

Nota sobre la aplicación e
interpretación del **artículo 2**
del **Convenio sobre *Trusts* de 1985**
y sobre las instituciones
análogas a los *trusts*

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y sobre las instituciones
análogas a los *trusts*

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Conferencia de La Haya de Derecho Internacional Privado (HCCH)

Oficina Permanente

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Prólogo

Es para mí un gran placer presentar esta 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* (Convenio sobre *Trusts*).

Desde su celebración en 1985 y su entrada en vigor en 1992, este Convenio ha tenido un papel único en tender puentes entre diferentes tradiciones jurídicas. Al establecer normas comunes de derecho internacional privado relativas al derecho aplicable a los *trusts* y a su reconocimiento, ha reforzado la seguridad jurídica y la previsibilidad en situaciones transfronterizas relacionadas con los *trusts*, al tiempo que ha facilitado el diálogo y el entendimiento mutuo entre ordenamientos jurídicos que, históricamente, han adoptado enfoques diferentes respecto a esta institución. En este sentido, el Convenio sobre *Trusts* constituye un ejemplo especialmente contundente de la capacidad de la HCCH para formular soluciones prácticas e inclusivas a los desafíos que plantea la diversidad de tradiciones jurídicas.

Los orígenes de esta Nota se remontan a la labor realizada por la HCCH con motivo del 30.º aniversario de la entrada en vigor del Convenio en 2022. Durante las deliberaciones celebradas en la HCCH, en particular las que tuvieron lugar en la primera Conferencia de la HCCH sobre Derecho Comercial, Digital y Financiero Transfronterizo (Conferencia CODIFI) en 2022, se puso de relieve no solo la continua relevancia del Convenio, sino también el creciente interés por los *trusts* y las instituciones análogas en jurisdicciones de una amplia variedad de tradiciones jurídicas. Los sucesivos mandatos del Consejo de Asuntos Generales y Política (CAGP) sentaron las bases para el trabajo que, en última instancia, dio lugar a esta publicación, lo que refleja la importancia que los Miembros de la HCCH otorgan a garantizar el funcionamiento eficaz y continuado del Convenio.

La presente Nota es el resultado de cinco años de investigación y colaboración dedicados al análisis de la aplicación e interpretación del artículo 2 del Convenio, así como de las instituciones que pueden considerarse comprendidas en su ámbito de aplicación. En ella se ofrecen orientaciones prácticas sobre la interpretación del artículo 2, se analizan instituciones de diferentes ordenamientos jurídicos que pueden ajustarse a sus criterios y se recoge legislación y jurisprudencia relativa a la aplicación del Convenio y al reconocimiento transfronterizo de los *trusts* y otras instituciones análogas. Con ello, la Nota pone de relieve la flexibilidad del Convenio y su capacidad para funcionar eficazmente tanto en el ámbito del *common law* como en el del *civil law* y en otras tradiciones jurídicas. Contribuye así a una comprensión más clara y fundamentada del ámbito de aplicación del Convenio y refuerza su funcionamiento práctico en un entorno jurídico internacional cada vez más interconectado.

Me gustaría aprovechar esta oportunidad para expresar mi más sincero agradecimiento a todas las personas que han contribuido a este proyecto. En particular, deseo dar las gracias a los miembros del Grupo de Trabajo sobre *Trusts* por sus valiosos conocimientos y su participación constructiva a lo largo de la preparación y revisión del estudio, así como a su presidenta, la jueza Roberta Nocella (Italia), por su excelente liderazgo durante el proceso. También quiero expresar mi agradecimiento a la *Society of Trust and Estate Practitioners* (STEP) y a los numerosos miembros de este organismo que participaron en la encuesta realizada para el proyecto y compartieron sus conocimientos prácticos sobre sus respectivas jurisdicciones. Sus aportaciones han enriquecido enormemente este trabajo. También deseo reconocer al personal de la Oficina Permanente, en particular a la secretaria general adjunta, la Dra. Gérardine Goh Escolar; a la oficial legal Raquel Salinas Peixoto; al antiguo oficial legal Harry Cheng; la oficial legal Hosna Attar, la antigua colaboradora en comisión

de servicio Wendy Ho, y la responsable de publicaciones Lydie de Loof, cuyos esfuerzos a lo largo de varios años han sido fundamentales para preparar y ultimar esta publicación.

A medida que crece el interés por los *trusts* y las instituciones análogas en todo el mundo, el Convenio sigue teniendo una gran importancia para promover la seguridad jurídica, la previsibilidad y la cooperación internacional. Más de 30 años después de su entrada en vigor, sigue demostrando el valor que tiene la cooperación multilateral para hacer frente a las consecuencias prácticas de las diferencias entre los distintos ordenamientos jurídicos. Estoy convencido de que esta Nota resultará de gran utilidad para jueces, profesionales del derecho, académicos, funcionarios públicos y demás personas interesadas en el funcionamiento del Convenio, y de que contribuirá a una aplicación eficaz y continuada, así como a una mayor comprensión del mismo.

Dr. Christophe BERNASCONI | Secretario General

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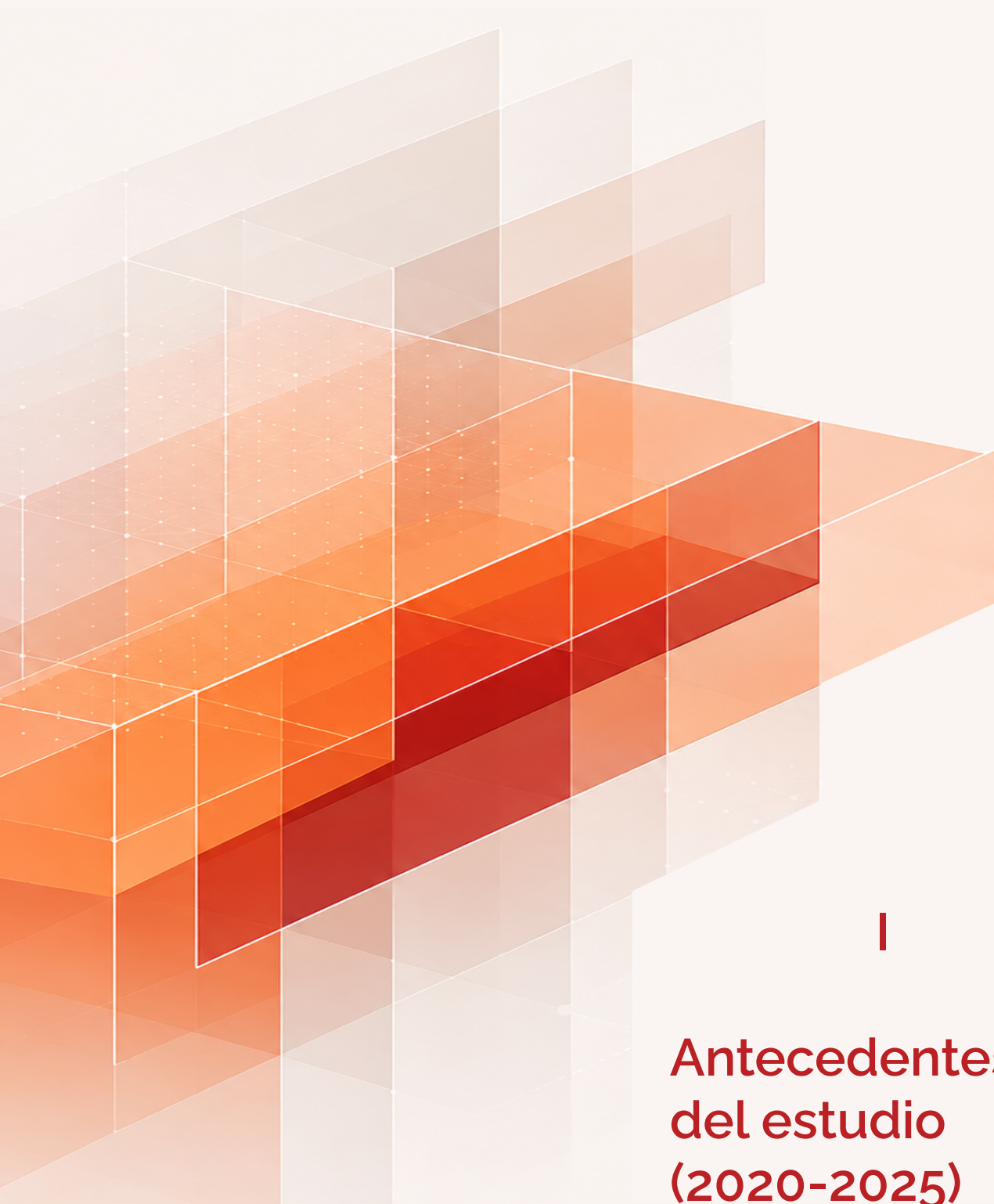
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Introducción

- 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 III);
 - ii. las instituciones que pueden cumplir los criterios del artículo 2 del Convenio en distintas jurisdicciones (véase el anexo A); 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 el anexo B).
- 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 de la HCCH. Los usuarios de esta Nota deben solicitar asesoramiento jurídico a profesionales autorizados de las jurisdicciones pertinentes.

¹ Para la lista actualizada de Partes contratantes del Convenio sobre *Trusts* y las respectivas fechas de entrada en vigor, consulte el estado actual (disponible en el sitio web de la HCCH (www.hcch.net) en la "Sección Trusts".



I

**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 Oficina Permanente que "emprenda la investigación y los preparativos relacionados con el cuestionario sobre derecho comercial y financiero y la posible conferencia internacional que se 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 (en adelante "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

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 (www.hcch.net) en "Gobernanza" => "Consejo de Asuntos Generales y Política" => "Archivo (2000-2025)".

³ "The HCCH 1985 Trusts Convention: Updates and possible future work", Doc. Prel. N.º 15 de diciembre de 2020 para el CAGP 2021, disponible en el sitio web de la HCCH (www.hcch.net) en "Gobernanza" => "Consejo de Asuntos Generales y Política" => "Archivo (2000-2025)", párrs. 8 y 9.

⁴ "The HCCH 1985 Trusts Convention: Updates and possible future work", Doc. Prel. N.º 14 de noviembre de 2021 para el CAGP 2022, disponible en el sitio web de la HCCH (www.hcch.net) en "Gobernanza" => "Consejo de Asuntos Generales y Política" => "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", Doc. Prel. N.º 3A de enero de 2023 para el CAGP 2023 anexo 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 (www.hcch.net) en "Gobernanza", "Consejo de Asuntos Generales y Política" => "Archivo (2000-2025)", párrs. 11 a 16.

