

Note on the application and
interpretation of **Article 2**
of the **1985 Trusts Convention**
and on the institutions
analogous to trusts

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Permanent Bureau

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Foreword

It is with great pleasure that I present this Note on the Application and Interpretation of Article 2 of the *Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition* and on Institutions Analogous to Trusts (Trusts Convention).

Since its conclusion in 1985 and entry into force in 1992, the Trusts Convention has played a unique role in building bridges between different legal traditions. By establishing common private international law rules on the law applicable to trusts and their recognition, it has enhanced legal certainty and predictability in cross-border situations involving trusts while facilitating dialogue and mutual understanding between legal systems that have historically taken different approaches to the institution. In this respect, the Trusts Convention stands as a particularly compelling example of the HCCH's capacity to develop practical and inclusive solutions to the challenges arising from the diversity of legal traditions.

The origins of this Note can be traced to the work undertaken by the HCCH in advance of the 30th anniversary of the entry into force of the Trusts Convention in 2022. Discussions within the HCCH, including those held during the inaugural HCCH Conference on Commercial, Digital and Financial Law Across Borders (CODIFI Conference) in 2022, highlighted not only the continuing relevance of the Convention, but also the growing interest in trusts and trust-like institutions in jurisdictions representing a wide range of legal traditions. Successive mandates from the Council on General Affairs and Policy (CGAP) provided the basis for the work that ultimately resulted in this publication, reflecting the importance that HCCH Members attach to ensuring the continued effective operation of the Trusts Convention.

This Note is the culmination of five years of research and collaboration examining the application and interpretation of Article 2 of the Convention and the institutions that may fall within its scope. It provides practical guidance on the interpretation of Article 2, explores institutions that may satisfy its criteria in different legal systems, and compiles legislation and case law concerning the application of the Convention and the cross-border recognition of trusts and analogous institutions. In doing so, the Note highlights the flexibility of the Convention and its capacity to operate effectively across common law, civil law and other legal traditions. It thereby contributes to a clearer and more informed understanding of the Convention's scope and supports its practical operation in an increasingly interconnected cross-border legal environment.

I would like to take this opportunity to express my sincere appreciation to all those who contributed to this project. In particular, I wish to thank the members of the Working Group on Trusts for their valuable expertise and constructive engagement throughout the preparation and review of the study, and its Chair, Judge Roberta Nocella (Italy) for her excellent stewardship of the process. I am also grateful to the Society of Trust and Estate Practitioners (STEP) and to the many STEP members who participated in the survey conducted for this project and shared practical insights from their respective jurisdictions. Their contributions greatly enriched this work. I also wish to acknowledge, with appreciation, the work of the staff of the Permanent Bureau, in particular Deputy Secretary General Dr Gérardine Goh Escolar, Legal Officer Raquel Salinas Peixoto, former Legal Officer Harry Cheng, Legal Officer Hosna Attar, former Seconded Wendy Ho, Publications Officer Lydie de Loof, whose efforts over several years were instrumental in preparing and finalising this publication.

As interest in trusts and institutions analogous to trusts continues to develop around the world, the Trusts Convention remains an important instrument for promoting legal certainty, predictability and cooperation across borders. More than three decades after its entry into force, it continues to demonstrate the enduring value of multilateral cooperation in addressing the practical consequences of differences between legal systems. I am confident that this Note will prove to be a valuable resource for judges, legal practitioners, academics, government officials and all others interested in the operation of the Convention, and that it will contribute to the Convention's continued effective implementation and wider understanding.

Dr Christophe Bernasconi | Secretary General

Table of contents

Introduction.....	9
I. Background of the study (2020-2025).....	11
II. Outline of the 1985 Trusts Convention.....	15
III. Interpretation of Article 2 of the 1985 Trusts Convention	17
IV. Institutions meeting the criteria in Article 2 of the 1985 Trusts Convention	21
A. Contractual arrangements.....	23
B. Institutions with legal personality	24
C. Foundations	24
D. <i>Waqfs</i>	24
V. Legislation and cases on the application and interpretation of the 1985 Trusts Convention and on cross-border recognition of trusts and institutions analogous to trusts	27
Annexes.....	29
Annex A – Institutions meeting the criteria in Article 2 of the 1985 Trusts Convention.....	31
1. Argentina.....	33
2. Austria	35
3. Bahrain.....	37
4. Bangladesh	39
5. Brazil.....	41
6. Canada.....	43
7. Chile.....	47
8. People's Republic of China.....	49
9. Colombia.....	51
10. Czech Republic	53
11. Egypt.....	55
12. Ethiopia.....	57
13. France.....	59
14. Germany.....	61
15. Hungary	63
16. Indonesia.....	65
17. Israel.....	67
18. Italy.....	69
19. Japan.....	71
20. Jordan.....	73

21.	Republic of Korea.....	75
22.	Kuwait.....	77
23.	Liechtenstein.....	79
24.	Luxembourg.....	83
25.	Malaysia.....	85
26.	Republic of Moldova.....	89
27.	Monaco.....	91
28.	Netherlands.....	93
29.	Oman.....	95
30.	Pakistan.....	97
31.	Peru.....	99
32.	Poland.....	101
33.	Qatar.....	103
34.	Romania.....	105
35.	San Marino.....	107
36.	South Africa.....	109
37.	Sri Lanka.....	111
38.	Switzerland.....	113
39.	United Arab Emirates.....	115
40.	United Kingdom of Great Britain and Northern Ireland.....	119
41.	Uruguay.....	121
42.	Venezuela (Bolivarian Republic of).....	127

Annex B – Selected legislation and cases on the application and interpretation of the 1985 Trusts Convention and on cross-border recognition of trusts and institutions analogous to trusts129

1.	Australia.....	130
2.	Belgium.....	130
3.	(A) Canada (other than Quebec).....	131
4.	(B) Canada (Quebec).....	131
5.	Czech Republic.....	132
6.	Hong Kong, China.....	132
7.	Italy.....	132
8.	Luxembourg.....	132
9.	Monaco.....	132
10.	Netherlands.....	133
11.	Portugal.....	133
12.	Romania.....	133

