements of Article 2. In particular, this form of <i>Treuhand</i> lacks a special fund, as the assets to be managed by the <i>Treuhänder</i> remain in the <i>Treugeber</i>’s assets and are not transferred to the <i>Treuhänder</i>. Therefore, an <i>Ermächtigungs- oder Vollmachtstreuhand</i> does not meet the requirements of Article 2, which requires that the trust assets be held by the trustee.</p>
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¹ I. Gvelesiani, "German "Treuhand" vis-à-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:	<p>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 6:310-330¹</p> <p>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.”.</p> <p>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.”</p> <p>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.”.</p>
Whether the institution may potentially meet the criteria of Article 2:	Yes
Institution:	(2) Trust foundation
Legal Basis / Origin:	<p>Act XIII of 2019 on Trust²</p> <p>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</p>

¹ Act V of 2013 on Civil Code, available at <https://nit.hu/jogszabaly/en/2013-5-00-00> (official English translation).

² Act XIII of 2019 on Trust Foundations, available at <https://nit.hu/jogszabaly/2019-13-00-00> (original text).

	<p>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).”.</p> <p>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.”.</p>
<p>Whether the institution may potentially meet the criteria of Article 2:</p>	<p>No</p> <p>Trust foundations are functionally analogous to trust but not structurally analogous to trust (noting that they have separate legal personalities).</p>

16. Indonesia

Country (Region)	Indonesia ¹
Institution:	<i>Wakaf</i>
Legal Basis / Origin:	<p>Law No. 41 of 2004 of Indonesia.²</p> <p>M. Obaidullah and others noted the following:³</p> <ul style="list-style-type: none"> - Indonesian law provides a comprehensive definition of <i>waqf</i> that includes both permanent and temporary <i>waqf</i>. However, once the <i>waqf</i> has been declared, it is irrevocable. [Articles 1.1 and 3 of the Law No. 41 of 2004] - Indonesian law recognizes a <i>waqf</i> 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 <i>waqf</i> if it is legally owned and authorized by the waqif [endower]. It recognizes both movable and immovable assets as <i>mawquf</i> [endowed asset] [Articles 15 and 16 of the Law] - Indonesian law specifies the purpose of <i>waqf</i> as ibadah and/or public welfare and therefore, does not recognize family <i>waqf</i>. [Articles 1.1 and 5 of the Law] - The central authority responsible for all aspects of <i>awqaf</i> in Indonesia is called the Badan Wakaf Indonesia, which does not own or directly manage the <i>waqf</i> 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 <i>waqf</i> asset(s); managing and developing the same in accordance with the objective, benefit and designation of <i>waqf</i>; controlling and protecting the <i>waqf</i> asset(s); and submitting the report of <i>waqf</i> administration to Badan Wakaf, the central body created for the purpose of supervision of all Indonesian <i>awqaf</i>. [Articles 11 and 42 of the Law] - The Indonesian law explicitly prohibits the <i>waqf</i> asset from being used as a mortgage, confiscated, given away, sold, inherited, exchanged or being alienated into any form of right. The <i>waqf</i> asset may however be exchanged as an exception to the above general rule,

¹ As Indonesia is not a Member of the HCCH, the information in this table was based on research conducted by the PB.

² 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).

³ M. Obaidullah et al., Islamic Social Finance Report, Thompson Reuters, 2014, Ch. 4.

	<p>when this is deemed to be in the public interest. Such 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]</p> <ul style="list-style-type: none"> - Indonesian law requires that in managing and developing the <i>waqf</i> asset, a nazir is not permitted to alienate the designation of <i>waqf</i> 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 <i>waqf</i> deed. [see Articles 44 of the Law]
<p>Whether the institution may potentially meet the criteria of Article 2:</p>	<p>No</p>

17. Israel

Country (Region)	Israel
Institution:	Trust
Legal Basis / Origin:	Section 1 of the Israeli Trust Law 5739-1979 ¹ 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 ² 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.”

¹ Israeli Trust Law 5739-1979, available at https://www.nevo.co.il/law_html/law00/72996.htm (original text).

² The Dyer/Van Loon Report, p. 33 (footnotes in the original text omitted).