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 Oficina Permanente recibió el mandato de proseguir los trabajos.

- 9 En 2024, la Oficina Permanente y la *Society of Trust and Estate Practitioners* (STEP) analizaron una posible cooperación en relación con los trabajos en el Convenio sobre *Trusts*. La Oficina Permanente elaboró una encuesta sobre el Convenio sobre *Trusts* (en adelante, "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 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 Oficina Permanente 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 (en adelante, "Grupo de Trabajo sobre *Trusts*")⁸ 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 1985⁹;
 - ii. el Informe sobre *Trusts* e Instituciones Análogas¹⁰;

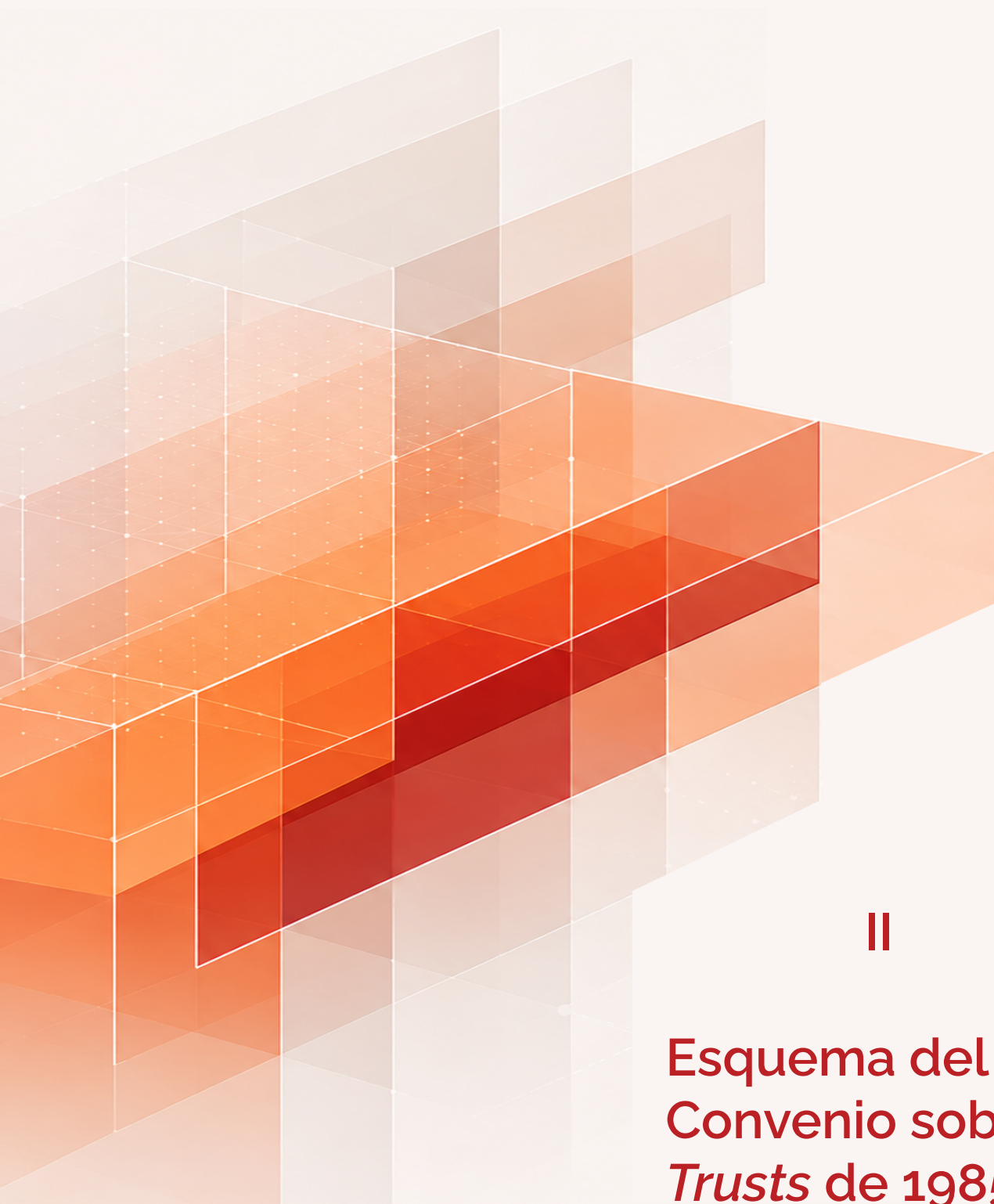
⁷ "2006 Securities Convention, 1985 Trusts Convention, 2015 Principles on Choice of Law: Update", Doc. Prel. N.º 10A de febrero de 2023 para el CAGP 2023, disponible en el sitio web de la HCCH (www.hcch.net) en "Gobernanza" => "Consejo de Asuntos Generales y Política" => "Archivo (2000-2025)", párr. 15.

⁸ El Grupo de Trabajo estuvo integrado por expertos designados por Miembros de la HCCH y organizaciones observadoras: Alemania (Christoph Wurm, Silvia Bartodziej); Australia (Brody Warren, Michael France); Canadá (Christopher Blakeney, Raphaël Morissette, Valérie Simard); Costa Rica (Sofía Cob Briceño); Ecuador (Alegría Baus Pinto, Javier Llorca Vega); Italia (Roberta Nocella, *Presidenta del Grupo de Trabajo*); Japón (Yuki Kato); Letonia (Agnese Saukuma, Dina Buse); México (Carlos Sánchez Mejorada y Velasco, Jorge Sánchez Cordero Dávila); Panamá (Gilberto Boutin, Raúl Aparicio); Reino Unido (Matthew Rowden, Peter Farr, Martin Fullick, Ian Keenan, Michael Paparakis, Keith Vincent); Suiza (Thomas Mayer); Ucrania (Kateryna Taranenko, Mykhailo Korol, Yelizaveta Revilo); AAIL (Adrian Lai JP); ASADIP (Candela Villegas, Cecilia Fresnedo de Aguirre); CNUE (Kacper Górniak, Paolo Pasqualis); EAPIL (Afonso Patrão, Gianluca Contaldi, Gilles Cuniberti, Pietro Franzina); ELI (Pascal Pichonnaz); y STEP (Emily Deane, Filippo Nosedà, Paolo Panico, Samantha Morgan). Antes de la segunda reunión del Grupo de Trabajo, la representante de Costa Rica comunicó a la Oficina Permanente que Costa Rica ya no participaría en el Grupo de Trabajo.

⁹ A.E. von Overbeck, "Explanatory Report on the 1985 Hague Trusts Convention" (en adelante, "Informe Explicativo"), en *Proceedings of the Fifteenth Session (1984), Tome II, Trusts – applicable law and recognition*, La Haya, Imprimerie Nationale, 1985, págs. 370 a 415.

¹⁰ A. Dyer y H. van Loon, "Report on trusts and analogous institutions" (en adelante, "Informe Dyer/Van Loon"), Doc. Prel. N.º 1 de mayo de 1982, en *Proceedings of the Fifteenth Session (1984)*, (*ibid.*), págs. 10 a 108.

- iii. fuentes académicas;
- iv. respuestas a la Encuesta STEP; y
- v. aportes de los miembros del Grupo de Trabajo sobre *Trusts*.



II

Esquema del
Convenio sobre
Trusts de 1985

- 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 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*¹¹; 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 implícita¹². 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)¹³.

¹¹ Informe Explicativo, pág. 383, párr. 63.

¹² *Ibid.*, págs. 374, 386 y 387, párrs. 20, 72 y 77.

¹³ *Ibid.*, pág. 383, párrs. 21 y 22.

- 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).



III

Interpretación
del artículo 2 del
Convenio sobre
Trusts de 1985

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
"For the purposes of this Convention, the term 'trust' refers to the legal relationships created – <i>inter vivos</i> 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. A trust has the following characteristics: – (a) the assets constitute a separate fund and are not a part of the trustee's own estate; (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; (c) the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law. 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."	"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 <i>trustee</i> dans l'intérêt d'un bénéficiaire ou dans un but déterminé. Le trust présente les caractéristiques suivantes : - (a) les biens du trust constituent une masse distincte et ne font pas partie du patrimoine du <i>trustee</i> ; (b) le titre relatif aux biens du trust est établi au nom du <i>trustee</i> ou d'une autre personne pour le compte du <i>trustee</i> ; (c) le <i>trustee</i> 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 <i>trustee</i> par la loi. Le fait que le constituant conserve certaines prérogatives ou que le <i>trustee</i> possède certains droits en qualité de bénéficiaire ne s'oppose pas nécessairement à l'existence d'un trust."

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*¹⁴.

¹⁴ Conferencia CODIFI, F. Nosedá, "Trusts/Closing Session", 16 de septiembre de 2022, disponible en https://youtu.be/emhldcYSepE?si=bKUY_RoBxlufey6t (consultado por última vez el 6 de mayo de 2026).

- 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*¹⁵.
- 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 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.

¹⁵ Consulte el anexo A para obtener información sobre los marcos normativos de Quebec (Canadá), Italia y la República Checa.



IV

Instituciones que
cumplen los criterios
del artículo 2 del
Convenio sobre
Trusts de 1985

- 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 internacional¹⁶.
- 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.

¹⁶ 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*¹⁷. 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 Convenio¹⁸.
- 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*¹⁹.
- 36 En el Informe Explicativo también se señalaba lo siguiente:
- “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 incluidas”²⁰.
- 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.

¹⁷ *Ibid.*, pág. 372, párr. 12.

¹⁸ *Ibid.*, pág. 375, párr. 26.

¹⁹ Informe Dyer/Van Loon, pág. 40, párr. 57.

²⁰ 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”, Doc. Prel. N.º 6 de septiembre de 1982, en *Proceedings of the Fifteenth Session (1984)* (op. cit. nota 2), pág. 140, párr. 12.

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.
- 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, *supra*, el párr. 44). 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 religiosas²¹ 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 para satisfacer necesidades públicas o familiares, conforme a las preferencias y condiciones establecidas por el fundador²². 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 usufructo²³. Otros Estados, como Jordania, consideran que, una vez creado el *waqf*, los bienes ya no pueden ser propiedad de nadie²⁴. Emiratos Árabes Unidos²⁵, Omán²⁶ y Qatar²⁷ 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

²¹ Informe de la declaración en los registros de la Oficina Permanente.