13. San Marino133

14. Spain.....133

15. Switzerland.....134

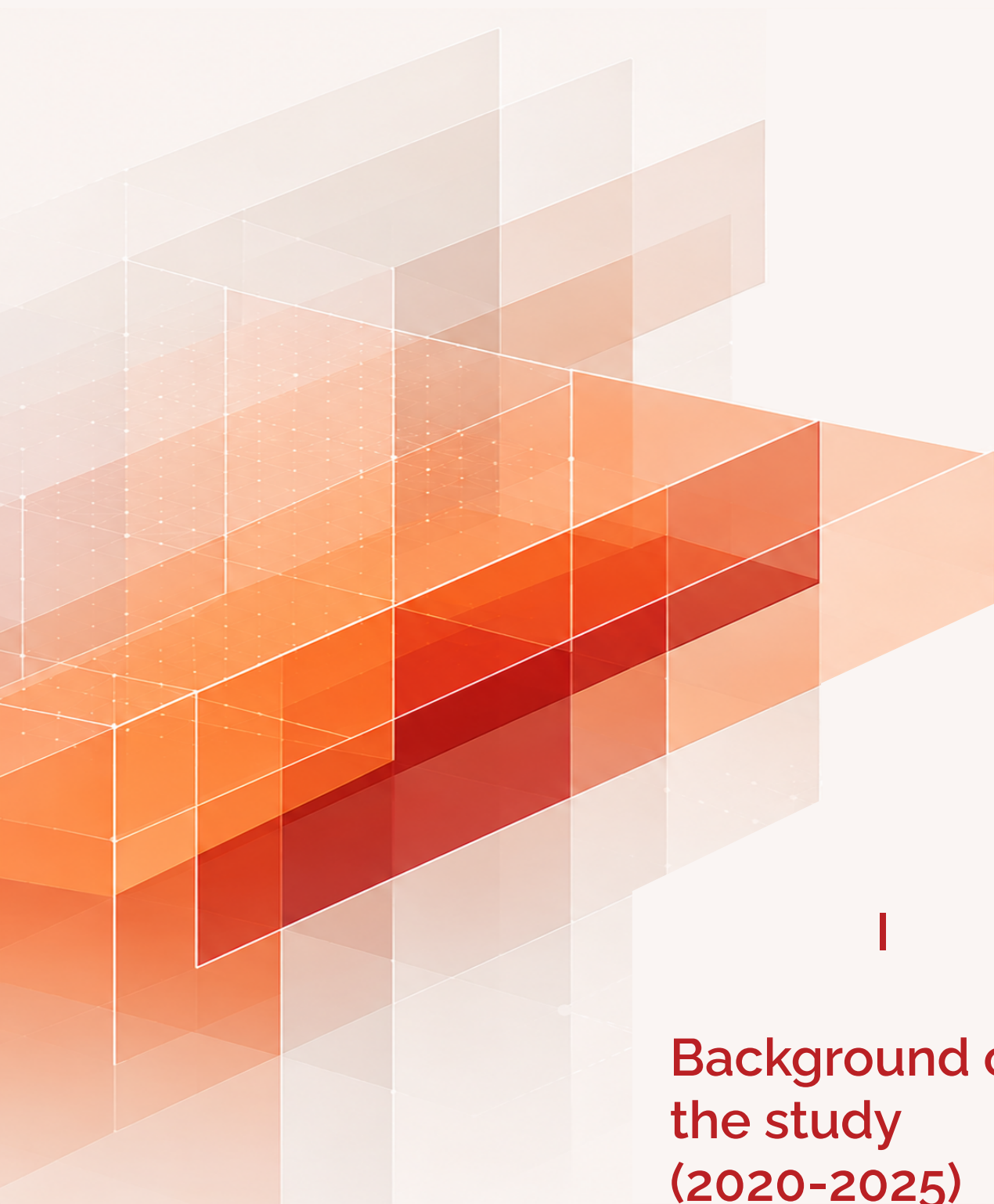
16. United Kingdom of Great Britain and Northern Ireland.....134



Introduction

- 1 The *Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition* (Trusts Convention) was concluded on 1 July 1985 and entered into force on 1 January 1992.¹
- 2 From 2020 to 2025, the HCCH conducted a study on the application and interpretation of Article 2 of the Trusts Convention and on the institutions that may be analogous to trusts for the purposes of the Convention. This Note publishes the results of the study with an aim to increase global awareness of the Convention and reliance on institutions that may be analogous to trusts and to highlight the potential for the Convention to ensure greater legal certainty in the recognition of trusts and institutions analogous to trusts.
- 3 The objective of this Note is to provide practical guidance on the application of the Trusts Convention. It adopts a comparative approach to the treatment of trusts and potentially trust-like institutions within different legal frameworks, including common law, civil law and Islamic law. It focuses on the following three main areas:
 - i. the interpretation of the English and French versions of Article 2 of the Convention (see Section III);
 - ii. institutions that may meet the criteria of Article 2 of the Convention in different jurisdictions (see Annex A); and
 - iii. legislation and cases on the application and interpretation of the Convention and on cross-border recognition of trusts and institutions analogous to trusts (see Annex B).
- 4 This Note is intended to serve as reference material for legal practitioners dealing with issues relating to the application and interpretation of the Trusts Convention and, in particular, the question of whether an institution may meet the criteria of Article 2 of the Convention. The information provided in this Note does not constitute legal advice from the Permanent Bureau of the HCCH. Users of this Note should seek legal advice from licensed practitioners of the relevant jurisdiction(s).

¹ For the most current list of Contracting Parties to the Trusts Convention, together with the respective dates of entry into force, please refer to the Status Table (available on the HCCH website (www.hcch.net) under "Trusts Section").



I

**Background of
the study
(2020-2025)**

- 5 The work on the Trusts Convention that resulted in this Note started in March 2020 when the Council on General Affairs and Policy (CGAP) of the HCCH mandated the Permanent Bureau to “commence research and preparations in relation to the commercial and financial law questionnaire and the possible international conference to be held in late 2022, coinciding with the 30th anniversary of the entry into force of the Trusts Convention”.²
- 6 In 2021, a report was submitted to CGAP that described the challenges to a wider adoption of the Trusts Convention. The report noted “a possible continuing misunderstanding of, or incompatibility between, civil law and common law concepts of trusts and other analogous institutions” and suggested that “[a] survey may be necessary to analyse the extent to which such questions interfere with the proper scope and application of the Convention”.³
- 7 Preliminary Document No 14 of November 2021,⁴ presented to CGAP for its meeting in 2022, noted the importance of the concept of “institutions analogous to trusts”. Annexed to this Preliminary Document was a table presenting information from jurisdictions representing a variety of legal traditions with a particular focus on civil law jurisdictions that have adopted trusts and/or have their own institutions analogous to trusts.⁵ The information gathered in that Annex formed the basis for the study in the following years.
- 8 Matters relating to the Trusts Convention were discussed in the inaugural HCCH Conference on Commercial, Digital and Financial Law Across Borders [hereinafter, “CODIFI Conference”] of 2022, held online from 12 to 16 September 2022, in a track of programming devoted to the Trusts Convention, which featured four specific sessions on the instrument.⁶ Experts at the CODIFI Conference identified a growth of recent initiatives in jurisdictions such as the People’s Republic of China, Hungary, Israel, Japan, Korea, and Switzerland and in various parts of Latin America, which have developed institutions analogous to trusts in the years following the conclusion of the Convention. Experts noted that engagement with these jurisdictions would support a wider understanding of trusts and analogous institutions and thus support wider application of the Convention.⁷ In light of those discussions, further work focusing on the

² “Conclusions and Decisions of the Council on General Affairs and Policy of the Conference (3-6 March 2020)”, C&D No 39 (available on the HCCH website (www.hcch.net) under “Governance” => “Council on General Affairs and Policy” => “Archive (2000-2025)”).

³ “The HCCH 1985 Trusts Convention: Updates and possible future work”, Prel. Doc. No 15 of December 2020 for CGAP 2021 (available on the HCCH website (www.hcch.net) under “Governance” => “Council on General Affairs and Policy” => “Archive (2000-2025)”), paras 8 and 9.

⁴ “The HCCH 1985 Trusts Convention: Updates and possible future work”, Prel. Doc. No 14 of November 2021 for CGAP 2022 (available on the HCCH website (www.hcch.net) under “Governance” => “Council on General Affairs and Policy” => “Archive (2000-2025)”), para. 10.

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

⁶ “Digital Economy and the HCCH Conference on Commercial, Digital and Financial Law Across Borders (CODIFI Conference): Report”, Prel. Doc. No 3A of January 2023 for CGAP 2023, Annex I, “Report of the 2022 inaugural HCCH Conference on Commercial, Digital and Financial Law Across Borders (CODIFI Conference)” (available on the HCCH website (www.hcch.net) under “Governance” => “Council on General Affairs and Policy” => “Archive (2000-2025)”), paras 11 to 16.

⁷ “2006 Securities Convention, 1985 Trusts Convention, 2015 Principles on Choice of Law: Update”, Prel. Doc. No 10A of February 2023 for CGAP 2023 (available on the HCCH website (www.hcch.net) under “Governance” => “Council on General Affairs and Policy” => “Archive (2000-2025)”), para. 15.