18. Italy

Country (Region)	Italy
Institution:	(1) <i>Contratto di affidamento fiduciario</i>
Legal Basis / Origin:	<p>Created by private parties in form of a fiduciary contract where one party, the “<i>affidante</i>”, allocates certain assets for the benefit of one or more persons, the beneficiaries, in accordance with a plan that the other party, “<i>affidatario</i>”, undertakes to implement.</p> <p>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.</p>
Whether the institution may potentially meet the criteria of Article 2:	Yes
Institution:	(2) Bond of purpose
Legal Basis / Origin:	<p>Article 2645-ter of the Italian Civil Code provides that:</p> <p>“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.”¹</p>

¹ Article 2645-ter, Italian Civil Code, available at <https://academic.oup.com/tandt/article-abstract/12/7/21/1649566?redirectedFrom=PDF> (unofficial English translation).

<p>Whether the institution may potentially meet the criteria of Article 2:</p>	<p>Yes¹</p> <p>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 Italian Civil Code and trusts as understood under the Trusts Convention.</p> <p>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 (“<i>in parte</i>”), “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” (“<i>notevoli tratti comuni con il trust di diritto anglosassone</i>”), so much so that Article 2645 ter appears to provide a legal basis to domestic trusts (“<i>offr[e] anche copertura normativa al trust interno</i>”), 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.</p> <p>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 “<i>affidatario</i>” (whether or not the latter is also the “<i>affidante</i>”); and (3) the “<i>affidatario</i>” 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.</p>
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¹ L. Franciosi, "Italy: Trust and the Italian Legal System: Why Menu Matters", *Journal of Civil Law Studies*, vol. 6(2), 2013.

19. Japan

Country (Region)	Japan
Institution:	<i>Shintaku</i>
Legal Basis / Origin:	The Trust Act of Japan ¹ 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 ² 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.” ³ 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 ' <i>shintaku</i> ' in Japanese, has found wide application in Japan.” ⁴

¹ Trust Act of Japan (Act No. 108 of 2006), available at <https://www.japaneselawtranslation.go.jp/en/laws/view/2476/en> (official English translation).

² 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.

³ Ibid at p. 28.

⁴ The Dyer/Van Loon Report, pp. 33-34.

20. Jordan

Country (Region)	Jordan
Institution:	<i>Waqf</i>
Legal Basis / Origin:	The Jordanian Waqf Law ⁵ provides: Article 2. Definition of <i>Waqf</i> : “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 ⁶ M. Al Manaseer, M and Matarneh, B. stated: “As for Jordanian civil law based on the Islamic Shari’a law, <i>waqf</i> 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.”

⁵ The Jordanian Waqf Law No. 32/2001.

⁶ 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) ¹ 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 ² 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.” ³

¹ 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)

² 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.

³ *Ibid.* at pp. 46-37.

22. Kuwait

Country (Region)	Kuwait ⁴
Institution:	<i>Waqf</i>
Legal Basis / Origin:	Kuwaiti Law of Waqf al-Istirshadi 2014
Whether the institution may potentially meet the criteria of Article 2:	No ⁵

⁴ As Kuwait is not a Member of the HCCH, the information in this table was based on research conducted by the PB.

⁵ Kuwaiti Law of Waqf al-Istirshadi 2014, Article 23. (“Once created, *waqf* becomes a legal entity.”)

23. Liechtenstein

Country (Region)	Liechtenstein ¹
Institution:	(1) <i>Treuhänderschaft</i>
Legal Basis / Origin:	Article 897 of the Liechtenstein Law on Persons and Companies (PGR) ² 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 <i>Treuhänderschaft</i> , corresponded to the concept of trust within the meaning of Hague Trusts Convention and that, in particular, the <i>Treuhänderschaft</i> met the requirements in Article 2 of the Convention. ³
Institution:	(2) <i>Stiftung</i> (Foundation)
Legal Basis / Origin:	Section 1 of Article 552 of the PGR ⁴ 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

¹ 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.

² 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).

³ 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>.