²² S. Baqutayan *et al.*, “Waqf Between the Past and Present”, *Mediterranean Journal of Social Sciences*, vol. 9 (4) 2018, pág. 149. Véase también Federation of the Islamic Associations of New Zealand, “Our Community – Baitul Maal New Zealand Trust” (disponible en <https://fianz.com/our-community/#:-:text=Waqf%20is%20a%20financial%20charitable,conditions%20set%20by%20the%20founder> (consultado por última vez el 6 de mayo de 2026)).

²³ M. Papa y M. Santostasi, “Real Estate, Usufruct Right and the Issue of the Waqf Assets in Egypt”, *European Journal of Islamic Finance*, 2019.

²⁴ 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.

²⁵ Ley Federal de los EAU N.º 5 de 2018, art. 10.

²⁶ Real Decreto 65/2000 de Omán sobre *Awqaf*, art. 2.

²⁷ Ley qatari N.º 8 de 1996 con respecto a la Dotación (*Waqf*) 8/1996, art. 7.

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 propietario²⁸. 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 títulos²⁹. 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”³⁰.
- iii. *Objeto*: Por último, si bien los *trusts* pueden adoptar diversas formas³¹, los *waqfs* solo pueden crearse con fines caritativos o piadosos, ya sea en beneficio del público en general o de personas determinadas³². 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 familiar³³.

²⁸ M. Obaidullah et al., *Islamic Social Finance Report 2014*, Thompson Reuters y Islamic Research and Training Institute (IRTI), 2014, Capítulo 4.

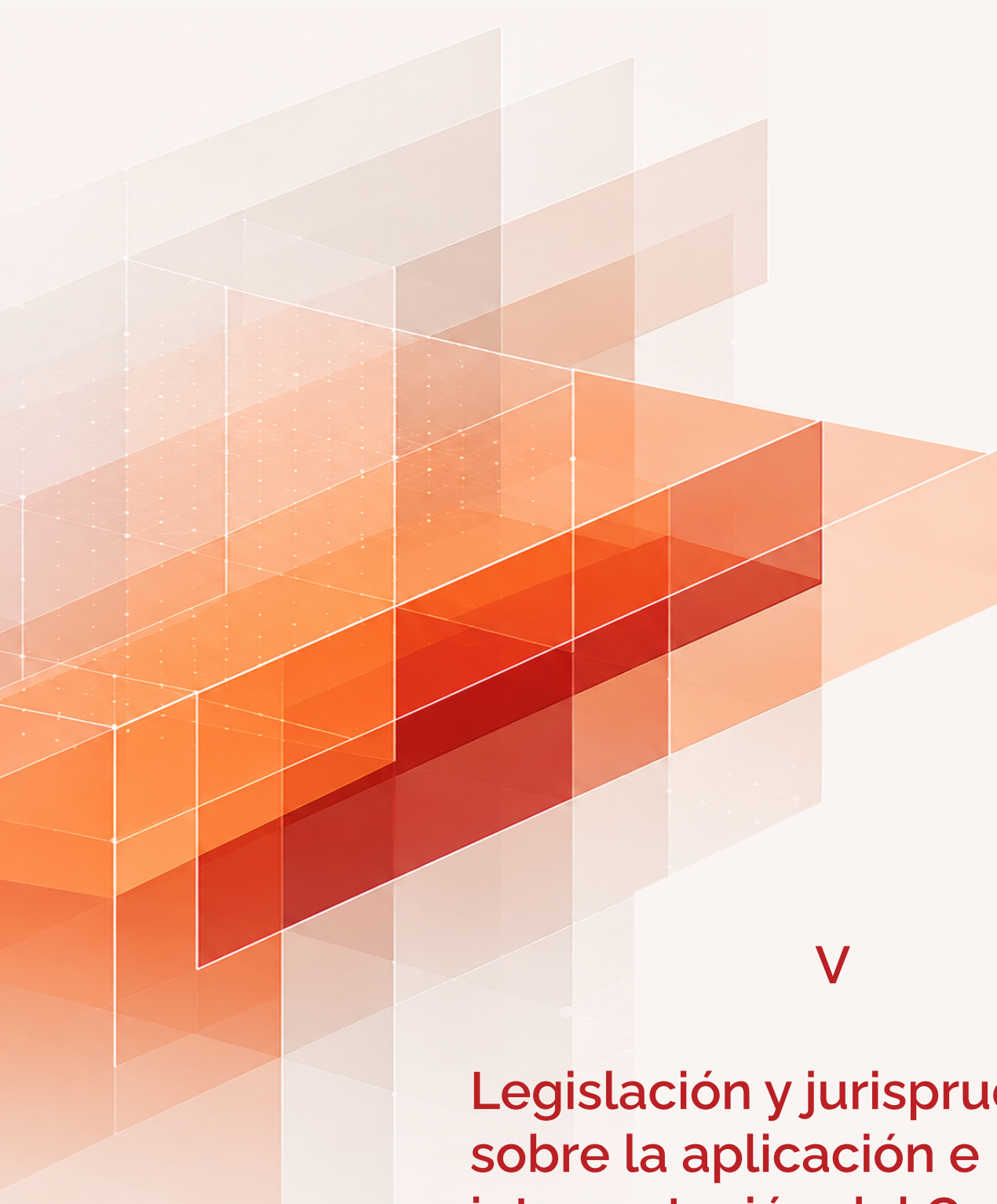
²⁹ M. Kahf, “The role of waqf in improving the ummah welfare”, en *International Seminar on Waqf as a Private Legal Body*, Islamic University of North Sumatra, Medan, Indonesia, 2003, págs. 1 a 26.

³⁰ I. Sándor, *Fiduciary Property Management and the Trust: Historical and Comparative Law Analysis*, Budapest, Hvg-ORAC Publishing Ltd., 2015.

³¹ I. Gvelesiani, “The Trust and the Waqf (Comparative Analysis)”, *Trusts & Trustees*, vol. 26 (8-9) 2020, pág. 737.

³² *Ibid.*, pág. 742.

³³ 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.



V

Legislación y jurisprudencia
sobre la aplicación e
interpretación del Convenio
sobre *Trusts* de 1985 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 Bélgica³⁴, Quebec (Canadá)³⁵, la República Checa³⁶ y Rumanía³⁷. 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.

³⁴ Ley de 16 de julio de 2004 de Bélgica por la que se establece el Código de Derecho Internacional Privado, Capítulo XII (*Trust*), arts. 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) (consultado por última vez el 6 de mayo de 2026).

³⁵ 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) (consultado por última vez el 6 de mayo de 2026) (nota: si bien Canadá es parte en el Convenio sobre *Trusts*, su aplicación no se extiende a Quebec).

³⁶ 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 <http://obcanskyzakonik.justice.cz/images/pdf/Act-Governing-Private-International-Law.pdf>) (consultado por última vez el 6 de mayo de 2026).

³⁷ Código Civil de Rumanía, Libro VII (Disposiciones de Derecho Internacional Privado), Título II (Conflictos de Leyes), Capítulo VIII (Fiducia), arts. 2.659 a 2.662 (disponible en Portal Legislativ, <https://legislatie.just.ro/>) (consultado por última vez el 6 de mayo de 2026).



Anexos



Anexo A

Instituciones que
cumplen los criterios
del artículo 2
del Convenio
sobre *Trusts* de 1985

- 1 El presente anexo recoge, en forma de cuadro, las instituciones de distintas jurisdicciones que pueden cumplir o no los criterios del artículo 2 del Convenio sobre *Trusts*. Contiene descripciones de sus orígenes, configuración, naturaleza jurídica y función y, cuando procede, las leyes que las regulan, jurisprudencia y otra información pertinente. La información que figura en los cuadros no pretende ser exhaustiva.
- 2 Los cuadros que figuran a continuación indican si una institución puede estar comprendida en el artículo 2 a efectos del Convenio sobre *Trusts*. Sin embargo, esta indicación no es concluyente. Se basa en las fuentes indicadas en el párrafo 12 de la Nota, en particular las declaraciones formuladas por las delegaciones de las jurisdicciones representadas en la Decimoquinta Sesión y las aportaciones de los miembros del Grupo de Trabajo sobre Trusts. Cabe señalar que, si bien las declaraciones realizadas por las delegaciones en la Decimoquinta Sesión pueden tener un importante valor de referencia, es posible que la legislación y las prácticas aplicables en las respectivas jurisdicciones hayan cambiado desde entonces. Además, dado que no todas las jurisdicciones que figuran en las tablas están representadas en el Grupo de Trabajo, es posible que la información no haya sido verificada por los representantes de las respectivas jurisdicciones.
- 3 Asimismo, la información que figura en los cuadros procede de fuentes jurídicas de distintas jurisdicciones y está redactada en diferentes idiomas. Por lo tanto, en algunos casos fue necesario recurrir a traducciones. Cuando existe una traducción oficial al inglés del nombre de una institución, dicho nombre figura en inglés. Cuando no existe tal traducción, el nombre de la institución se mantiene en su idioma original. Por ejemplo, en la publicación en inglés se utiliza el término "fideicomiso" cuando no existe una traducción oficial en la jurisdicción en cuestión. Los títulos de las fuentes legislativas figuran en inglés. En algunos casos se trata de traducciones oficiales, pero en otros, las traducciones se han realizado con la ayuda de servicios de traducción o de la Oficina Permanente.

1. Argentina

Country (Region)	Argentina
Institution:	(1) Trust
Legal Basis / Origin:	Under Section 1666 of Law No. 26,994, 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." ¹
Whether the institution may potentially meet the criteria of Article 2:	Yes See note below ²

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) (last accessed 6 May 2026).

² *Ibid.*

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: "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." ³ (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes According to N. Malumian, the Latin American <i>fideicomiso</i> fulfils the three criteria of a trust by Lewin as follows: "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. [...]"⁴

³ Resolution 622/2013, available at <https://servicios.infoleg.gob.ar/infolegInternet/anexos/215000-219999/219405/norma.htm> (original text) (last accessed 6 May 2026).