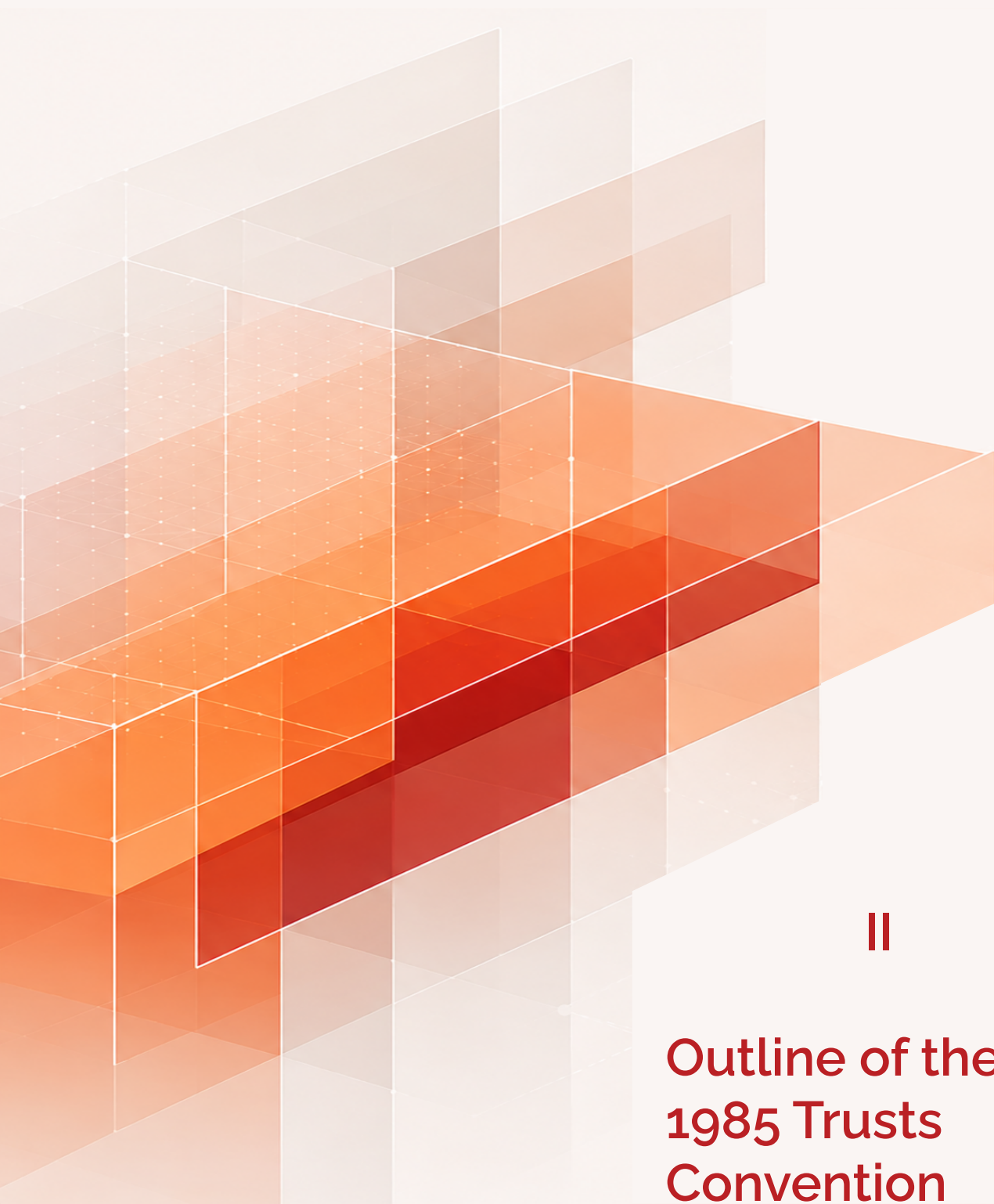
scope and the interpretation of Article 2 of the Convention was considered timely and desirable for increasing interest in the Convention. At the CGAP meetings in 2023 and 2024, the Permanent Bureau was mandated to proceed with the further work.

- 9 In 2024, the Permanent Bureau and the Society of Trust and Estate Practitioners (STEP) discussed possible cooperation in relation to the work on the Trusts Convention. The Permanent Bureau developed a survey on the Trusts Convention [hereinafter, "STEP Survey"] aimed at collecting information from practitioners who are members of STEP. The STEP Survey contained questions relating to the current areas of work concerning Article 2 of the Convention and institutions that may be analogous to trusts for the purposes of the Convention. The STEP Survey was circulated to the members of STEP in July 2024, and responses relating to six jurisdictions, namely Argentina, Israel, Italy, Malta, San Marino and the United Kingdom, were received by 9 August 2024.
- 10 In 2025, CGAP welcomed the report on the work undertaken by the Permanent Bureau in collaboration with STEP on the study of the application and interpretation of Article 2 of the Trusts Convention and on the institutions analogous to trusts. CGAP also mandated the establishment of a Working Group [hereinafter, "Working Group on Trusts"]⁸ to review and complete the study on the application and interpretation of Article 2 of the Trusts Convention and on the institutions analogous to trusts, having due regard to any possible implications on non-Contracting Parties and subject to available resources.
- 11 This Note is the result of five years of work at the HCCH on this study.
- 12 There are five main sources of reference for this Note:
 - i. The Explanatory Report on the 1985 Hague Trusts Convention;⁹
 - ii. The Report on Trusts and Analogous Institutions;¹⁰
 - iii. academic sources;
 - iv. STEP Survey responses; and
 - v. input from members of the Working Group on Trusts.

⁸ The Working Group was composed of experts designated by HCCH Members and Observer Organisations: Australia (Brody Warren, Michael France); Canada (Christopher Blakeney, Raphaël Morissette, Valérie Simard); Costa Rica (Sofía Cob Briceño); Ecuador (Alegria Baus Pinto, Javier Llorca Vega); Germany (Christoph Wurm, Silvia Bartodziej); Italy (Roberta Nocella, *Chair of the Working Group*); Japan (Yuki Kato); Latvia (Agnese Saukuma, Dina Buse); Mexico (Carlos Sánchez Mejorada y Velasco, Jorge Sánchez Cordero Dávila); Panama (Gilberto Boutin, Raúl Aparicio); Switzerland (Thomas Mayer); Ukraine (Kateryna Taranenko, Mykhailo Korol, Yelizaveta Revilo); United Kingdom (Matthew Rowden, Peter Farr, Martin Fullick, Ian Keenan, Michael Paparakis, Keith Vincent); AAIL (Adrian Lai JP); ASADIP (Candela Villegas, Cecilia Fresnedo de Aguirre); CNUE (Kacper Górnjak, Paolo Pasqualis); EAPIL (Afonso Patrão, Gianluca Contaldi, Gilles Cuniberti, Pietro Franzina); ELI (Pascal Pichonnaz); and STEP (Emily Deane, Filippo Nosedà, Paolo Panico, Samantha Morgan). Prior to the second meeting of the Working Group, the representative of Costa Rica informed the Permanent Bureau that Costa Rica would no longer participate in the Working Group.

⁹ A.E. von Overbeck, "Explanatory Report on the HCCH 1985 Trusts Convention" [hereinafter, "Explanatory Report"], in *Proceedings of the Fifteenth Session (1984)*, Tome II, *Trusts, applicable law and recognition*, The Hague, Imprimerie Nationale, 1985, pp. 370-415.