⁴ *Ibid.*

	allocates the specifically designated foundation assets, 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 <i>Stiftung</i> are functionally analogous to trust but not structurally analogous to trust (noting that they have separate legal personalities).
Institution:	(3) <i>Anstalt</i> (Establishment)
Legal Basis / Origin:	Article 534 of the PGR ⁵ 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 <i>Anstalt</i> are functionally analogous to trust but not structurally analogous to trust (noting that they have separate legal personalities). Domenik Vogt stated that “The Liechtenstein <i>Anstalt</i> 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) ⁶
Institution:	(4) <i>Treuunternehmen</i>
Legal Basis / Origin:	Article 932a of the PGR ⁷ provides that: “A trust enterprise (a business trust) may be formed and operated pursuant to the following provisions:

⁵ *Ibid.*

⁶ D. Vogt, "Die liechtensteinische privatrechtliche Anstalt", *PSR – Politische Studien und Recht*, Issue 1, 2020.

⁷ *Ibid.*

	<p>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 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.</p> <p>2) Where, applying the preceding paragraph <i>mutatis mutandis</i>, 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 <i>mutatis mutandis</i> to this trust enterprise with legal personality, in particular the provisions governing liability for obligations.”.</p>
<p>Whether the institution may potentially meet the criteria of Article 2:</p>	<p>No</p> <p>The Swiss Federal Supreme Court held in a case⁸ that <i>Treuunternehmen</i> 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.</p>

⁸ Swiss Federal Tribunal, 16.12.2024, Case no. 5A_89/2024.

24. Luxembourg

Country (Region)	Luxembourg
Institution:	(1) <i>Contrat fiduciaire</i>
Legal Basis / Origin:	<p>Law of 27 July 2003 on Trusts and Fiduciary Contracts, Title II (Fiduciary Contracts), Articles 4 to 9¹</p> <p>Article 5 defines “<i>contrat fiduciaire</i>” as “a contract by which a person, the trustor (<i>fiduciant</i>), agrees with another person, the trustee (<i>fiduciaire</i>), that the latter, under the obligations determined by the parties, becomes the owner of property forming a trust (<i>patrimoine fiduciaire</i>)”. (unofficial translation)</p> <p>Article 6 further provides that:</p> <p>“(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.</p> <p>(2) The trustee must account for the trust assets separately from his personal assets and other trust assets.” (unofficial translation)</p>
Whether the institution may potentially meet the criteria of Article 2:	<p>Yes</p> <p>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.”²</p>
Institution:	(2) Patrimonial foundation

¹ 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/lo> (original text).

² 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.

Legal Basis / Origin:	<p>Draft bill no. 6595 on Patrimonial Foundations¹</p> <p>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)</p> <p>It is noted that the draft bill was filed with the Luxembourg Parliament on 22 July 2013 but it has not been passed yet. 2</p>
Whether the institution may potentially meet the criteria of Article 2:	<p>No</p> <p>Patrimonial foundations are functionally analogous to trust but not structurally analogous to trust (noting that they have separate legal personalities).</p>

¹ 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).

² 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) ¹ Trustee Act 1949 (Malaysian Act 208) ²
Whether the institution may potentially meet the criteria of Article 2:	Yes
Institution:	(2) <i>Wakaf</i> / charitable trusts
Legal Basis / Origin:	<p>Sections 61 and 62 of the Administration of Islamic Law (Federal Territories) of 1993 (Malaysian Act 505) ³ provides:</p> <p>“Wakaf and nazr</p> <p>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 <i>wakaf</i>, whether <i>wakaf ‘am</i> or <i>wakaf khas</i>, of all <i>nazr ‘am</i>, 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, <i>wakaf</i> or <i>nazr ‘am</i> was domiciled in the Federal Territories, to the extent of all properties affected thereby wherever situated.</p> <p>Vesting</p> <p>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, <i>wakaf</i> or <i>nazr ‘am</i> affecting the same.</p> <p>(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.”.</p>

¹ Trust Companies Act 1949 (Malaysian Act 100), available at https://www.ssm.com.my/Pages/Legal_Framework/Document/Act%20100.pdf (official English translation).

² 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).

³ 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).