⁴ 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:	Private Foundations Act of 1993 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.”¹ (unofficial translation) Article 7 of the Act provides that “[a] private foundation shall be established by a declaration of foundation; it shall come into existence upon registration in the commercial register.” (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	No Private foundations are functionally analogous to trust but not structurally analogous to trust (noting that they have separate legal personalities). In “<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 Foundation

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) (last accessed 6 May 2026).

had the same legal rights as a Canadian corporation to deal with its property as it saw fit. The FCA pointed out that a Canadian corporation does not hold property in trust for its shareholders, except to the extent that a trust arrangement has been specifically drawn out (by deed or otherwise), and which arrangement establishes the legal and equitable obligations of a trustee. This was not the case with the Foundation. Indeed, as trust arrangements are foreign to Austrian law (and to the laws of other European civil law jurisdictions), it is questionable if '*Privatstiftungen*' can be reasonably classified as trusts for Canadian common law purposes."²

² M.J. Rochwerg and 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. Bahrein

Country (Region)	Bahrain ¹
Institution:	Trust
Legal Basis / Origin:	Article 2.1. of the Bahraini Legislative Decree No 23 of 2016 provides: "A Trust is a legal relationship created by a Settlor whereby a Trust Property is held in the name of the Trustee, or another Person on behalf of the Trustee, to exercise in relation thereto the duties and powers in accordance with the provisions of the proper law of the Trust and the Terms of the Trust for any of the following: a. the benefit of a Beneficiary, whether or not yet ascertained or in existence, b. any valid Charitable or Non-Charitable Purpose which is not for the benefit only of the Trustee; or c. both such benefit as is mentioned under paragraph (a) of this sub-section and any such purpose as is mentioned under paragraph (b) of this sub-section."²

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

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) (last accessed 6 May 2026).

Whether the institution may potentially meet the criteria of Article 2:

Yes

Article 2.2 of the Bahraini Legislative Decree No 23 of 2016 provides that a Trust has the following characteristics:

- "a. the Trust Property constitutes a separate fund and is not a part of the Trustee's own estate;
- b. title to the Trust Property is held in the name, or under the control of the Trustee, whereby it is held in the name of another Person on behalf of the Trustee; and
- c. the Trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the Trust Property in accordance with the Terms of the Trust and the duties imposed upon him by any law applicable thereto."³

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) 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.” ²
Whether the institution may potentially meet the criteria of Article 2:	No 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”. ³

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

² The Waqfs Ordinance (1962), available at <http://bdlaws.minlaw.gov.bd/act-details-326.html> (official English translation) (last accessed 6 May 2026).

³ M. Obaidullah *et al.*, *Islamic Social Finance Report 2014*, Thomson Reuters and Islamic Research and Training Institute (IRTI), 2014, Chap. 4.

5. Brasil

Country (Region)	Brazil
Institution:	<i>Fideicomisso</i> ("Substituição Fideicomissária")
Legal Basis / Origin:	Articles 1.951-1.960 of the Brazilian Civil Code¹ provide for the "<i>substituição fideicomissária</i>": 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) 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) 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)
Whether the institution may potentially meet the criteria of Article 2:	Yes According to J. Martins-Costa, "60. Among the various institutions within Brazilian law that perform functions analogous to those of trusts, particularly the discretionary trust, is the <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 demonstrate both the theoretical acceptability of such functions and to outline interpretative guidelines for evaluating a trust under Brazilian law.

¹ Brazilian Civil Code, Law 10.406/2002, available at https://www.planalto.gov.br/ccivil_03/LEIS/2002/L10406compilada.htm (original text) (last accessed 6 May 2026).

61. Where the disposition arises from a testamentary act, the closest figure will be the *fideicomisso* (Civil Code, arts. 1.951 to 1.960). Among the broad lines within which analogy is appropriate, attention must be paid to the legal relationship between the *fiduciário* and the *fideicomissário* during the existence of the fiduciary arrangement. [...]

65. As can be seen, although discretionary trusts are not expressly regulated under Brazilian law, the legal system does recognise functionally analogous structures that permit analogical interpretation where appropriate. Such analogy serves to demonstrate that fiduciary arrangements do not inherently exclude discretionary powers, provided these are consistent with the functions and nature of the fiduciary relationship. As Pontes de Miranda observes, 'the similarity between legal categories serves only to resolve specific issues, given that legal rules have analogical scope.'² (unofficial translation)

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

6. Canadá

Country (Region)	Canada (other than Quebec)
Institution:	Trust
Legal Basis / Origin:	Common law Trusts in Canada (other than Quebec) stem from the common law of England as received into the common law of Canada. See, for example, <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.

¹ Available at <https://canlii.ca/t/hqf44> (last accessed 6 May 2026).

² Available at <https://canlii.ca/t/j3xhq> (last accessed 6 May 2026).

Whether the institution may potentially meet the criteria of Article 2:

Yes

The trust found in common law Canada is an example of the trust developed in courts of equity as referenced in the preamble to the Convention. That the common law trust fell within the scope of the Convention was not doubted at the time of the finalisation of the Convention.³

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

³ A.E. von Overbeck, "Explanatory Report on the HCCH 1985 Trusts Convention", in *Proceedings of the Fifteenth Session (1984)*, Tome II, *Trusts, applicable law and recognition*, The Hague, Imprimerie Nationale, 1985, para. 13

⁴ D.W.M. Waters, M.R. Gillen and L.D. Smith, *Waters' Law of Trusts in Canada*, 5th ed. (Toronto, Carswell, 2021) at 3.III.

⁵ *Ibid.* p. 3.I.

⁶ *Ibid.* p. 3.VII.

Country (Region)	Canada (Quebec)
Institution:	Trust
Legal Basis / Origin:	Articles 1260 and following of the Civil Code of Québec⁷ provide the foundation for trusts in Quebec law. 1260. A trust results from an act whereby a person, the settlor, transfers property from his patrimony to another patrimony constituted by him which he appropriates to a particular purpose and which a trustee undertakes, by his acceptance, to hold and administer. 1261. The trust patrimony, consisting of the property transferred in trust, constitutes a patrimony by appropriation, autonomous and distinct from that of the settlor, trustee or beneficiary and in which none of them has any real right.
Whether the institution may potentially meet the criteria of Article 2:	Yes Article 1278 of the Civil Code of Québec provides that the trustee has the control and the exclusive administration of the trust patrimony, that the titles relating to the property of the trust patrimony are drawn-up in the trustee's name, and that the trustee acts, with respect to the trust property, as the "administrator of the property of others charged with full administration". The powers and duties of the trustee as an administrator of the property of others are specified in Articles 1299 and following of the Civil Code of Québec. Thus, since (i) the assets of the trust patrimony are not part of the trustee's own estate; (ii) the title to the trust assets stands in the name of the trustee; and (iii) the trustee has the powers of an administrator to manage, employ and dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him, Quebec's trust seems to satisfy the criteria of Article 2 of the Convention.

⁷ Civil Code of Québec, CQLR c CCQ-1991, available at [ccq-1991 - Civil Code of Quebec](#) (last accessed 6 May 2026).

7. Chile

Country (Region)	Chile
Institution:	<i>Fideicomiso</i>
Legal Basis / Origin:	Articles 733 and 734 of the Chilean Civil Code provides that "Article 733. Fiduciary property is that which is subject to the encumbrance of passing to another person, due to the verification of a condition. The constitution of fiduciary property is called a <i>fideicomiso</i>. This name is also given to things constituted as <i>propiedad fiduciara</i>. The transfer of property to the person in whose favor the <i>fideicomiso</i> has been established is called restitution. 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."¹ (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	No According to N. Malumian: "Based on the Mexican experience, the express trust has made its way from north to south into the laws of most Latin American countries, with the exception of a few countries, such as Chile."²

¹ Chilean Civil Code, available at <https://www.bcn.cl/leychile/navegar?idNorma=172986&idParte=&idVersion=> (original text) (last accessed 6 May 2026).

² N. Malumian, "Trust in Latin America: A Brief Comparison with European Civil Law Countries", *Trusts e attività fiduciarie*, 2011, pp. 499-506.

8. República Popular China

Country (Region)	People's Republic of China
Institution:	Trusts
Legal Basis / Origin:	Article 2 of the Trust Law of the People's Republic of China provides: "Trust refers to that the settlor, based on his faith in trustee, entrusts his property rights to the trustee and allows the trustee to, according to the will of the settlor and in the name of the trustee, administer or dispose of such property in the interest of a beneficiary or for any intended purposes."¹
Whether the institution may potentially meet the criteria of Article 2:	Yes D. Clarry in "Fiduciary Ownership and Trusts in a Comparative Perspective" stated: "The idea that the settlor reserves ownership of trust property is perhaps supported by certain provisions of the Chinese Trust Law providing for the segregation of trust property from other property of the settlor and empowering the trustee to 'entrust' another to handle trust business—if the latter 'entrust' does not convey ownership to a third party then the initial entrusting by a settlor ought not convey ownership to a trustee either, if 'entrust' has a consistent meaning... a strained interpretation of ownership arises in the Chinese trust, with ownership being in the settlor, rather than any fiduciary ownership in the trustee, even though the broad term 'entrusts' in Article 2 of the Chinese Trust Law supports that conclusion and avoids those ambiguities."²

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) (last accessed 6 May 2026).

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:	Article 1226 of the Commercial Code of Colombia provides: "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 fulfil a purpose determined by the settlor, for the benefit of the settlor or a third party called the beneficiary or <i>fideicomisario</i>. A person can be both the settlor and the beneficiary. Only credit institutions and trust companies, specifically authorized by the Banking Superintendency, may have the status of trustees."² (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes D. Clarry in "Fiduciary Ownership and Trusts in a Comparative Perspective" stated: "In Colombia, a trustee cannot acquire definitely the possession of [trust] assets', with possession of trust assets returning to the '<i>fiduciant</i> or his heirs' unless some other provision is made for conveyance to some other person."³

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

² The Commercial Code of Colombia, Arts 1226-1244, available at <http://www.suin-juriscol.gov.co/viewDocument.asp?id=1833376> (original text) (last accessed 6 May 2026).

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

10. República Checa

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

¹ Sections 1448–1474, Civil Code of the Czech Republic (Act No 89/2012), available at <http://obcanskyzakonik.justice.cz/images/pdf/Civil-Code.pdf> (official English translation) (last accessed 6 May 2026).

² L. Tichy, "Recognition of a Trust as a Specific Problem in Private International Law", *European Review of Private Law – Revue Européenne de Droit Privé*, Vol. 24 (6), 2016, pp. 1165–1166.