¹⁰ 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) (ibid.)*, pp. 10-108.



II

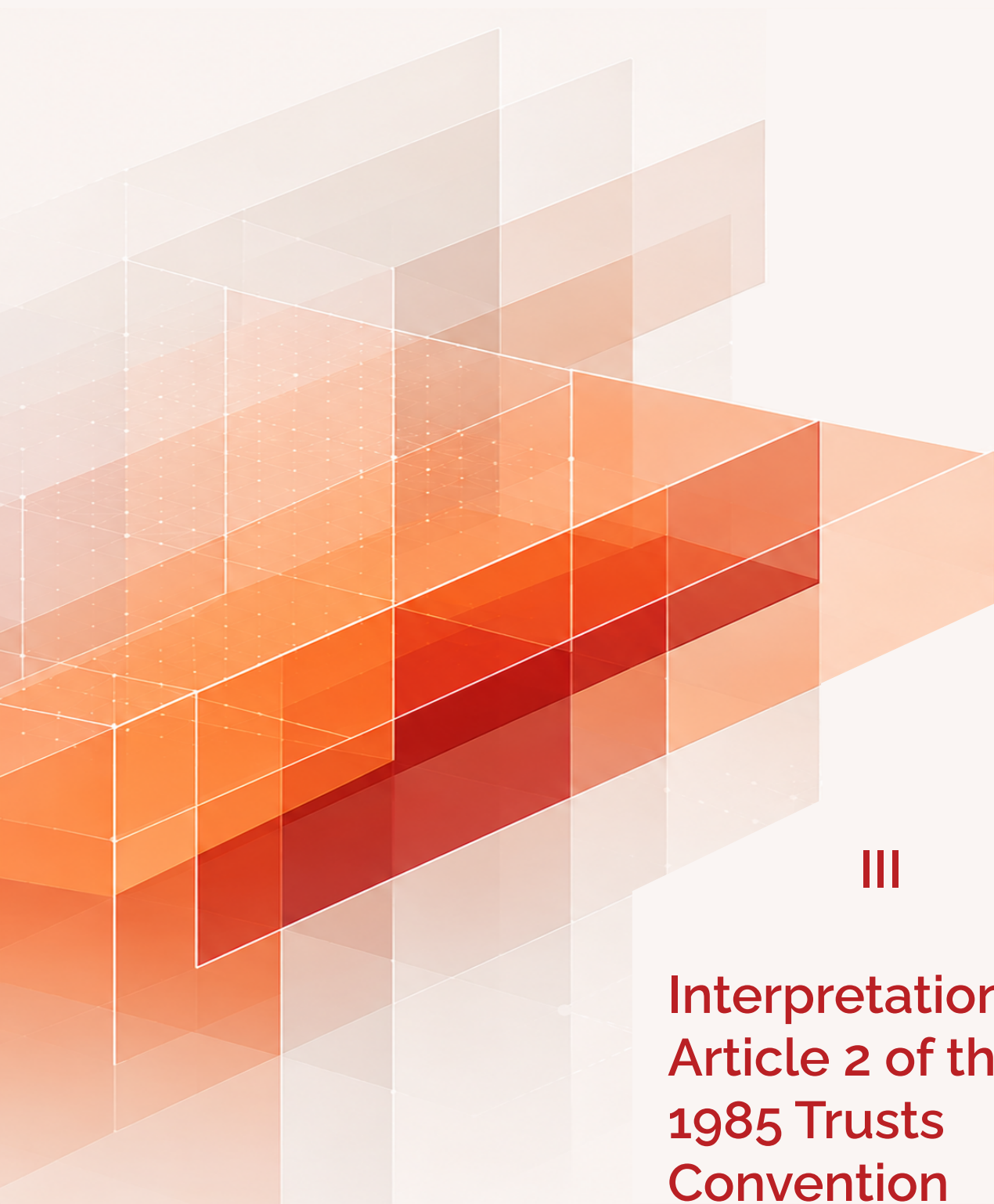
Outline of the 1985 Trusts Convention

- 13 The Trusts Convention specifies the law applicable to trusts and governs the recognition of trusts in the Contracting Parties. A trust is a legal institution originally developed in the common law tradition, where a person, the settlor, places assets under the control of a trustee to fulfil a pre-determined purpose or for the benefit of a beneficiary (Art. 2). The trustee is charged with, and accountable for, the administration of the trust. Bearing in mind the adoption of trusts and analogous institutions in different jurisdictions and the uniqueness of this common law institution, the Convention establishes provisions common to trusts and builds bridges between different legal traditions.
- 14 By facilitating cross-border recognition of trusts, the Convention provides predictability and certainty to the beneficiaries of trusts and to those involved in legal relationships created by trusts. It enhances party autonomy by giving priority to the law chosen by the settlor and harmonises conflicting private international law provisions among the jurisdictions that recognise the institution of trusts.
- 15 The Trusts Convention is divided into five chapters. Chapter I focuses on the scope of the Convention, identifying the institutions which are covered, and delimiting them in relation to other institutions (Art. 2). The scope of the Convention is limited in that it applies only to trusts created voluntarily and evidenced in writing (Art. 3). Therefore, trusts created by operation of law do not fall within the scope of the Convention, and trusts created by judicial decisions only fall within the scope of the Convention if the Contracting Party so declares. Preliminary issues relating to the validity of wills or of other acts in which assets are transferred to the trustee are also expressly excluded from the scope of the Convention (Art. 4). In other words, the Convention is applicable only to matters that concern the trust itself and only to such matters that arise after the establishment of the trust.
- 16 Chapter II of the Convention lays down the applicable law rules for trusts. It adopts a principle of "party autonomy" for trusts¹¹: the choice of law by the settlor provides the subjective connection (Art. 6); subsidiarily, failing a settlor choice (or if such a choice is ineffective), an objective connection to the law with which the trust is most closely connected (Art. 7) is provided in sub-paragraphs (a) to (d) in an implicit hierarchy.¹² *Dépeçage* is provided for (Art. 9) in that a settlor may pick and choose different laws to govern different aspects of the trust.
- 17 Chapter III of the Convention sets out what the recognition will consist of at a minimum (Art. 11) and specifies the form in which the trust may appear in public registers (Art. 12). Together with Chapter IV, the Convention provisions permit the non-recognition of certain trusts, if they appear improper (Arts 13, 15, 16 and 18) while preserving rules that are more favourable to the recognition of trusts than those of the Convention (Art. 14)¹³.
- 18 Chapter V contains the customary provisions of HCCH Conventions on signature, ratification, accession, entry into force and denunciation, as well as those on the implementation of the Convention in certain territorial units of composite States.
- 19 The English and French versions of the text of the Trusts Convention are equally authentic (Final Provision).

¹¹ Explanatory Report, p. 383, para. 63.

¹² *Ibid.*, pp. 374, 386 and 387, paras 20, 72 and 77.

¹³ *Ibid.*, p. 383, paras 21 and 22.



III

Interpretation of Article 2 of the 1985 Trusts Convention

20 Article 2 of the Trusts Convention describes the scope of the Convention.

21 The English and French versions of Article 2 read as follows:

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 Experts speaking at the CODIFI Conference had noted the importance of clarifying any divergences in interpretation between the English and French versions of the Article, including any challenges raised by the use of the French term *patrimoine* and the English term *estate*.¹⁴

¹⁴ CODIFI Conference, F. Nosedà, "Trusts / Closing Session", 16 September 2022, available at https://youtu.be/emhldcYSepE?si=bKUY_RoBxlufey6t (last accessed 6 May 2026).