<p>Whether the institution may potentially meet the criteria of Article 2:</p>	<p>No⁴</p> <p>M. Obaidullah and others stated: “Malaysian law requires that every <i>waqf</i> shall be registered in the name of the Islamic Religious Council as proprietor”.</p> <p>The concept of trustee under <i>waqf</i> is different from the trustee under the law of trusts. For instance, section 2(1) of the Pahang Wakaf Enactment 2022⁵ provides that “sole trustee” means “the only institution responsible for administering all <i>wakaf</i> property under Islamic Law, but <u>does not mean a trustee as defined under the Trustees Act 1949 [Act 208]</u>”.</p> <p>Since the <i>waqf</i> property is registered in the name of the respective Islamic Religious Councils, it allows the respective Islamic Religious Councils to manage and develop the <i>waqf</i> 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 <i>waqif</i> (donor) will be fulfilled utmost.</p> <p>As the Islamic Religious Council is registered as the proprietor of the <i>waqf</i> properties, <i>waqf</i> is not considered analogous to trusts and would therefore fall outside the scope of Article 2. Furthermore, <i>waqf</i> and trusts are different in terms of the administration and purpose as has been highlighted in the Note.</p>
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⁴ M. Obaidullah et al., Islamic Social Finance Report, Thompson Reuters, 2014, Ch. 4.

⁵ 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:	<i>Fiducia</i>
Legal Basis / Origin:	Moldovan Civil Code, Book III (Obligations), Title IV (Trust), Articles 2055-2161 ¹
Whether the institution may potentially meet the criteria of Article 2:	<p>Yes</p> <p>Violeta Cojocar 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 (<i>fiducia</i>) 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)²</p> <p>Veronica Pozneacova noted that “[t]he effect of the trust (<i>fiduciei</i>) 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”.³ (unofficial translation)</p>

¹ Moldovan Civil Code, available at https://www.legis.md/cautare/getResults?doc_id=112573&lang=ro (original text).

² V. Cojocar & 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.

³ 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:	<p>Law No. 214 of 27 February 1936 revising Law No. 207 of 12 July 1935 on Trusts⁴</p> <p>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:</p> <p>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;</p> <p>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;</p> <p>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.”⁵ (unofficial translation)</p>
Whether the institution may potentially meet the criteria of Article 2:	Yes

⁴ 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 \[Legimonaco\]](#)

⁵ 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:	<i>Bewind</i>
Legal Basis / Origin:	Title 3.6 of the Dutch Civil Code ¹
Whether the institution may potentially meet the criteria of Article 2:	No ² According to the Dyer/Van Loon Report, the <i>bewind</i> is different from the trust because ownership is vested in the beneficiaries.

¹ 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>

² The Dyer/Van Loon Report, p. 39.

29. Oman

Country (Region)	Oman ¹
Institution:	<i>Waqf</i>
Legal Basis / Origin:	Article 2 of Omani Royal Decree 65/2000 on Awqaf ² provides that “once created, the <i>waqf</i> has its own legal personality. The ownership of the assets is transferred from the <i>waqif</i> (settlor) to the <i>waqf</i> .”. (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	No ³

¹ As Oman is not a Member of the HCCH, the information in this table was based on research conducted by the PB.

² Omani Royal Decree 65/2000, available at <https://qanoon.om/p/2000/rd2000065/> (original text).

³ *Ibid.*

30. Pakistan

Country (Region)	Pakistan ¹
Institution:	(1) Trust
Legal Basis / Origin:	<p>The Trust Act of 1882, Chapter 1, section 3² provides the following interpretations:</p> <ul style="list-style-type: none"> - “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) <i>Waqf</i>
Legal Basis / Origin:	The Islamabad Capital Territory Waqf Properties Act, 2020, Section 2(n) ³ 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”.

¹ As Pakistan is not a Member of the HCCH, the information in this table was based on research conducted by the PB.

² The Trust Act of 1882, available at <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-bpg%3D-sg-ijiiiiiiiiiii> (official English translation).

³ The Islamabad Capital Territory Waqf Properties Act, 2020, available at https://na.gov.pk/uploads/documents/1601023429_848.pdf (original text).

Whether the institution may potentially meet the criteria of Article 2:	No ¹ 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 <i>waqf</i> assets.”.
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¹ M. Obaidullah et al., *Islamic Social Finance Report*, Thompson Reuters, 2014, Ch. 4.