11. Egipto

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 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

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

12. Etiopía

Country (Region)	Ethiopia ¹
Institution:	<i>Fideicommis</i>
Legal Basis / Origin:	Article 516 of the Civil Code of Ethiopia 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." ²
Whether the institution may potentially meet the criteria of Article 2:	Yes See note below ³

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

² The Federal Negarit Gazeta, Year No 2, Proclamation No 165 of 1960, Civil Code of Ethiopia (1960), Arts 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) (last accessed 6 May 2026).

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

13. Francia

Country (Region)	France
Institution:	(1) <i>Fiducie</i>
Legal Basis / Origin:	Articles 2011-2031 of the French Civil Code 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."¹
Whether the institution may potentially meet the criteria of Article 2:	Yes 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."²

¹ French Civil Code, Arts 2011-2031, available at <https://www.legifrance.gouv.fr/codes/id/LEGIARTI000006445338/2007-02-21> (original text) (last accessed 6 May 2026); 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 (*ibid.*), Vol. 13 (1), 2012, p. 28.

Institution:	(2) <i>Prête Nom</i>
Legal Basis / Origin:	
Whether the institution may potentially meet the criteria of Article 2:	Yes 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.”³

³ A. Dyer and H. van Loon, “Report on trusts and analogous institutions”, Prel. Doc. No 1 of May 1982, in *Proceedings of the Fifteenth Session (1984)*, Tome II, *Trusts, applicable law and recognition*, The Hague, Imprimerie Nationale, 1985, p. 37.

14. Alemania

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:	No <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. 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. Unlike in a trust, assets acquired with funds from the trust assets do not automatically become trust assets. There are no subrogation provisions in this respect. As the legal owner, the <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. 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.

However, the German legal system gives *Treugeber* an opportunity to make the safer agreement (the so-called *Ermächtigungstreuhand* or *Vollmachtstreuhand*), "under which he (she) does not transfer the full right in rem to *Treuhänder*, but simply authorizes him (her) to manage or dispose of the assets in a specific manner. When the *Treuhänder* exceeds his authorization the disposal of the assets is not valid no real separation of property takes place and the protection of the *Treugeber* is of minor importance because he is still the legal owner with all of his power."¹

As a contractual obligation, the *Ermächtigungs- oder Vollmachtstreuhand* also does not meet the requirements of Article 2. In particular, this form of *Treuhand* lacks a special fund, as the assets to be managed by the *Treuhänder* remain in the *Treugeber's* assets and are not transferred to the *Treuhänder*. Therefore, an *Ermächtigungs- oder Vollmachtstreuhand* does not meet the requirements of Article 2, which requires that the trust assets be held by the trustee.

¹ I. Gvelesiani, "German 'Treuhand' vis-à-vis Austrian 'Treuhand' (Terminological Study)", *European Scientific Journal*, 2015, p. 135.

15. Hungria

Country (Region)	Hungary
Institution:	(1) Fiduciary asset management contract
Legal Basis / Origin:	Act V of 2013 on the Civil Code, Book Six (Law of Obligations), Title XVI (Agency-type Contracts), Chapter XLIII (Fiduciary asset management contract), Sections 6:310-330¹ Section 6:310(1) of the Act provides that "[u]nder a fiduciary asset management contract, the trustee shall manage on his own behalf and for the benefit of the beneficiary the things transferred to his ownership, as well as the rights and obligations transferred to him by the settlor (hereinafter "trust property"), and the settlor shall pay the fee." Section 6:312(1) of the Act provides that "[t]he trust property shall form property separated from the property of the trustee and from other properties managed by him, and the trustee shall keep a separate record of it. Any provision by the parties derogating from this shall be null and void." Section 6:318 of the Act provides that: "(1) Management of assets shall include the exercise of rights arising from the ownership and other rights and claims transferred to the trustee, and the fulfilment of obligations arising from them. (2) The trustee may avail of the assets that are part of the trust property under the terms and limitations determined in the contract. (3) If the trustee breaches his obligation under paragraph (2) and carries out the unauthorised transfer of any asset that is part of the trust property to a third party, the settlor and the beneficiary may claim that the asset be returned to the trust property if the third party has not been acting in good faith or has not acquired the asset reciprocally. This rule shall apply accordingly to the unauthorised encumbrance of an asset in the trust property."
Whether the institution may potentially meet the criteria of Article 2:	Yes

¹ Act V of 2013 on Civil Code, available at <https://njt.hu/jogszabaly/en/2013-5-00-00> (official English translation) (last accessed 6 May 2026).

Institution:	(2) Trust foundation
Legal Basis / Origin:	Act XIII of 2019 on Trust² 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 document, and to provide financial benefits to the person or persons designated as beneficiaries." and section 2(2) of the Act provides that "[a] trust foundation may carry out, as an economic activity, the management of assets assigned to its benefit or placed in trust for the purpose referred to in paragraph (1)." Section 5(1) provides that "[t]he founder of a trust foundation may appoint a board of trustees of the foundation in the foundation's charter to exercise the founder's rights, and the founder of a non-public interest trust foundation may appoint a foundation auditor pursuant to Section 7 instead of the board of trustees, or if he has reserved his founder's rights in the foundation's charter or has not provided for them in it, he may transfer these rights to the foundation. The founder may also provide in the foundation's charter that his founder's rights shall pass to the foundation in the event of his death, termination without legal successor or the occurrence of a condition specified in the foundation's charter."
Whether the institution may potentially meet the criteria of Article 2:	No Trust foundations are functionally analogous to trust but not structurally analogous to trust (noting that they have separate legal personalities).

²Act XIII of 2019 on Trust Foundations, available at <https://njt.hu/jogszabaly/2019-13-00-00> (original text) (last accessed 6 May 2026).

16. Indonesia

Country (Region)	Indonesia ¹
Institution:	<i>Wakaf</i>
Legal Basis / Origin:	Law No. 41 of 2004 of Indonesia.² M. Obaidullah and others noted the following:³ - 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 institution. [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]

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

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) (last accessed 6 May 2026).

³ M. Obaidullah *et al.*, *Islamic Social Finance Report 2014*, Thomson Reuters and Islamic research and Training Institute (IRTI), 2014, Chap. 4.

- The Indonesian law explicitly prohibits the *waqf* asset from being used as a mortgage, confiscated, given away, sold, inherited, exchanged or being alienated into any form of right. The *waqf* asset may, however be exchanged as an exception to the above general rule, when this is deemed to be in the public interest. Such exchange would, however, require prior permission from both the Ministry and the Badan Wakaf, with an additional condition that the asset exchange must be against another asset of equal or higher value. [Articles 40 and 41 of the Law]
- Indonesian law requires that in managing and developing the *waqf* asset, a nazir is not permitted to alienate the designation of *waqf* asset, except if he has received a written permission from the Badan Wakaf Indonesia. Such permission is given if the asset concerned is no longer beneficial as had been assigned in the *waqf* deed. [Article 44 of the Law]

Whether the institution may potentially meet the criteria of Article 2:

No

17. Israel

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

¹ Israeli Trust Law 5739-1979, available at https://www.nevo.co.il/law_html/law00/72996.htm (original text) (last accessed 6 May 2026).

² A. Dyer and H. van Loon, "Report on trusts and analogous institutions", Prel. Doc. No 1 of May 1982, in *Proceedings of the Fifteenth Session (1984)*, Tome II, *Trusts, applicable law and recognition*, The Hague, Imprimerie Nationale, 1985, p. 33 (notes in the original text omitted).

18. Italia

Country (Region)	Italy
Institution:	(1) <i>Contratto di affidamento fiduciario</i>
Legal Basis / Origin:	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. The fiduciary contract is generally accepted as meeting the condition prescribed in Article 1322(2) of the Italian Civil Code and fall under the general rules on contracts specified in Book IV of the Italian Civil Code.
Whether the institution may potentially meet the criteria of Article 2:	Yes

Institution:	(2) Bond of purpose
Legal Basis / Origin:	Article 2645-ter of the Italian Civil Code provides that: “Deeds, made by public act, by means of which movable and immovable assets, recorded in public registers, are allocated, for no 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
Whether the institution may potentially meet the criteria of Article 2:	Yes 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. 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. Bond of purpose under Article 2645-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.”²

¹ Art. 2645-ter, Italian Civil Code, available at <https://academic.oup.com/tandt/article-abstract/12/7/21/1649566?redirectedFrom=PDF> (unofficial English translation) (last accessed 6 May 2026).

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

19. Japón

Country (Region)	Japan
Institution:	<i>Shintaku</i>
Legal Basis / Origin:	The Trust Act of Japan 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."¹ (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. M. Arai 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."²

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) (last accessed 6 May 2026).

² M. Arai, "Trust law in Japan: inspiring changes in Asia, 1922 and 2006", in L. Ho and R. Lee (eds), *Trust Law in Asian Civil Law Jurisdictions a Comparative Analysis*, Cambridge, Cambridge University Press, 2013, pp. 27-31.

Dyer and Van Loon also found:

"The Japanese Civil Code, influenced by civil law concepts, does not know the trust. A 1905 Act, however, permitted trusts for bond holders in respects of mortgages securing corporate bonds. Many trust companies, formed after the American model, flourished though apparently not always in the interest of their client beneficiaries. In order to protect these better, in 1922 a Trust and Trust-Company Statute was enacted. Since that time, it does not seem, however, that the trust, which is called '*shintaku*' in Japanese, has found wide application in Japan."³

³ A. Dyer and H. van Loon, "Report on trusts and analogous institutions", Prel. Doc. No 1 of May 1982, in *Proceedings of the Fifteenth Session (1984)*, Tome II, *Trusts, applicable law and recognition*, The Hague, Imprimerie Nationale, 1985, pp. 33-34.

20. Jordania

Country (Region)	Jordan
Institution:	<i>Waqf</i>
Legal Basis / Origin:	The Jordanian Waqf Law 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".¹
Whether the institution may potentially meet the criteria of Article 2:	No 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."²

¹ The Jordanian Waqf Law No 32/2001.

² M. Al Manaseer and 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. República de Corea

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 "trustee") 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 fulfil 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 trustor and the trustee." (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes 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 finally 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."²

¹ Art. 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) (last accessed 6 May 2026).

² Y.-C. Wu, "Trust Law in South Korea: Developments and Challenges", in L. Ho and R. Lee (eds), *Trust Law in Asian Civil Law Jurisdictions – a Comparative Analysis*, Cambridge, Cambridge University Press, 2013, pp. 46-62.