- 23 An essential element of the structure of a trust for the purposes of the Convention, as specified in Article 2(a), is that “the assets constitute a separate fund and are not a part of the trustee's own estate”. In the French version, it reads, “les biens du trust constituent une masse distincte et ne font pas partie du patrimoine du trustee”. The term *estate* may be understood as a common law concept, while *patrimoine* reflects a civil law understanding of a person's assets.
- 24 In common law jurisdictions, trust assets are typically divided between legal and equitable ownership. By contrast, civil law systems have traditionally adhered to the principle that a person possesses a single, indivisible patrimony. This conceptual difference has historically posed challenges to the recognition of trusts within civil law frameworks. In response, several civil law jurisdictions have, over the past decades, developed legal mechanisms that allow for the recognition of distinct patrimonies or for the appropriation of a patrimony to a specific purpose. Examples include Quebec (Canada), the Czech Republic, and Italy, each of which has introduced frameworks that reconcile trust-like structures with civil law principles.¹⁵
- 25 To accommodate differences among legal traditions, the Convention does not require the presence of equitable ownership for a legal relationship to qualify as a trust. Instead, it focuses on the structural separation of trust assets from the trustee's personal assets. This structural requirement allows the Convention to be applied flexibly across legal traditions. It accommodates both the common law model – where ownership is split between legal and equitable interests – and the civil law approach, which may rely on the notion of a separate patrimony or a patrimony subject to an appropriation. Importantly, this conceptual divergence has not, to date, resulted in interpretive difficulties under the Convention.
- 26 Despite this flexibility, the use of *patrimoine* in the French version of Article 2 has raised concerns about potential misinterpretation by practitioners in civil law jurisdictions. Specifically, there is apprehension that the term – and the broader concept of distinct patrimonies – might lead some to assume that a trustee's personal assets are automatically shielded from liabilities incurred in their capacity as trustee. In practice, however, whether such protection exists depends on the applicable trust law, not on the concept of *patrimoine* itself.
- 27 Ultimately, the Convention's emphasis on structural separation rather than on conceptual ownership models ensures its compatibility with different legal systems while leaving questions of liability and asset protection to be resolved under domestic law.

¹⁵ Please refer to Annex A for information concerning frameworks in Quebec (Canada), the Czech Republic, and Italy.



IV

**Institutions meeting
the criteria in Article 2
of the 1985 Trusts
Convention**

- 28 The Trusts Convention does not define *trusts*. Rather, Article 2 of the Convention lists the characteristics of a trust and the type of legal relationships created by a trust. This reflects the intention of the drafters to ensure that the Convention would be relevant and applicable in an international context.¹⁶
- 29 Common law trusts originated in England around the 12th century as a way to manage property on behalf of those who were unable to do so themselves, such as knights fighting abroad and Roman Catholic mendicant orders who were forbidden from owning property directly under Canon Law. As the common law could be strict and inflexible and as it allowed anyone holding property to do with it whatever they lawfully pleased, the only way beneficiaries could challenge the decisions of their trustees if they disagreed with them was by petitioning the Monarch, and later the Lord Chancellor, for relief.
- 30 Over time, this led to the development of the law of equity, which is not a separate legal system, but a set of principles designed to mitigate the perceived harshness of the common law and to offer legal remedies designed to prevent injustice. In the case of trusts, equity ensures that a trust is managed for the benefit of the beneficiary, not the trustee.
- 31 It is also possible to have separate legal and equitable interests in the same property, where one person has legal ownership of a property with all the rights this entails, and another has an equitable interest in the same property, which gives them the right to enjoy or otherwise benefit from the property. For example, if a trustee sells a property held in trust, they must pass the profits of the sale to the beneficiary (or the trustee must otherwise deal with the proceeds for the beneficiary's benefit in a manner provided for by the trust agreement), as the beneficiary has an equitable interest in that property. Notably, this is considered a separate ownership interest rather than a specific right against the trustee.
- 32 It is also worth noting that in England and Wales, as well as several other common law legal systems, it is a longstanding legal principle that, where equity and common law are in dispute, equity prevails.
- 33 There is little doubt that common law trusts, as recognised in common law jurisdictions like Australia, Canada and the United Kingdom, fall squarely within the scope of the Trusts Convention. However, the position is less certain with respect to institutions, established by statute or otherwise, in jurisdictions outside the common law tradition. It sometimes remains unclear whether such institutions exhibit the characteristics enumerated in Article 2 of the Convention and, consequently, whether they may fall within the scope of the Convention. This section considers the nature of these institutions and assesses their potential inclusion within the ambit of the Convention.
- 34 Challenges to the interpretation of the Trusts Convention were recognised at the time that the Convention was negotiated, notably because the Convention deals with trusts, an institution arising specifically from common law traditions.¹⁷ It is noteworthy that the delegations at the Fifteenth Session considered and sought the inclusion of certain institutions, which are not common law trusts, within the scope of the Convention.¹⁸

¹⁶ Explanatory Report, p. 378, paras 36 and 37.

¹⁷ *Ibid.*, p. 372, para. 12.

¹⁸ *Ibid.*, p. 375, para. 26.

- 35 The Dyer/Van Loon Report stated that civil law systems have developed a bouquet of institutions which, either alone or in combination, could fulfil the functions of a trust, and noted that “[b]y instituting an independent juristic entity (a corporation or foundation), by setting up a contractual network of relationships, by transferring proprietary rights, by certain testamentary dispositions, and, most often, by a combination of two or more of these legal devices, it is possible to arrive at results which are very similar to those which common law systems have achieved through the trust. None of these institutions, per se, however, can be seen as an adequate translation of the trust concept.”¹⁹
- 36 The Explanatory Report also stated:
- “The question of whether analogous institutions existing in certain civil law countries also meet the criteria of the Convention will be more difficult to resolve [...]. It will be necessary to distinguish those institutions which are structurally analogous to the trust, and which fall under the Convention, from those which are only functionally analogous, and which are not covered.”²⁰
- 37 For reference, Annex A sets out, in table form, institutions in various jurisdictions that may or may not meet the criteria of Article 2 of the Trusts Convention, including descriptions of their origins, configuration, legal nature and function and, where relevant, the sources of the establishing legislation, case law, and other pertinent information.
- 38 In writing this Note, the Working Group on Trusts examined in detail whether certain contractual arrangements, institutions with legal personality, foundations and *waqfs* may meet the criteria set out in Article 2 of the Trusts Convention and therefore fall within the scope of the Convention.

A. Contractual arrangements

- 39 Some jurisdictions have contractual arrangements, the effects of which are similar to those under trusts. In assessing whether such creations satisfy the criteria of the Convention, it should be remembered that an institution must be structurally analogous to a trust to fall within the scope of the Convention.
- 40 The wording of Article 2 does not expressly include or exclude contractual arrangements from being covered by the Convention. From this perspective, it may be possible for contractual arrangements to satisfy the requirements of the Convention, including the requirement of the trust funds constituting a separate fund, but such should not be assumed to be the case. Each type of contractual relationship must be assessed against the Convention’s requirements.
- 41 Special care should be paid to the treatment of third parties in such relationships, as purely contractual arrangements may lack the ability to replicate the protective effects a trust affords against third-party claims without additional legal mechanisms. For example, in common law

¹⁹ The Dyer/Van Loon Report, p. 40, para. 57.

²⁰ Explanatory Report, p. 372, para. 13. See also “Conclusions drawn from the discussion of the Special Commission of June 1982 on trusts and analogous institutions”, Prel. Doc. No 6 of September 1982, in *Proceedings of the Fifteenth Session (1984)* (*op. cit.* note 2), p. 140, para. 12.

systems, trust property is held by the trustee but remains distinct from the trustee's personal assets. This separation ensures that, in the event of bankruptcy or insolvency, trust property is not available to satisfy the trustee's personal debts.