31. Peru

Country (Region)	Peru
Institution:	<i>Fideicomiso</i>
Legal Basis / Origin:	<p>Article 241 of the Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros¹ reads:</p> <p>“Article 241. Concept of <i>fideicomiso</i> - A <i>fideicomiso</i> is a legal relationship by which the <i>fideicomitente</i> transfers assets in trust to another person, called the <i>fiduciario</i>, for the establishment of a <i>patrimonio fideicometido</i>, 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 <i>fideicomisario</i>.</p> <p>The <i>patrimonio fideicometido</i> is distinct from the estate of the <i>fiduciario</i>, the <i>fideicomitente</i>, or the <i>fideicomisario</i>, and, where applicable, the recipient of the remaining assets.</p> <p>The assets comprising the independent <i>patrimonio fideicometido</i> do not generate charges against the corresponding effective assets of the <i>empresa fiduciaria</i>, except in the case where a judicial resolution has assigned liability for mismanagement and for the amount of the corresponding damages.</p> <p>The liquid portion of the <i>fideicomiso</i> funds is not subject to reserve requirements.</p> <p>The Superintendency issues general regulations on the various types of <i>negocios fiduciarios</i>.” (unofficial translation)</p>
Whether the institution may potentially meet the criteria of Article 2:	Yes ²

¹ 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](https://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/7B3154074498CD5E05257F030072F042/$FILE/26702.pdf) (original text).

² 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:	<p>Act of 26 January 2023 on Family Foundation¹</p> <p>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)</p> <p>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)</p>
Whether the institution may potentially meet the criteria of Article 2:	<p>No</p> <p>Family foundations are functionally analogous to trust but not structurally analogous to trust (noting that they have separate legal personalities).</p>

¹ 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 ¹
Institution:	<i>Waqf</i>
Legal Basis / Origin:	Article 7 of the Law No. 8 of 1996 with respect to Endowment (Waqf) provides ² : “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 ³

¹ As Qatar is not a Member of the HCCH, the information in this table was based on research conducted by the PB.

² 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).

³ *Ibid.*

34. Romania

Country (Region)	Romania
Institution:	<i>Fiducia</i>
Legal Basis / Origin:	<p>Civil Code, Book III (Goods), Title IV (Fiducia), Articles 773 to 791¹</p> <p>Article 773 of the Civil Code provides that “<i>fiducia</i> 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)</p>
Whether the institution may potentially meet the criteria of Article 2:	<p>Yes</p> <p>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.”²</p>

¹ Romania Civil Code, available at [COD CIVIL \(A\) 04/02/2016 - Portal Legislativ](#)

² 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 ¹
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”. ²
Whether the institution may potentially meet the criteria of Article 2:	Yes
Institution:	(2) <i>Contratto di affidamento fiduciario</i>
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.” ³
Whether the institution may potentially meet the criteria of Article 2:	Yes ⁴ 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 <i>ius commune</i> , to govern functions that were hitherto seen as typical trust functions.”

¹ 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.

² 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).

³ 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).

⁴ M. Lupoi, "The new law of San Marino on the 'affidamento fiduciario'", *Studi in onore di Aldo Frigani*, Napoli, 2011, p. 9.

36. South Africa

Country (Region)	South Africa
Institution:	Trust
Legal Basis / Origin:	<p>Trust Property Control Act 57 of 1988¹ 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–</p> <p>(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</p> <p>(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,</p> <p>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)[.]”</p>
Whether the institution may potentially meet the criteria of Article 2:	<p>Yes²</p> <p>D. Clarry in “Fiduciary Ownership and Trusts in a Comparative Perspective” stated:</p> <p>“[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.”³</p>

¹ 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).

² The Dyer/Van Loon Report, p. 34.

³ 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:	<p>The Trusts Ordinance¹ provides:</p> <p>“(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;</p> <p>(b) a Trust does not include a fideicommissum;”</p>
Whether the institution may potentially meet the criteria of Article 2:	Yes ²

¹ 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).

² *Ibid.*

38. Switzerland

Country (Region)	Switzerland
Institution:	(1) <i>Treuhand</i> / <i>fiducie</i> / <i>fiducia</i>
Legal Basis / Origin:	
Whether the institution may potentially meet the criteria of Article 2:	<p>No</p> <p>Under Swiss law, <i>Treuhand</i> is an institution of a contractual nature and does not provide for a general segregation of assets in the event of insolvency.</p> <p>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.”.</p>
Institution:	(2) <i>Stiftung</i> / <i>fondation</i> / <i>fondazione</i>
Legal Basis / Origin:	<p>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”).</p> <p>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.”.¹</p>
Whether the institution may potentially meet the criteria of Article 2:	<p>No</p> <p>Under Swiss law, <i>Stiftung</i> has a separate legal personality² and does not satisfy Article 2(b) of the Trusts Convention.</p>

¹ Swiss Civil Code, available at https://www.fedlex.admin.ch/eli/cc/24/233_245_233/en.