22. Kuwait

Country (Region)	Kuwait ¹
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 See note below ²

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

² Kuwaiti Law of Waqf al-Istirshadi 2014, Art. 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) 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."²
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

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) (last accessed 6 May 2026).

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> (last accessed 6 May 2026).

Institution:	(2) <i>Stiftung</i> (Foundation)
Legal Basis / Origin:	Section 1 of Article 552 of the PGR provides that: "A foundation as referred to in this section consists in legally and economically independent special-purpose assets which are formed as a legal person through the unilateral declaration of intent of the founder. The founder allocates the specifically designated foundation assets, stipulates the purpose of the foundation, which must be entirely non-self-serving and specifically designated, and also stipulates the beneficiaries."⁴
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).

⁴ *Ibid.*

Institution:	(3) <i>Anstalt</i> (Establishment)
Legal Basis / Origin:	Article 534 of the PGR 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."⁵
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."⁶ (unofficial translation)

⁵ *Ibid.*

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

Institution:	(4) Treuunternehmen
Legal Basis / Origin:	Article 932a of the PGR provides that: "A trust enterprise (a business trust) may be formed and operated pursuant to the following provisions: 1) A trust enterprise as a business trust without legal personality pursuant to the law is an undertaking managed or further operated on the basis of the trust articles by one or several trustees (as fiduciary owners), under their own name or legal name which, as a legally autonomous undertaking, pursues organised, economic or other objects and is endowed with its own assets, without legal personality, whose liability for its obligations shall be pursuant to this Act (trust enterprise without legal personality), and which does not have any character under public law or any other legal form under private law. 2) Where, applying the preceding paragraph mutatis mutandis, an undertaking is expressly created as a trust enterprise with legal personality in accordance with the trust articles (deed of formation) drawn up pursuant to the provisions of this Act, the provisions governing the business trust without legal personality shall apply mutatis mutandis to this trust enterprise with legal personality, in particular the provisions governing liability for obligations." ⁷
Whether the institution may potentially meet the criteria of Article 2:	No 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) fall outside the scope of the Trusts Convention because of its legal personality.

⁷ Ibid.

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

24. Luxemburgo

Country (Region)	Luxembourg
Institution:	(1) <i>Contrat fiduciaire</i>
Legal Basis / Origin:	Law of 27 July 2003 on Trusts and Fiduciary Contracts, Title II (Fiduciary Contracts), Articles 4 to 9¹ 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) Article 6 further provides that: "(1) The trust estate is separate from the trustee's personal estate, as from any other trust estate. The assets comprising it may only be seized by creditors whose rights arose from the trust estate. They do not form part of the trustee's personal estate in the event of liquidation or bankruptcy of the trustee or any other situation of competition between his personal creditors. (2) The trustee must account for the trust assets separately from his personal assets and other trust assets." (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes Paolo Panico noted that "[a] total overhaul of the regulation of fiduciary contracts took place under the same statute that ratified the Hague Convention on the Law Applicable to Trusts and on their Recognition. An express purpose of this legislative exercise was to recast the Luxembourg fiduciary contract according to the definition of 'trust' under Article 2 of the Hague Trusts Convention. As a result, it was hoped, a Luxembourg fiduciary contract could be readily recognised and enforced as a civil law trust-like arrangement in any other jurisdiction where the Hague Trusts Convention was in force."²

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/jo> (original text) (last accessed 6 May 2026).

² P. Panico, "Luxembourg – fiduciary contracts and trusts", in A. Kaplan and B.R. Hauser (eds), *Trusts in Prime Jurisdictions*, 5th ed., vol. 1, Globe Law and Business, 2019.

Institution:	(2) Patrimonial foundation
Legal Basis / Origin:	Draft bill no. 6595 on Patrimonial Foundations 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."³ (unofficial translation) It is noted that the draft bill was filed with the Luxembourg Parliament on 22 July 2013, but it has not been passed yet.⁴
Whether the institution may potentially meet the criteria of Article 2:	No Patrimonial foundations are functionally analogous to trust but not structurally analogous to trust (noting that they have separate legal personalities).

³ 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) (last accessed 6 May 2026).

⁴ Details of the legislative procedure of the draft bill no. 6596 on Patrimonial Foundations, available at <https://www.chd.lu/fr/dossier/6595> (last accessed 6 May 2026).

25. Malasia

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

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) (last accessed 6 May 2026).

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) (last accessed 6 May 2026).

Institution:	(2) <i>Wakaf</i> / charitable trusts
Legal Basis / Origin:	Sections 61 and 62 of the Administration of Islamic Law (Federal Territories) of 1993 (Malaysian Act 505) provides: "<i>Wakaf and nazr</i>" 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. Vesting 62 (1) All properties subject to the provisions of section 61 and situated in the Federal Territories shall without any conveyance, assignment or transfer whatsoever, and, in the case of immovable property, upon registration under the relevant written laws relating to land, vest in the Majlis, for the purposes of the trust, <i>wakaf</i> or <i>nazr 'am</i> affecting the same. (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."³
Whether the institution may potentially meet the criteria of Article 2:	No 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".⁴ 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>".

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) (last accessed 6 May 2026).

⁴ M. Obaidullah *et al.*, *Islamic Social Finance Report 2014*, Thomson Reuters and Islamic Research and Training Institute (IRTI), 2014, Chap. 4.

⁵ Pahang Wakaf Enactment 2022, available at <http://libraryjksm.gov.my/cgi-bin/koha/opac-retrieve-file.pl?id=045d85412638783bed4d2513e46ea2bc> (original text) (last accessed 6 May 2026).

Since the *waqf* property is registered in the name of the respective Islamic Religious Councils, it allows the respective Islamic Religious Councils to manage and develop the *waqf* property and ensure that it brings benefit to the beneficiaries. In doing so, the respective Islamic Religious Councils will ensure that the intention and wishes of the *waqif* (donor) will be fulfilled utmost.

As the Islamic Religious Council is registered as the proprietor of the *waqf* properties, *waqf* is not considered analogous to trusts and would therefore fall outside the scope of Article 2. Furthermore, *waqf* and trusts are different in terms of the administration and purpose as has been highlighted in the Note.

26. República de 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:	Yes Violeta Cojocaru and Irina Digori stated that "[t]he amendments to the Civil Code of the Republic of Moldova (hereinafter referred to as the Civil Code or CC), made by the Law on the Modernization of the Civil Code and Amendments to Certain Legislative Acts, No. 133 of 15.11.2018 (hereinafter referred to as Law No. 133/2018), and entered into force on 1 March 2019 (with some exceptions), have modernized the private law of the Republic of Moldova by aligning it with international trends ... according to art. 2055 CC, trust (<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 Veronica Pozneacova noted that "[t]he effect of the trust (<i>fiducie</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)

¹ Moldovan Civil Code, available at https://www.legis.md/cautare/getResults?doc_id=112573&lang=ro (original text) (last accessed 6 May 2026).

² V. Cojocaru and 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. Mónaco

Country (Region)	Monaco
Institution:	Trust
Legal Basis / Origin:	Law No. 214 of 27 February 1936 revising Law No. 207 of 12 July 1935 on Trusts¹ Article 1 of the Sovereign Ordinance No. 8.635 of 29 April 2021 implementing Law No. 214 of 27 February 1936 revising Law No. 207 of 12 July 1935 on Trusts provides that "a legal structure is considered similar to trusts when it allows a person to create legal relationships which place assets under the control of a third party in the interest of a beneficiary or for a specific purpose, when it has the following characteristics: 1) the assets placed under the control of the third party constitute a separate mass and are not part of the third party's assets; 2) the title relating to the goods placed under the control of the third party is established in the name of the third party or of another person on behalf of the third party; 3) the third party is invested with the power and charged with the obligation, for which he must account, to administer, manage or dispose of the assets placed under his control according to the terms of the legal structure and the specific rules imposed on the third party by law;"² (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes

¹ 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 \[Legimonaco\]](#) (last accessed 6 May 2026).

² Monaco Sovereign Ordinance No 8.635 of 29 April 2021, available at <https://legimonaco.mc/tnc/ordonnance/2021/04-29-8.635/> (last accessed 6 May 2026).

28. Países Bajos

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 According to the Dyer/Van Loon Report, ² the <i>bewind</i> is different from the trust because ownership is vested in the beneficiaries.

¹ A. Dyer and H. van Loon, "Report on trusts and analogous institutions" [hereinafter, "Dyer/Van Loon Report"], Prel. Doc. No 1 of May 1982, in *Proceedings of the Fifteenth Session (1984)*, Tome II, *Trusts, applicable law and recognition*, The Hague, Imprimerie Nationale, 1985, 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> (last accessed 6 May 2026).

² The Dyer/Van Loon Report, p. 39.

29. Omán

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 See note below ³

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

² Omani Royal Decree 65/2000, available at <https://qanoon.om/p/2000/rd2000065/> (original text) (last accessed 6 May 2026).

³ *Ibid.*

30. Pakistán

Country (Region)	Pakistan ¹
Institution:	(1) Trust
Legal Basis / Origin:	The Trust Act of 1882, Chapter 1, section 3² provides the following interpretations: - "trust" is an obligation annexed to the ownership of property, and rising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner; - the person who reposes or declares the confidence is called the "author of the trust"; - the person who accepts the confidence is called the "trustee"; - the person whose benefit the confidence is accepted is called the "beneficiary"; - the subject-matter of the trust is called "trust-property" or "trust-money"; - the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property, and - the instrument, if any, by which the trust is declared is called the "instrument of the trust": a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust".
Whether the institution may potentially meet the criteria of Article 2:	Yes

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

² The Trust Act of 1882, available at <https://nasirlawsite.com/llb2/trust.htm> (official English translation) (last accessed 6 May 2026).

Institution	(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".
Whether the institution may potentially meet the criteria of Article 2:	No 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".⁴

³ The Islamabad Capital Territory Waqf Properties Act, 2020, available at https://na.gov.pk/uploads/documents/1601023429_848.pdf (original text) (last accessed 6 May 2026).

⁴ M. Obaidullah *et al.*, *Islamic Social Finance Report 2014*, Thomson Reuters and Islamic Research and Training Institute (IRTI), 2014, Chap. 4.