- 42 Under the doctrine of privity of contract known to some jurisdictions, contractual rights and obligations generally bind only the contracting parties. Therefore, a purely contractual arrangement in which property title passes from one party to another typically cannot, without some additional operation of law, protect that property from claims brought by third-party creditors upon the insolvency of the transferee. Contractual arrangements binding only on the contracting parties would not fall within the scope of the Convention.
- 43 See Annex A, where various contractual relationships which have some similarities to trusts are assessed to determine if they fall within the scope of the Convention.

B. Institutions with legal personality

- 44 Institutions with a separate legal personality holding or owning assets as legal persons fall outside the scope of Article 2 of the Convention. This is because Article 2 states, "assets have been placed under the control of a trustee" and "title to the trust assets stands in the name of the trustee". Therefore, it is the trustee – rather than the trust itself as a legal person – who is regarded as holding or owning the relevant assets.

C. Foundations

- 45 The Working Group on Trusts acknowledged that the nature of foundations varies across jurisdictions and that their structures and functions depend on the applicable legal frameworks. Foundations do not necessarily fall under the Trusts Convention. For example, foundations with a separate legal personality do not fall within the scope of the Convention (see, *supra*, para. 44). Accordingly, the determination of whether a specific type of foundation meets the criteria set out in Article 2 of the Convention is case-specific.

D. *Waqfs*

- 46 *Waqfs* are institutions rooted in the Islamic tradition. While noting that CGAP raised concerns about the inclusion of religious institutions²¹ and that many of the relevant jurisdictions that have *waqfs* are not represented in the Working Group on Trusts, it is considered informative to include a discussion of *waqfs* in this section.
- 47 Noting that there are several jurisdictions around the world where legal and religious systems are intertwined, the concerns on the inclusion of religious institutions may be alleviated by applying the same legal analysis as that applied to other institutions.
- 48 A *waqf* has been defined as "a financial charitable act established by withholding immovable and movable properties to perpetually spend its revenue to fulfil public or family needs, based

²¹ Report of statement on record with the Permanent Bureau.

on the preferences and conditions set by the founder.”²² To create a *waqf*, the owner of the property (*waqif*) declares his intention to dedicate the revenues of his property to a beneficiary (*mawquf alayh*) and assigns an administrator (*mutawalli*) over these assets. While this might appear to be an analogous institution at first glance, further consideration of their characteristics reveals several key areas of divergence between *waqfs* and trusts as follows:

- i. *Ownership*: The structure of *waqf* is distinct from the trust in that the assets do not constitute a separate fund from the trustee's own estate, and the ownership of the assets is not transferred to the trustee as such. Some States, such as Egypt, view the ownership as being retained by the *waqif* while only the usufruct right is assigned.²³ Others, like Jordan, consider that, once the *waqf* is created, the property can no longer be owned by anyone.²⁴ Oman,²⁵ Qatar,²⁶ and the United Arab Emirates²⁷ consider the *waqf* as a separate legal entity. In all three cases, the assets do not stand “in the name of the trustee or in the name of another person on behalf of the trustee” as required by Article 2(b) of the Convention. On the other hand, Malaysia has enacted a model that is closer to the common law model of trusts, in which the law “requires that every *waqf* shall be registered in the name of the Islamic Religious Council as proprietor”.²⁸ Yet this structure in Malaysia highlights another divergence between *waqf* and trusts, which is the role of governmental bodies in managing the endowed assets.
- ii. *Administration*: In a *waqf*, the administrator (*mutawalli*) is almost always a governmental authority under the name of “Ministry of *Awqaf*” or “General Directorate of *Awqaf*”, among other titles.²⁹ The competent authority has the power of an administrator, which entails a “right to build, preserve or rent out the property, to plant, collect and distribute income from the property, and to carry out the legal representation of the property.”³⁰

²² S. Baqutayan *et al.*, “Waqf Between the Past and Present”, *Mediterranean Journal of Social Sciences*, Vol. 9 (4), 2018, p. 149. See also The Federation of the Islamic Associations of New Zealand, “Our Community – Baitul Maal New Zealand Trust” (available at <https://fianz.com/our-community/#:~:text=Waqf%20is%20a%20financial%20charitable,conditions%20set%20by%20the%20founder>) (last accessed 6 May 2026).

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

²⁴ 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.

²⁵ Omani Royal Decree 65/2000 on *Awqaf*, Art. 2.

²⁶ Qatari Law No 8 of 1996 with respect to Endowment (*Waqf*) 8/1996, Art. 7.

²⁷ Federal Law of the UAE No 5 of 2018, Art. 10.

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

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

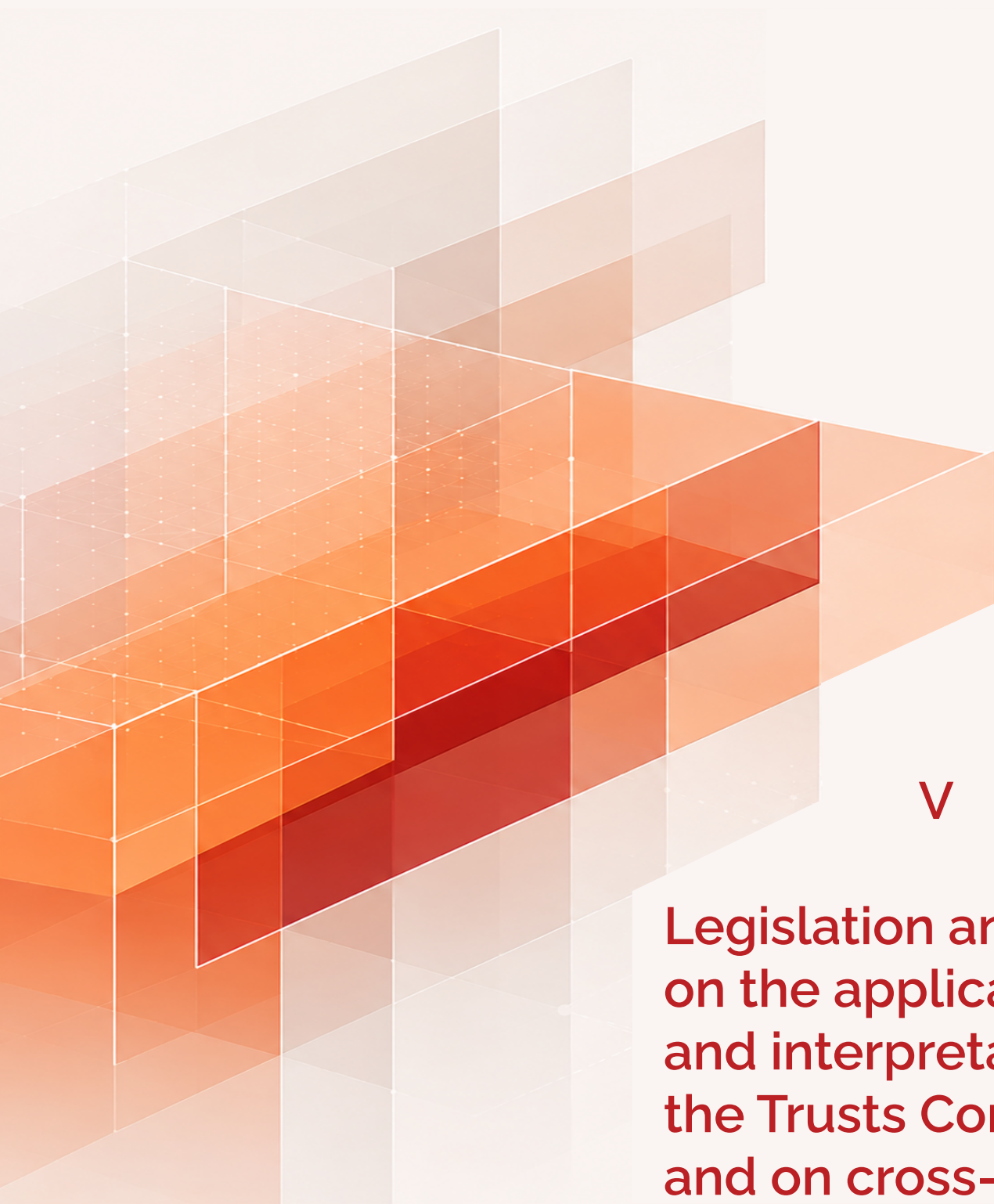
³⁰ I. Sándor, *Fiduciary Property Management and the Trust: Historical and Comparative Law Analysis*, Budapest, Hvg-ORAC Publishing Ltd., 2015.