² 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 ¹
Institution:	(1) Trusts
Legal Basis / Origin:	<p>The Federal Decree by Law No (31) of 2023² regarding trusts provides under Article 1 the following definitions:</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>

¹ 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.

² Federal Decree by Law No (31) of 2023 Concerning Trust, available at <https://uaelegislation.gov.ae/en/legislations/2120> (official English translation).

<p>Whether the institution may potentially meet the criteria of Article 2:</p>	<p>Yes¹</p> <p>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 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.²</p> <p>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[.]”³</p> <p>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).⁴ Articles 23 and 25 of the old UAE Trust Law are substantially replicated in Articles 21 and 23 of the new UAE Trust Law.⁵</p>
<p>Institution:</p>	<p>(2) <i>Waqf</i></p>
<p>Legal Basis / Origin:</p>	<p>Article 10 of the Federal Law of the UAE No 5 of 2018⁶ provides for the effects of Registration of Endowment.</p> <p>The registration of the Endowment in the Record shall entail the following:</p> <p>1- Acquisition of legal entity, financial and administrative independence, and right of litigation in this capacity.</p> <p>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.</p>

¹ 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.)

² *Ibid.* at p. 315.

³ *Ibid.*

⁴ Federal Decree by Law No (31) of 2023 Concerning Trust, available at <https://uaelegislation.gov.ae/en/legislations/2120> (official English translation).

⁵ *Ibid.*

⁶ Federal Law of the UAE No 5 of 2018, available at <https://uaelegislation.gov.ae/en/legislations/1237/download> (official English translation).

Whether the institution may potentially meet the criteria of Article 2:	No

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 <i>Knight v Knight</i> [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: <ul style="list-style-type: none"> • 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. <ul style="list-style-type: none"> • 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 <i>M'Caig's Trs v Kirk-Session of United Free Church of Lismore</i> 1915 SC 426 (the purpose of a trust cannot be contrary to public policy), <i>Inland Revenue v Clark's Trs</i> 1939 SC 11 (which sets out the dual patrimony theory) and <i>Gillespie v City of Glasgow Bank</i> (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) <i>Fideicomiso</i>
Legal Basis / Origin:	<p>Under Article 1 of Act N° 17.703 (<i>Ley de Fideicomiso</i>), 27 October 2003¹, “<i>fideicomiso</i>” 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.”.</p> <p>“Article 2. (Constitution).- A “<i>fideicomiso</i>” (trust) may be established by an act <i>inter vivos</i> or by will.</p> <p>A trust by act <i>inter vivos</i> 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.</p> <p>A trust by act <i>inter vivos</i> is a valid instrument for producing the transfer of ownership or title to the real or personal rights that constitute its subject matter.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>The heir-trustee succeeds according to the general principles.”</p> <p>“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. (...)”</p>

¹ 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) <i>Fideicomiso financiero</i>
Legal Basis / Origin:	<p>Under chapter IV, Act N° 17.703, Article 25, the <i>fideicomiso financiero</i> 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.”</p> <p>“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.”</p>
Whether the institution may potentially meet the criteria of Article 2	Yes
Institution:	(3) <i>Fideicomiso de garantía</i> (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) <i>Fideicomiso de inversion</i>
Legal Basis / Origin:	<p>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.</p> <p>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.”</p>
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 <i>fideicomiso</i> 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." ²
Whether the institution may potentially meet the criteria of Article 2:	Yes
Institution:	(2) <i>Fideicomiso</i>
Legal Basis / Origin:	Article 1 of the Law of <i>Fideicomisos</i> ³ states that: "A <i>fideicomiso</i> is a legal relationship by which a person, called the <i>fideicomitente</i> , transfers one or more assets to another person, called the <i>fiducario</i> , who is obligated to use them for the benefit of the <i>fideicomitente</i> 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.

² 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).