31. Perú

Country (Region)	Peru
Institution:	<i>Fideicomiso</i>
Legal Basis / Origin:	Article 241 of the Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros reads: "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 fulfil a specific purpose in favor of the settlor or a third party called the <i>fideicomisario</i>. 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. 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. The liquid portion of the <i>fideicomiso</i> funds is not subject to reserve requirements. The Superintendency issues general regulations on the various types of <i>negocios fiduciarios</i>."¹ (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes See note below²

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) (last accessed 6 May 2026).

² M. Lupoi, "The Shapeless Trust", *Trusts & Trustees*, vol. 1 (3), 1995, pp. 15-18.

32. Polonia

Country (Region)	Poland
Institution:	Family foundation
Legal Basis / Origin:	Act of 26 January 2023 on Family Foundation¹ Article 2 of the Act provides that “[t]he family foundation is a legal person established for the purposes of property accumulation and management in the interest of the beneficiaries and of providing the benefits to the beneficiaries. The founder lays down a specific objective of the family foundation in its statute.” (unofficial translation) Article 4 of the Act provides that “[t]he family foundation acquires a legal personality upon being entered into the register of family foundations.” (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	No Family foundations are functionally analogous to trust but not structurally analogous to trust (noting that they have separate legal personalities).

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) (last accessed 6 May 2026).

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: "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." ²
Whether the institution may potentially meet the criteria of Article 2:	No See note below ³

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

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) (last accessed 6 May 2026).

³ *Ibid.*

34. Rumanía

Country (Region)	Romania
Institution:	<i>Fiducia</i>
Legal Basis / Origin:	Civil Code, Book III (Goods), Title IV (Fiducia), Articles 773 to 791 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."¹ (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes Anduena Maria Illinca Mehedinti Sandru noted that "Romania's new Civil Code, which came into effect on October 1, 2011, serves as the capstone of many years of assiduous work. Among its progressive changes, the New Code establishes trusts as a legal instrument for the first time under Romanian law."²

¹ Romania Civil Code, available at Portal Legislativ, <https://legislatie.just.ro/> (last accessed 6 May 2026).

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

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) (last accessed 6 May 2026).

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 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.”⁴

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) (last accessed 6 May 2026).

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

36. Sudáfrica

Country (Region)	South Africa
Institution:	Trust
Legal Basis / Origin:	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-- (a) to another person, the trustee, in whole or in part, to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument or for the achievement of the object stated in the trust instrument; or (b) to the beneficiaries designated in the trust instrument, which property is placed under the control of another person, the trustee, to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument or for the achievement of the object stated in the trust instrument, but does not include the case where the property of another is to be administered by any person as executor, tutor or curator in terms of the provisions of the Administration of Estates Act, 1965 (Act No. 66 of 1965).]"
Whether the institution may potentially meet the criteria of Article 2:	Yes See note below² D. Clarry in "Fiduciary Ownership and Trusts in a Comparative Perspective" stated: "[T]he South African experience of the trust provides an excellent example of a jurisdiction that has not only embraced the trust but has made the trust its own by accommodating it within the broader schema of South African law."³

¹ Trust Property Control Act 57 of 1988, available at https://www.gov.za/sites/default/files/gcis_document/201505/act-57-1988_o.pdf (official English translation) (last accessed 6 May 2026).

² A. Dyer and H. van Loon, "Report on trusts and analogous institutions", Prel. Doc. No 1 of May 1982, in *Proceedings of the Fifteenth Session (1984)*, Tome II, *Trusts, applicable law and recognition*, The Hague, Imprimerie Nationale, 1985, 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:	The Trusts Ordinance provides: "(a) 'Trust' is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another person, or of another person and the owner, of such a character that, while the ownership is nominally vested in the owner, the right to the beneficial enjoyment of the property is vested or to be vested in such other person, or in such other person concurrently with the owner; (b) a Trust does not include a fideicommissum"¹
Whether the institution may potentially meet the criteria of Article 2:	Yes See note below²

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) (last accessed 6 May 2026).

² *Ibid.*

38. Suiza

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:	No 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. The Swiss Federal Supreme Court (BGE 117 II 429 E. 3.b) has held that "under Swiss law, the fiduciary is considered to be the full owner of the entrusted assets. Property and rights that belong to him in his fiduciary capacity can therefore in principle be seized from him and, in the event of general enforcement, fall into his bankruptcy estate, even if, from an economic point of view, they belong to someone else."

Institution:	(2) <i>Stiftung</i> / <i>fondation</i> / <i>fondazione</i>
Legal Basis / Origin:	Article 80 of the Swiss Civil Code¹ states that "a foundation is established by the endowment of assets for a particular purpose." (This provision is placed in Title Two of the Code, "Legal Entities"). Article 53 of the Swiss Civil Code states that "legal entities have all the rights and duties other than those which presuppose intrinsically human attributes, such as sex, age or kinship."
Whether the institution may potentially meet the criteria of Article 2:	No Under Swiss law, <i>Stiftung</i> has a separate legal personality² and does not satisfy Article 2(b) of the Trusts Convention.

¹ Swiss Civil Code, available at https://www.fedlex.admin.ch/eli/cc/24/233_245_233/en (last accessed 6 May 2026).

² The Swiss Federal Supreme Court has held that *Treuunternehmen* under Art. 932 of the Liechtenstein Law on Persons and Companies (PGR) falls outside the scope of the Trusts Convention due to its legal personality. Please refer to Swiss Federal Tribunal, 16.12.2024, Case no. 5A_89/2024.

39. Emiratos Árabes Unidos

Country (Region)	United Arab Emirates ¹
Institution:	(1) Trusts
Legal Basis / Origin:	The Federal Decree by Law No (31) of 2023² regarding trusts provides under Article 1 the following definitions: Trust: The legal person established by virtue of the Trust Instrument in accordance with the provisions of this Law by Decree to achieve the purpose of the Trust. Settlor: A natural or legal person who creates the Trust and transfers its property thereto in accordance with the provisions of this Law by Decree. Trustee: A natural person, including the Professional Trustee, or a profession legal person, appointed in accordance with the Trust Instrument, to whom the authorities and powers identified in the Trust Instrument and the provisions of this Law by Decree are transferred to achieve the purpose of the Trust. Trust Property: Any movable or immovable property owned by the Trust, including any interests related thereto or deemed a part thereof and any existing or possible right, inside or outside State. The Trust Property includes Dividends of the Trust in accordance with what is specified by the Trust Instrument. Beneficiary: The person entitled to a personal right by virtue of the Trust Instrument, including the person entitled to or may be entitled to, in accordance with the Trust Instrument obtaining dividends or property of the Trust; and any person to whom the trustee has the power to grant the dividends of the trust, including granting the security right in his favour on the property of the Trust.

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 Permanent Bureau.

² Federal Decree by Law No (31) of 2023 Concerning Trust, available at <https://uaelegislation.gov.ae/en/legislations/2120> (official English translation) (last accessed 6 May 2026).

Whether the institution may potentially meet the criteria of Article 2:

Yes

Russell in his article "Trust and foundations move onshore in the Gulf"³ 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.⁴

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[.]"⁵

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).⁶ Articles 23 and 25 of the old UAE Trust Law are substantially replicated in Articles 21 and 23 of the new UAE Trust Law.⁷

³ D. Russell QC, "Trusts and Foundations Move Onshore in the Gulf", *Trusts & Trustees*, vol. 27 (4), 2021, pp. 315-316. (Note that the Art. 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).

⁴ *Ibid.*, p. 315.

⁵ *Ibid.*

⁶ Federal Decree by Law No (31) of 2023 Concerning Trust, available at <https://uaelegislation.gov.ae/en/legislations/2120> (official English translation) (last accessed 6 May 2026).

⁷ *Ibid.*

Institution:	(2) <i>Waqf</i>
Legal Basis / Origin:	Article 10 of the Federal Law of the UAE No 5 of 2018⁸ provides for the effects of Registration of Endowment. The registration of the Endowment in the Record shall entail the following: 1- Acquisition of legal entity, financial and administrative independence, and right of litigation in this capacity. 2- Transfer of ownership and possession of the Endowed to the Endowment and it shall not be disposed of throughout the period of Endowment in any type of disposal of transfer of property or restriction of the benefit of its revenues, such as sale, mortgage or donation.
Whether the institution may potentially meet the criteria of Article 2:	No

⁸ Federal Law of the UAE No 5 of 2018, available at <https://uaelegislation.gov.ae/en/legislations/1237/download> (official English translation) (last accessed 6 May 2026).

40. Reino Unido de Gran Bretaña e Irlanda del Norte

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: • The Trusts (Scotland) Act 1921; • The Trusts (Scotland) Act 1961; • The Trustee Investments Act 1961; • The Law Reform (Miscellaneous Provisions) (Scotland) Act 1968; • The Charities and Trustee Investment (Scotland) Act 2005; and • The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. • It is noted that the Trusts (Scotland) Act 1921 will be replaced by the Trusts and Succession (Scotland) Act 2024 once this enters into force. • There are also several cases that establish further rules governing trusts, notably <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:	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 <i>in rem</i> or personal rights is established. These rights are transferred by the <i>fideicomitente</i> to the <i>fiduciario</i> to administer or exercise in accordance with the instructions contained in the <i>fideicomiso</i>, for the benefit of a person (beneficiary) designated therein, and for the <i>fideicomitente</i> to return them upon fulfillment of the term or condition, or to transfer them to the beneficiary. There may be multiple <i>fideicomitentes</i> and beneficiaries.” (unofficial translation) “Article 2. (Constitution).- A “<i>fideicomiso</i>” may be established by an act <i>inter vivos</i> or by will. A <i>fideicomiso</i> 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. A <i>fideicomiso</i> by act <i>inter vivos</i> is a valid instrument for producing the transfer of ownership or title to of the rights <i>in rem</i> or personal rights that constitute its subject matter. A <i>fideicomiso testamentario</i> may be established by open or closed will. The certificate of succession must record the establishment of the <i>propiedad fiduciaria</i> and must be registered in the cases provided for in the Public Registry Law.

¹ Available at <https://www.impo.com.uy/bases/leyes/17703-2003> (last accessed 6 May 2026).

A *fideicomiso testamentario* grants the *fiduciario* the personal right to claim from the heirs the delivery of the assets and rights that constitute its object, except in the case of a specific type of asset.

In such a case, the *fiduciario* acquires ownership of the asset upon the death of the testator, in accordance with Articles 937 and 938 of the Civil Code.