- iii. *Purpose:* Finally, while trusts are known in a variety of forms,³¹ *waqfs* can only be created for charitable or pious purposes, either for the benefit of the general public or for specific individuals.³² Thus, only two forms of *waqf* exist: “the *waqf Khairi* – an endowment for an object of a religious or public nature – and the *waqf ahli* or *dhurri* – a family endowment”.³³

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

³² *Ibid.*, p. 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, p. 1233.



V

Legislation and cases
on the application
and interpretation of
the Trusts Convention
and on cross-border
recognition of trusts
and institutions
analogous to trusts

- 49 The purpose of this section is to present legislation and cases that may provide insight into how different legal systems apply the Trusts Convention and how they approach matters involving the cross-border recognition of trusts and institutions that may be analogous to trusts. In particular, it may illuminate how jurisdictions that recognise the institution of trusts handle cases involving trusts or analogous institutions originating from jurisdictions that did not traditionally have the trust institution. It may also clarify how these latter jurisdictions respond to foreign trusts and analogous institutions, especially when these originate from States that are not Contracting Parties to the Convention.
- 50 It is worth noting that some non-Contracting Parties seek to apply the Trusts Convention by incorporating it into their domestic legal frameworks through provisions similar to those set out in the Convention. Examples include Belgium,³⁴ Quebec (Canada),³⁵ the Czech Republic³⁶ and Romania.³⁷ The practical effect is that these jurisdictions recognise trusts in a similar way to Contracting Parties to the Convention.
- 51 Lists of relevant legislation and case law by jurisdiction are set out in Annex B for reference.

³⁴ Law of 16 July 2004 of Belgium establishing the Code of Private International Law, Chapter XII (Trust), Arts 122-125 (available at https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2004071631&table_name=loi) (last accessed 6 May 2026)

³⁵ Civil Code of Québec of Canada, Book Ten (Private International Law), Title Two (Conflict of Laws), Arts 3107-3108 (available at https://www.legisquebec.gouv.qc.ca/en/document/cs/ccq-1991/20170616?langCont=en#ga:l_ten-gb:l_two-h1) (last accessed 6 May 2026) (note: while Canada is a party to the Trusts Convention, its application is not extended to Quebec).

³⁶ Law of 25 January 2012 of the Czech Republic 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) (available at <http://obcanskyzakonik.justice.cz/images/pdf/Act-Governing-Private-International-Law.pdf>) (last accessed 6 May 2026).

³⁷ Civil Code of Romania, Book VII (Provisions of Private International Law), Title II (Conflicts of Laws), Chapter VIII (Fiducia), Arts 2.659-2.662 (available at Portal Legislativ, <https://legislatie.just.ro/>) (last accessed 6 May 2026).



Annexes



Annex A

**Institutions meeting
the criteria in Article 2
of the 1985 Trusts
Convention**

- 1 This Annex sets out, in table form, institutions in various jurisdictions that may or may not meet the criteria of Article 2 of the Trusts Convention, including descriptions of their origins, configuration, legal nature and function and, where relevant, the sources of the establishing legislation, case law, and other pertinent information. The information presented in the tables below is not intended to be exhaustive.
- 2 The tables below indicate whether an institution may fall under Article 2 for purposes of the Trusts Convention. However, the indication is not conclusive. It is based on the sources described in paragraph 12 of the Note, including the statements made by delegations representing the relevant jurisdictions at the Fifteenth Session and the input from members of the Working Group on Trusts. It should be noted that while the statements made by the delegations at the Fifteenth Session may have significant referential value, the applicable laws and practices in the respective jurisdictions may have evolved since that time. Also, as not all jurisdictions set out in the tables are represented in the Working Group, the information may not have been verified by the representatives of the respective jurisdictions.
- 3 Additionally, the information presented in the tables involves legal sources from different jurisdictions in different languages. Translations will, consequently, be required in some cases. When an official translation of the formal name of an institution is available, that name will be translated into the language of the publication. When no such translation is available, the name of the institution will remain in its original language. For example, the term "*fideicomiso*" will be used in the English publication when no official translation exists in the jurisdiction with this institution that is being referenced. Legislative sources will be set out in the language of this publication, relying on official translations where available and using the translation capabilities of the Permanent Bureau when official translations are unavailable.

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 Rochwerger 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

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).

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

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."

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

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. Brazil

Country (Region)	Brazil
Institution:	<i>Fideicomisso</i> (“ <i>Substituição Fideicomissária</i> ”)
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. Canada

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

Country (Region)	People's Republic of China
Institution:	Trusts
Legal Basis / Origin:	Article 2 of the Trust Law of the People's Republic of China provides: "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. Czech Republic

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. Egypt

Country (Region)	Egypt
Institution:	(1) Charitable trust
Legal Basis / Origin:	
Whether the institution may potentially meet the criteria of Article 2:	Yes At the Fifteenth Session, the delegation representing this country sought inclusion of this local institution within the scope of "analogous institution" of the Convention.

Institution:	(2) <i>Waqf</i>
Legal Basis / Origin:	
Whether the institution may potentially meet the criteria of Article 2:	No 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. Ethiopia

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. France

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. Germany

Country (Region)	Germany
Institution:	<i>Fiduziarische Treuhand</i> or <i>Ermächtigungs- oder Vollmachtstreuhand</i>
Legal Basis / Origin:	<i>Fiduziarische Treuhand</i> is a contractual obligation. In the contract, the <i>Treugeber</i> undertakes to transfer assets to the <i>Treuhänder</i> . The <i>Treuhänder</i> undertakes to manage the <i>Treuhandvermögen</i> , of which he becomes the full owner, separately from his own assets for the <i>Treugeber</i> or a third party.
Whether the institution may potentially meet the criteria of Article 2:	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. Hungary

Country (Region)	Hungary
Institution:	(1) Fiduciary asset management contract
Legal Basis / Origin:	Act V of 2013 on the Civil Code, Book Six (Law of Obligations), Title XVI (Agency-type Contracts), Chapter XLIII (Fiduciary asset management contract), Sections 6:310-330¹ 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. Italy

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. Japan

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. Jordan

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. Republic of Korea

Country (Region)	Republic of Korea
Institution:	Trusts
Legal Basis / Origin:	Article 2 of Trust Act (as revised by Act No 10924 of 2011) ¹ defines "trust" as: "a legal relation that a person who creates a trust (hereinafter referred to as "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%Ao%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%Ao%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).