³ 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 125²

3. (A) Canada (other than Quebec)

Cases

Chan v. Chan, 2012 BCSC 192³

Everest Canadian Properties Ltd. v. CIBC World Markets Inc., 2008 BCCA 276⁴

Killam v. Killam, 2018 BCCA 64⁵

Re Jagos (Estate of), 2007 ABQB 56⁶

Ritter v. Hoag, 2003 ABQB 88⁷

Rowland v. Vancouver College Ltd., 2001 BCCA 527⁸

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>

Royal Trust Corporation of Canada v. A.S. (W.) S., 2004 ABQB 284⁹

⁹ Available at <https://canlii.ca/t/1gw6v>

Sevy v. Sevy, 2013 BCSC 2255¹

Sommer v. The Queen, 2012 FCA 207²

Webster-Tweel v. Royal Trust Corporation of Canada, 2010 ABQB 139³

4. (B) Canada (Quebec)

Legislation

Civil Code of Québec of Canada, Book Ten (Private International Law), Title Two (Conflict of Laws), Articles 3107 and 3108⁴

Cases

Dubeau c. *Lessard*, 2015 QCCS 6144 <https://eur01.safelinks.protection.outlook.com/?url=https://canlii.ca/t/gmt97&data=05|02|secretariat@hcch.net|208416e93ec3429bcbc508de1af57bff|f63757c537de44adb498b24589a7eb0b|0|0|638977838845078308|Unknown|TWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMilslkFOljoIjTWFpbGlldUljoyfQ==|0||&sdata=eg39Mxi2HxzAF37e6g62sixFsEOWt6PNdd2ZQTuqHBY=&reserved=0>⁵

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)⁶

6. Hong Kong, China

Legislation

Recognition of Trusts Ordinance (Cap. 76)⁷

7. Italy

Legislation

Law of 16 October 1989 on Ratification and Implementation of the Convention on the Law Applicable to Trusts and on their Recognition⁸

8. Luxembourg

Legislation

¹ Available at <https://canlii.ca/t/g29t9>

² Available at [Canada v. Sommerer - Federal Court of Appeal](#)

³ Available at <https://canlii.ca/t/28c4d>

⁴ Available at <https://www.legisquebec.gouv.qc.ca/en/document/cs/ccq-1991?langCont=fr#se:3107>

⁵ Available at <https://canlii.ca/t/gmt97>

⁶ Available at [91/2012 Sb., 23. 9. 2023, aktuální znění, informativní znění systému e-Sbírka](#)

⁷ Available at [Cap. 76 Recognition of Trusts Ordinance](#)

⁸ Available at [LAW no. 364 of 16 October 1989 - Normattiva](#)

Law of 27 July 2003 on Trusts and Fiduciary Contracts, Title I (Law Applicable to the Trust and its Recognition), Articles 1 to 3⁹

⁹ Available at <http://data.legilux.public.lu/eli/etat/leg/loi/2003/07/27/n4/jo>

Cases

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

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 100¹

10. Netherlands**Legislation**

Civil Code, Book 10, Title 11 (Trust Law), Articles 142 to 144²

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)³

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 2.662⁴

¹ Available at <https://legimonaco.mc/code/code-droit-international-prive/>

² Available at [wetten.nl - Regeling - Burgerlijk Wetboek Boek 10 - BWBR0030068](https://wetten.nl/Regeling-Burgerlijk-Wetboek-Boek-10-BWBR0030068)

³ Available at [wetten.nl - Regeling - Verdrag inzake het recht dat toepasselijk is op trusts en inzake de erkenning van trusts - BWBV0002005](https://wetten.nl/Regeling-Verdrag-inzake-het-recht-dat-toepasselijk-is-op-trusts-en-inzake-de-erkenning-van-trusts-BWBV0002005)

⁴ Available at [COD CIVIL \(A\) 04/02/2016 - Portal Legislativ](https://codcivil.a.ro/04/02/2016)

13. San Marino

Legislation

Law No. 42 of 1 March 2010 on Trust, Article 4¹

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 1987 on Private International Law, Chapter 9a (Trusts)²

Federal Act of 20 December 2006 on the Approval and Implementation of the Hague Convention on the Law Applicable to Trusts and on their Recognition³

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 1987⁴

¹ 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).

² Available at [SR 291 - Bundesgesetz vom 18. Dezember 1987 über... | Fedlex](#)

³ Available at [AS 2007 2849 - Bundesbeschluss über die Genehmig... | Fedlex](#)

⁴ Available at <https://www.legislation.gov.uk/ukpga/1987/14>