The heir 'fiduciario' (*fiduciario heredero*) succeeds according to the general principles." (unofficial translation)

"Article 8. (Scope of liability)- The assets of the *fiduciario* will not be liable for the obligations incurred in the execution of the *fideicomiso*, which will only be satisfied from the assets in *fideicomiso*....]" (unofficial translation)

Whether the institution may potentially meet the criteria of Article 2:

Yes

Institution:	(2) <i>Fideicomiso financiero</i>
Legal Basis / Origin:	Under chapter IV, Act N° 17.703, Article 25, the <i>fideicomiso financiero</i> is defined as “...A <i>fideicomiso</i> transaction whose beneficiaries are holders of certificates of participation in the dominio fiduciario, debt securities secured by the assets comprising the fideicomiso, or mixed securities granting credit rights and participation rights over the remainder. The certificates of participation and debt securities shall be governed by Decree-Law No. 14,701 of September 12, 1977, as applicable.” “A <i>fideicomiso financiero</i> may be established by unilateral act, in which the <i>fideicomitente</i> and the <i>fiduciario</i> agree, when authorisation is requested to publicly offer (Article 28 of this law) the participation certificates, debt securities, or mixed securities referred to in the preceding paragraph.”² (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2	Yes

²

Ibid.

Institution:	(3) <i>Fideicomiso de garantía</i>
Legal Basis / Origin:	Under Article 42 of Act N° 17.703, "Transfers of taxed assets made in compliance with a <i>fideicomiso de garantía</i> 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 <i>fideicomiso</i> and in the subsequent transfer to the <i>fiduciante</i> ." ³ (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes

Institution:	(4) <i>Fideicomiso de inversión</i>
Legal Basis / Origin:	Under Article 3 of Act N° 17.703, "(Investment Authorisation) - When the <i>fideicomiso</i> is intended to carry out a municipal public work, the Municipal Intendances may establish it by transferring departmental tax credit rights, notifying the Departmental Board. The Notarial Retirement and Pension Fund, the Retirement and Pension Fund for University Professionals, the Bank Retirement and Pension Fund, and the Pension Savings Fund Administrators may invest in <i>fideicomisos</i>, 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." (unofficial translation)
Whether the institution may potentially meet the criteria of Article 2:	Yes

42. Venezuela (República Bolivariana de)

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." ¹
Whether the institution may potentially meet the criteria of Article 2:	Yes

¹ 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 M. Lupoi, *Trusts, A Comparative Study*, Simon Dix trans., Cambridge University Press, 2000, pp. 290-291).

Institution:	(2) <i>Fideicomiso</i>
Legal Basis / Origin:	Article 1 of the Law of <i>Fideicomisos</i> 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>fiduciario</i>, who is obligated to use them for the benefit of the <i>fideicomitente</i> or a third party, called beneficiary."² (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 Venezuela, Ley de Fideicomisos, No 496 of 17 August 1956, available at <https://docs.venezuela.justia.com/federales/leyes/ley-de-fideicomisos.pdf> (last accessed 6 May 2026).



Anexo B

Selección de legislación y jurisprudencia sobre la aplicación e interpretación del Convenio sobre *Trusts* de 1985 y sobre el reconocimiento transfronterizo de los *trusts* y de instituciones análogas

- 1 El presente anexo contiene listas de legislación y jurisprudencia que se considera pertinente para la aplicación e interpretación del Convenio sobre *Trusts*, así como para el reconocimiento transfronterizo de los *trusts* y de instituciones análogas. Está ordenado por Estado.
- 2 La información que se presenta no pretende ser exhaustiva.
- 3 Los títulos de la legislación y la jurisprudencia figuran en inglés. En algunos casos se trata de traducciones oficiales, pero en otros, las traducciones se han realizado con la ayuda de servicios de traducción o de la Oficina Permanente.

1. Australia

Legislación

Trusts (Hague Convention) Act 1991 (Cth)¹

Jurisprudencia

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. Bélgica

Legislación

Law of 16 July 2004 establishing the Code of Private International Law, Chapter XII (Trust), Articles 122 to 125²

¹ Available at [Trusts \(Hague Convention\) Act 1991 - Federal Register of Legislation](#) (consultado por última vez el 6 de mayo de 2026).

² Available at https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2004071631&table_name=loi (consultado por última vez el 6 de mayo de 2026).

3. (A) Canadá (salvo Quebec)

Jurisprudencia

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

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

Sevy v. Sevy, 2013 BCSC 2255¹⁰

Sommer v. The Queen, 2012 FCA 207¹¹

Webster-Tweel v. Royal Trust Corporation of Canada, 2010 ABQB 139¹²

4. (B) Canadá (Quebec)

Legislación

Civil Code of Québec of Canada, Book Ten (Private International Law), Title Two (Conflict of Laws), Articles 3107 and 3108¹³

Jurisprudencia

Dubeau c. Lessard, 2015 QCCS 6144 <https://euro1.safelinks.protection.outlook.com/?url=https://canlii.ca/t/gmtg97&data=05|02|secretariat@hcch.net|208416e93ec3429bcb508de1af57bff|f63757c537de44adb498b24589a7eb0b|0|0|638977838845078308|Unknown|TWfPbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOilwLjAuMDAwMCIslAIiOiJXaW4zMilslkFOljoiTWFpbCIsIldUljoyfQ==|0||&sd ata=eg39Mxj2HxzAF37e6g62sixFsEOWt6PNdd2ZQTuqHBY=&reserved=0>¹⁴

³ Available at <https://canlii.ca/t/fpwbs> (consultado por última vez el 6 de mayo de 2026).

⁴ Available at <https://canlii.ca/t/1z8wf> (consultado por última vez el 6 de mayo de 2026).

⁵ Available at <https://canlii.ca/t/hqxxkq> (consultado por última vez el 6 de mayo de 2026).

⁶ Available at <https://canlii.ca/t/1qdvw> (consultado por última vez el 6 de mayo de 2026).

⁷ Available at <https://canlii.ca/t/5dhr> (consultado por última vez el 6 de mayo de 2026).

⁸ Available at <https://canlii.ca/t/4z8b> (consultado por última vez el 6 de mayo de 2026).

⁹ Available at <https://canlii.ca/t/1gw6v> (consultado por última vez el 6 de mayo de 2026).

¹⁰ Available at <https://canlii.ca/t/g2gt9> (consultado por última vez el 6 de mayo de 2026).

¹¹ Available at *Canada v. Sommerer - Federal Court of Appeal* (consultado por última vez el 6 de mayo de 2026).

¹² Available at <https://canlii.ca/t/28c4d> (consultado por última vez el 6 de mayo de 2026).

¹³ Available at <https://www.legisquebec.gouv.qc.ca/en/document/cs/ccq-1991?langCont=fr#se:3107> (consultado por última vez el 6 de mayo de 2026).

¹⁴ Available at <https://canlii.ca/t/gmtg97> (consultado por última vez el 6 de mayo de 2026).

5. República Checa

Legislación

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

6. Hong Kong, China

Legislación

Recognition of Trusts Ordinance (Cap. 76)¹⁶

7. Italia

Legislación

Law of 16 October 1989 on Ratification and Implementation of the Convention on the Law Applicable to Trusts and on their Recognition¹⁷

8. Luxemburgo

Legislación

Law of 27 July 2003 on Trusts and Fiduciary Contracts, Title I (Law Applicable to the Trust and its Recognition), Articles 1 to 3¹⁸

Jurisprudencia

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

¹⁵ Available at [91/2012 Sb., 23. 9. 2023, aktuální znění, informativní znění systému e-Sbírka](#) (consultado por última vez el 6 de mayo de 2026).

¹⁶ Available at [Cap. 76 Recognition of Trusts Ordinance](#) (consultado por última vez el 6 de mayo de 2026).

¹⁷ Available at [LAW no. 364 of 16 October 1989 - Normattiva](#) (consultado por última vez el 6 de mayo de 2026).

¹⁸ Available at <http://data.legilux.public.lu/eli/etat/leg/loi/2003/07/27/n4/jo> (consultado por última vez el 6 de mayo de 2026).

9. Mónaco

Legislación

Law No. 1.448 of 28 June 2017 on Private International Law, Title V (Trusts), Articles 98 to 100¹⁹

10. Países Bajos

Legislación

Civil Code, Book 10, Title 11 (Trust Law), Articles 142 to 144²⁰

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

11. Portugal

Jurisprudencia

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.gTVPRT.P1

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

12. Rumanía

Legislación

Civil Code, Book VII (Provisions of Private International Law), Title II (Conflicts of Laws), Chapter VIII (Fiducia), Articles 2.659 to 2.662²²

¹⁹ Available at <https://legimonaco.mc/code/code-droit-international-prive/> (consultado por última vez el 6 de mayo de 2026).

²⁰ Available at [wetten.nl - Regeling - Burgerlijk Wetboek Boek 10 - BWBR0030068](https://wetten.nl/Regeling/Burgerlijk%20Wetboek/Boek%2010/BWBR0030068) (consultado por última vez el 6 de mayo de 2026).

²¹ 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%20inzake%20het%20recht%20dat%20toepasselijk%20is%20op%20trusts%20en%20inzake%20de%20erkenning%20van%20trusts) (consultado por última vez el 6 de mayo de 2026).

²² Available at [COD CIVIL \(A\) 04/02/2016 - Portal Legislativ](https://codcivil.ro/) (consultado por última vez el 6 de mayo de 2026).

13. San Marino

Legislación

Law No. 42 of 1 March 2010 on Trust, Article 4²³

14. España

Jurisprudencia

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

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

15. Suiza

Legislación

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

Federal Act of 20 December 2006 on the Approval and Implementation of the Hague Convention on the Law Applicable to Trusts and on their Recognition²⁵

Jurisprudencia

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. Unido de Gran Bretaña e Irlanda del Norte

Legislación

Recognition of Trusts Act 1987²⁶

²³ Available at <https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17024916.html> (original text) and at <https://www.consigliograndeegenerale.sm/on-line/documento17134204.html> (official English translation) (consultado por última vez el 6 de mayo de 2026).

²⁴ Available at [SR 291 - Bundesgesetz vom 18. Dezember 1987 über... | Fedlex](#) (consultado por última vez el 6 de mayo de 2026).

²⁵ Available at [AS 2007 2849 - Bundesbeschluss über die Genehmig... | Fedlex](#) (consultado por última vez el 6 de mayo de 2026).

²⁶ Available at <https://www.legislation.gov.uk/ukpga/1987/14> (consultado por última vez el 6 de mayo de 2026).

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