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) <i>Treuunternehmen</i>
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. Luxembourg

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. Malaysia

Country (Region)	Malaysia
Institution:	(1) Trusts
Legal Basis / Origin:	Trust Companies Act 1949 (Malaysian Act 100) ¹ Trustee Act 1949 (Malaysian Act 208) ²
Whether the institution may potentially meet the criteria of Article 2:	Yes

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://library.jksm.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. Republic of Moldova

Country (Region)	Republic of Moldova
Institution:	<i>Fiducia</i>
Legal Basis / Origin:	Moldovan Civil Code, Book III (Obligations), Title IV (Trust), Articles 2055–2161 ¹
Whether the institution may potentially meet the criteria of Article 2:	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. Monaco

Country (Region)	Monaco
Institution:	Trust
Legal Basis / Origin:	Law No. 214 of 27 February 1936 revising Law No. 207 of 12 July 1935 on 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. Netherlands

Country (Region)	Netherlands
Institution:	<i>Bewind</i>
Legal Basis / Origin:	Title 3.6 of the Dutch Civil Code ¹
Whether the institution may potentially meet the criteria of Article 2:	No 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. Oman

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

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. Peru

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. Poland

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. Romania

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. South Africa

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. Switzerland

Country (Region)	Switzerland
Institution:	(1) <i>Treuhand</i> / <i>fiducie</i> / <i>fiducia</i>
Legal Basis / Origin:	
Whether the institution may potentially meet the criteria of Article 2:	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. United Arab Emirates

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. United Kingdom of Great Britain and Northern Ireland

Country (Region)	The United Kingdom of Great Britain and Northern Ireland i) England and Wales ii) Scotland iii) Northern Ireland
Institution:	Trusts
Legal Basis / Origin:	Trusts law in all UK jurisdictions is based on a mixture of common law and statute. Notable cases and legislation include: i) For England and Wales, the case of <i>Knight v Knight</i> [1840] 49 ER 58 sets out the requirements for a trust to be recognised as valid. The Trustee Act 1925, the Trusts of Land and Appointment of Trustees Act 1996 and the Trustee Act 2000 codify the appointment, resignation and powers of trustees. ii) The key legislation governing the Scots law of trusts is as follows: • 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 (Bolivarian Republic of)

Country (Region)	Venezuela (Bolivarian Republic of)
Institution:	(1) Trust
Legal Basis / Origin:	"[I]n 1956, Venezuela sought to 'introduced a notion of trust with no restrictions as to its range of applications'. The civil code <i>fideicomiso</i> continued to exist, but the 1956 law permitted banks, insurance companies, and financial companies to perform as fiduciaries for certain operations within their respective industries." 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).



Annex B

**Selected legislation
and cases on the
application and
interpretation of the
1985 Trusts Convention
and on cross-border
recognition of trusts
and institutions
analogous to trusts**

- 1 This Annex sets out lists of legislation and cases, by jurisdictions, that are considered relevant to the application and interpretation of the Trusts Convention and cross-border recognition of trusts and institutions analogous to trusts.
- 2 The information presented in the lists below is not intended to be exhaustive.
- 3 The formal names of the legislation and cases are set out in the language of this publication, relying on official translations where available and using the translation capabilities or other assistance of the Permanent Bureau where official translations are otherwise unavailable.

1. Australia

Legislation

Trusts (Hague Convention) Act 1991 (Cth)¹

Cases

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

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

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

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

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

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

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

2. Belgium

Legislation

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

¹ Available at [Trusts \(Hague Convention\) Act 1991 - Federal Register of Legislation](#) (last accessed 6 May 2026).

² Available at https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2004071631&table_name=loi (last accessed 6 May 2026).

3. (A) Canada (other than Quebec)

Cases

Chan v. Chan, 2012 BCSC 192³

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

Killam v. Killam, 2018 BCCA 64⁵

Re Jagos (Estate of), 2007 ABQB 56⁶

Ritter v. Hoag, 2003 ABQB 88⁷

Rowland v. Vancouver College Ltd., 2001 BCCA 527⁸

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) Canada (Quebec)

Legislation

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

Cases

Dubeau c. Lessard, 2015 QCCS 6144¹⁴

³ Available at <https://canlii.ca/t/fpwbs> (last accessed 6 May 2026).

⁴ Available at <https://canlii.ca/t/1z8wf> (last accessed 6 May 2026).

⁵ Available at <https://canlii.ca/t/hqxxkq> (last accessed 6 May 2026).

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

⁷ Available at <https://canlii.ca/t/5dhr> (last accessed 6 May 2026).

⁸ Available at <https://canlii.ca/t/4z8b> (last accessed 6 May 2026).

⁹ Available at <https://canlii.ca/t/1gw6v> (last accessed 6 May 2026).

¹⁰ Available at <https://canlii.ca/t/g2gtg> (last accessed 6 May 2026).

¹¹ Available at [Canada v. Sommerer - Federal Court of Appeal](#) (last accessed 6 May 2026).

¹² Available at <https://canlii.ca/t/28c4d> (last accessed 6 May 2026).

¹³ Available at <https://www.legisquebec.gouv.qc.ca/en/document/cs/ccq-1991?langCont=fr#se:3107> (last accessed 6 May 2026).

¹⁴ Available at <https://canlii.ca/t/gmtg7> (last accessed 6 May 2026).

5. Czech Republic

Legislation

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

6. China, Hong Kong SAR

Legislation

Recognition of Trusts Ordinance (Cap. 76)¹⁶

7. Italy

Legislation

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

8. Luxembourg

Legislation

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

Cases

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

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

Luxembourg district court, 12 November 2008, case no 107177

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

9. Monaco

Legislation

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

¹⁵ Available at <http://obcanskyzakonik.justice.cz/images/pdf/Act-Governing-Private-International-Law.pdf> (last accessed 6 May 2026).

¹⁶ Available at [Cap. 76 Recognition of Trusts Ordinance](#) (last accessed 6 May 2026).

¹⁷ Available at [LAW no. 364 of 16 October 1989 - Normattiva](#) (last accessed 6 May 2026).

¹⁸ Available at <http://data.legilux.public.lu/eli/etat/leg/loi/2003/07/27/n4/jo> (last accessed 6 May 2026).

¹⁹ Available at <https://legimonaco.mc/code/code-droit-international-prive/> (last accessed 6 May 2026).

10. Netherlands

Legislation

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

Cases

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

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

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

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

Ruling of Porto Court of Appeal, 28.11.2017 - proc. 1050-06.gTVPRT.P1

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

12. Romania

Legislation

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

13. San Marino

Legislation

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

14. Spain

Cases

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

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

²⁰ Available at wetten.nl - Regeling - Burgerlijk Wetboek Boek 10 - BWBR0030068 (last accessed 6 May 2026).

²¹ Available at wetten.nl - Regeling - Verdrag inzake het recht dat toepasselijk is op trusts en inzake de erkenning van trusts - BWBV0002005 (last accessed 6 May 2026).

²² Available at [COD CIVIL \(A\) 04/02/2016](https://www.codcivil.ro) - Portal Legislativ (last accessed 6 May 2026).

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) (last accessed 6 May 2026).

15. Switzerland

Legislation

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

Cases

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

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

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

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

16. United Kingdom of Great Britain and Northern Ireland

Legislation

Recognition of Trusts Act 1987²⁶

²⁴ Available at [SR 291 - Bundesgesetz vom 18. Dezember 1987 über...](#) | Fedlex (last accessed 6 May 2026).

²⁵ Available at [AS 2007 2849 - Bundesbeschluss über die Genehmig...](#) | Fedlex (last accessed 6 May 2026).

²⁶ Available at <https://www.legislation.gov.uk/ukpga/1987/14> (last accessed 6 May 2026).

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